CHAPTER 61
NATURAL RESOURCES

Article.
1. Names. Transferred.
2. Department of Natural Resources. 61-201 to 61-219.

Cross References

Constitutional provisions:
Alienation of natural resources, prohibited, see Article III, section 20, Constitution of Nebraska.
Water, rights and uses, see Article XV, sections 4 to 7, Constitution of Nebraska.
Agreements with other states, authorized, see section 2-32,102 et seq.
Agriculture, generally, see Chapter 2.
Commission, Nebraska Natural Resources, created, see section 2-1504.
Conservation and Survey Division, University of Nebraska, see sections 85-163 to 85-165.
Conservation Corporation Act, see section 2-4201.
Data bank, see section 2-1568 et seq.
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Districts, natural resources, see section 2-3201 et seq.
Drainage, see Chapter 31.
Environmental protection, see Chapter 81, article 15.
Flood plain management, see section 31-1001 et seq.
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Geothermal resources, see sections 66-1101 to 66-1106.
Ground water, see Chapter 46, article 6.
Institute of Agriculture and Natural Resources, University of Nebraska, see section 85-1,104.
Irrigation, see Chapter 46, article 1.
Mines and minerals, see Chapter 57.
Missouri Basin Natural Resources Council, see section 2-32,102 et seq.
Oil and gas, see Chapter 57.
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Real estate, acquisition by political subdivision, see section 13-403.
Register, Nebraska Natural Areas, see section 37-716 et seq.
Soil and Water Conservation Act, Nebraska, see section 2-1575.
Solar energy, see sections 66-901 to 66-914.
Tree Recovery Program, Nebraska, see sections 72-1901 to 72-1904.
Water rights, see Chapter 46, article 2.
Wind energy, see sections 66-901 to 66-914.

ARTICLE 1
NAMES

Section
61-101. Transferred to section 25-21,270.
61-102. Transferred to section 25-21,271.
61-103. Transferred to section 25-21,272.
61-104. Transferred to section 25-21,273.
61-105. Transferred to section 23-1313.

61-101 Transferred to section 25-21,270.

61-102 Transferred to section 25-21,271.

61-103 Transferred to section 25-21,272.

61-104 Transferred to section 25-21,273.

61-105 Transferred to section 23-1313.

ARTICLE 2
DEPARTMENT OF NATURAL RESOURCES

Cross References

Fees, see section 33-105.

Section

61-201 Director of Natural Resources; qualifications.

The Director of Natural Resources shall be qualified by training and business experience to manage and supervise the Department of Natural Resources. The director shall be a professional engineer as provided in the Engineers and Architects Regulation Act and have had at least five years' experience in a position of responsibility in irrigation work.

Source: Laws 1957, c. 365, § 19, p. 1241; Laws 1959, c. 219, § 2, p. 767; Laws 1969, c. 386, § 1, p. 1355; Laws 1997, LB 622, § 75; R.S.1943, (1998), § 46-701; Laws 2000, LB 900, § 1.

Cross References

Engineers and Architects Regulation Act, see section 81-3401.

61-202 Director of Natural Resources; employment of personnel.

The Director of Natural Resources may employ such personnel, including legal and technical advisors, as necessary to carry out the duties required of the director.

Source: Laws 1957, c. 365, § 20, p. 1241; R.S.1943, (1998), § 46-702; Laws 2000, LB 900, § 2.

61-203 Director of Natural Resources; seal; certified copies of records; admissibility as evidence.

The Director of Natural Resources shall adopt a seal. Copies of all records or other instruments in the Department of Natural Resources when certified by the department as true copies and bearing the seal thereof shall be received in any court as prima facie evidence of the original record or instruments.

Source: Laws 1957, c. 365, § 21, p. 1241; R.S.1943, (1998), § 46-703; Laws 2000, LB 900, § 3.

61-204 Department of Natural Resources; rules and regulations.

(1) The Director of Natural Resources may adopt and promulgate rules and regulations for the Department of Natural Resources except to the extent such power is statutorily granted to the Nebraska Natural Resources Commission. The director shall administer rules and regulations adopted and promulgated by the commission.

(2) The rules, regulations, and orders of the Director of Water Resources, the Department of Water Resources, and the Nebraska Natural Resources Commission shall remain in effect unless changed or eliminated by the Director of Natural Resources or the Department of Natural Resources or by the commission to the extent such power is statutorily granted to the commission.

Source: Laws 1957, c. 365, § 22, p. 1241; R.S.1943, (1998), § 46-704; Laws 2000, LB 900, § 4.

61-205 Department of Natural Resources; general grant of authority.

The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Department of Water Resources prior to July 1, 2000. The Department of Natural Resources shall exercise the powers and perform the duties assigned to the Nebraska Natural Resources Commission prior to July 1, 2000, except as otherwise specifically provided.

The Director of Natural Resources and his or her duly authorized assistants shall have access at all reasonable times to all dams, reservoirs, hydroelectric plants, water measuring devices, and headgates, and other devices for diverting water, for the purpose of performing the duties assigned to the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 1, p. 834; C.S.1922, § 8420; C.S.1929, § 81-6301; R.S.1943, § 46-208; Laws 1973, LB 186, § 1; R.S.1943, (1998), § 46-208; Laws 2000, LB 900, § 5; Laws 2006, LB 1226, § 29.

Department is the successor of prior boards dealing with irrigation. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Under former law, Department of Roads and Irrigation exercised powers and functions of former Board of Irrigation. In re Claim Affidavit of Parsons, 148 Neb. 239, 27 N.W.2d 190 (1947).

61-206 Department of Natural Resources; jurisdiction; rules; hearings; orders; powers and duties.

(1) The Department of Natural Resources is given jurisdiction over all matters pertaining to water rights for irrigation, power, or other useful purposes except as such jurisdiction is specifically limited by statute. Such department shall adopt and promulgate rules and regulations governing matters coming before it. It may refuse to allow any water to be used by claimants until their rights have been determined and made of record. It may request information relative to irrigation and water power works from any county, irrigation, or power officers and from any other persons. It may have hearings on

complaints, petitions, or applications in connection with any of such matters. Such hearings shall be had at the time and place designated by the department. The department shall have power to certify official acts, compel attendance of witnesses, take testimony by deposition as in suits at law, and examine books, papers, documents, and records of any county, party, or parties interested in any of the matters mentioned in this section or have such examinations made by its qualified representative and shall make and preserve a true and complete transcript of its proceedings and hearings. If a final decision is made without a hearing, a hearing shall be held at the request of any party to the proceeding if the request is made within thirty days after the decision is rendered. If a hearing is held at the request of one or more parties, the department may require each such requesting party and each person who requests to be made a party to such hearing to pay the proportional share of the cost of such transcript. Upon any hearing, the department shall receive any evidence relevant to the matter under investigation and the burden of proof shall be upon the person making the complaint, petition, and application. After such hearing and investigation, the department shall render a decision in the premises in writing and shall issue such order or orders duly certified as it may deem necessary.

(2) The department shall serve as the official agency of the state in connection with water resources development, soil and water conservation, flood prevention, watershed protection, and flood control.

(3) The department shall:

(a) Offer assistance as appropriate to the supervisors or directors of any subdivision of government with responsibilities in the area of natural resources conservation, development, and use in the carrying out of any of their powers and programs;

(b) Keep the supervisors or directors of each such subdivision informed of the activities and experience of all other such subdivisions and facilitate cooperation and an interchange of advice and experience between such subdivisions;

(c) Coordinate the programs of such subdivisions so far as this may be done by advice and consultation;

(d) Secure the cooperation and assistance of the United States, any of its agencies, and agencies of this state in the work of such subdivisions;

(e) Disseminate information throughout the state concerning the activities and programs of such subdivisions;

(f) Plan, develop, and promote the implementation of a comprehensive program of resource development, conservation, and utilization for the soil and water resources of this state in cooperation with other local, state, and federal agencies and organizations;

(g) When necessary for the proper administration of the functions of the department, rent or lease space outside the State Capitol; and

(h) Assist such local governmental organizations as villages, cities, counties, and natural resources districts in securing, planning, and developing information on flood plains to be used in developing regulations and ordinances on proper use of these flood plains.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 14, p. 839; C.S.1922, § 8433; C.S.1929, § 81-6314; R.S.1943, § 46-209; Laws 1957, c. 197, § 1, p. 695; Laws 1959, c. 219, § 1, p. 766; Laws 1981, LB

109, § 1; Laws 1984, LB 897, § 2; Laws 1984, LB 1106, § 36; Laws 1991, LB 772, § 4; Laws 1995, LB 350, § 1; R.S.1943, (1998), § 46-209; Laws 2000, LB 900, § 6; Laws 2004, LB 962, § 102; Laws 2008, LB727, § 1.

The Department of Natural Resources has no independent authority to regulate ground water users or administer ground water rights for the benefit of surface water appropriators. In re Complaint of Central Neb. Pub. Power, 270 Neb. 108, 699 N.W.2d 372 (2005).

Even in the absence of statutory authority, an administrative agency has the power to reconsider its own decisions. However, except where the motion to reconsider is one based on newly discovered evidence, the agency's power to reconsider its own order exists only until the aggrieved party files an appeal or the statutory time has expired. A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. Where there has been no initial hearing, a motion for a hearing pursuant to this section cannot be considered one for rehearing. City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996).

Department of Water Resources has exclusive original jurisdiction to hear and adjudicate all matters pertaining to water rights. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

Department of Water Resources has exclusive original jurisdiction over application for allowance of water rights. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Department has jurisdiction over cancellation of water rights. State v. Nielsen, 163 Neb. 372, 79 N.W.2d 721 (1956).

Department cannot by rule extend time allowed to apply water to a beneficial use. North Loup River P. P. & I. Dist. v. Loup River P. P. Dist., 162 Neb. 22, 74 N.W.2d 863 (1956).

Under former law, appeal from decision refusing to cancel water rights on ground of nonuser may be properly taken to district court instead of directly to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

61-207 Department of Natural Resources; decisions; appeal; time; procedure.

If any county, party, or parties interested in irrigation or water power work affected thereby are dissatisfied with the decision or with any order adopted, such dissatisfied county, party, or parties may appeal to the Court of Appeals to reverse, vacate, or modify the order complained of. The procedure to obtain such reversal, modification, or vacation of any such decision or order upon which a hearing has been had before the Department of Natural Resources shall be governed by the same provisions in force with reference to appeals and error proceedings from the district court. The evidence presented before the department as reported by its official stenographer and reduced to writing, together with a transcript of the record and pleadings upon which the decision is based, duly certified in such case under the seal of the department, shall constitute the complete record and the evidence upon which the case shall be presented to the appellate court. The time for perfecting such appeal shall be limited to thirty days after the rendition of such decision or order, and the appellate court shall advance such appeal to the head of its docket.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 15, p. 840; C.S.1922, § 8434; C.S.1929, § 81-6315; R.S.1943, § 46-210; Laws 1961, c. 227, § 1, p. 671; Laws 1973, LB 186, § 2; Laws 1984, LB 897, § 3; Laws 1987, LB 33, § 9; Laws 1991, LB 732, § 105; Laws 1992, LB 360, § 12; R.S.1943, (1998), § 46-210; Laws 2000, LB 900, § 7.

Cross References

Actions appealed to Supreme Court, advanced for argument, see section 25-1920.

A motion to reconsider filed with an administrative agency will not toll the statutory time for seeking judicial review. City of Lincoln v. Twin Platte NRD, 250 Neb. 452, 551 N.W.2d 6 (1996).

Regarding the granting of water diversion applications, the court's standard of review is to (1) search for errors appearing in the record; (2) determine whether the judgment conforms to law and whether it is supported by competent and relevant evidence; and (3) determine whether the director's action was arbitrary, capricious, or unreasonable. In re Applications A-15145, A-15146, A-15147, and A-15148, 230 Neb. 580, 433 N.W.2d 161 (1988).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record. In re Application U-2, 226 Neb. 594, 413 N.W.2d 290 (1987).

The proper standard of review for the Supreme Court to follow in cases involving appeals from the Department of Water Resources under the provisions of this section is to search only for errors appearing in the record; i.e., does the judgment conform to law, is it supported by competent and relevant evidence, and was the action neither arbitrary, capricious, nor unreasonable? To the extent that In re Applications A-15995 and

A-16006, 223 Neb. 430, 390 N.W.2d 506 (1986), holds to the contrary, it is overruled. In re Application A-15738, 226 Neb. 146, 410 N.W.2d 101 (1987).

Under former law, appeal lies from final order of Department of Water Resources directly to Supreme Court. Ainsworth Irr. Dist. v. Harms, 170 Neb. 228, 102 N.W.2d 429 (1960).

Evidence not offered at hearing has no place in bill of exceptions. State v. Birdwood Irr. Dist., 154 Neb. 52, 46 N.W.2d 884 (1951).

Under former law, the Department of Roads and Irrigation was neither a necessary nor a proper party to a proceeding on appeal to secure a reversal, modification, or vacation of an order made and entered by it. Cozad Ditch Co. v. Central Nebraska Public Power & Irr. Dist., 132 Neb. 547, 272 N.W. 560 (1937).

Under former law, appeal in proceedings before Department of Roads and Irrigation to cancel water right on ground of abandonment from decision refusing cancellation could be properly taken to district court instead of to Supreme Court. State v. Oliver Bros., 119 Neb. 302, 228 N.W. 864 (1930).

The proper standard of review for an appellate court to follow in cases involving appeals from the Department of Water Resources under this section is to search only for errors appearing on the record, i.e., to determine whether the judgment conforms to law, is supported by relevant evidence, and is not arbitrary, capricious, or unreasonable. In re Applications A-17004 et al., 1 Neb. App. 974, 512 N.W.2d 392 (1993).

61-208 Department of Natural Resources; powers; survey of streams.

The Department of Natural Resources may make surveys of streams showing location of possible water power developments and irrigation projects.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 30, p. 845; C.S.1922, § 8449; C.S.1929, § 81-6330; R.S.1943, § 46-212; Laws 1984, LB 897, § 4; R.S.1943, (1998), § 46-212; Laws 2000, LB 900, § 8.

61-209 Department of Natural Resources; powers; water data collection; fee.

The Department of Natural Resources may conduct special projects for water data collection on behalf of other state agencies, political subdivisions, or federal agencies. Such data shall be public information. The department may charge a fee to cover in whole or in part the costs of collecting, analyzing, and publishing the data and such fees shall be deposited in the Department of Natural Resources Cash Fund.

Source: Laws 1983, LB 33, § 1; R.S.1943, (1998), § 46-212.01; Laws 2000, LB 900, § 9.

61-210 Department of Natural Resources Cash Fund; created; use; investment.

The Department of Natural Resources Cash Fund is created. The State Treasurer shall credit to such fund such money as is specifically appropriated or reappropriated by the Legislature. The State Treasurer shall also credit such fund with payments, if any, accepted for services rendered by the department and fees collected pursuant to subsection (6) of section 46-606 and section 61-209. The funds made available to the Department of Natural Resources by the United States, through the Natural Resources Conservation Service of the Department of Agriculture or through any other agencies, shall be credited to the fund by the State Treasurer. 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. The Department of Natural Resources shall allocate money from the fund to pay costs of the programs or activities of the department. The Director of Administrative Services, upon receipt of proper vouchers approved by the department, shall issue warrants on the fund, and the State Treasurer shall countersign and pay from, but never in excess of, the amounts to the credit of the fund.

Source: Laws 1937, c. 8, § 13, p. 109; C.S.Supp.,1941, § 2-1913; R.S. 1943, § 2-1547; Laws 1959, c. 6, § 25, p. 90; Laws 1969, c. 584, § 28, p. 2358; Laws 1973, LB 188, § 2; Laws 1987, LB 29, § 2; Laws 1995, LB 7, § 6; Laws 1999, LB 403, § 2; R.S.Supp.,1999,

§ 2-1547; Laws 2000, LB 900, § 10; Laws 2001, LB 667, § 26; Laws 2002, LB 458, § 8; Laws 2005, LB 335, § 81; Laws 2007, LB701, § 26.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-211 Department of Natural Resources; powers; measuring devices; gauge height reports; requirements; violation; penalty.

The Department of Natural Resources may direct managers or operators of interstate ditches to construct and maintain suitable measuring devices at or near the state line in Nebraska. A manager or operator shall within thirty days after receipt of notice from the department construct and complete installation of such a measuring device and shall furnish daily gauge height reports to the department from the beginning to the end of the irrigation season, in such form and manner as recommended by the department. Failure of any manager or operator of an interstate ditch to comply with this section shall be a Class V misdemeanor.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 31, p. 846; C.S.1922, § 8450; C.S.1929, § 81-6331; R.S.1943, § 46-213; Laws 1977, LB 40, § 256; Laws 1991, LB 276, § 1; R.S.1943, (1998), § 46-213; Laws 2000, LB 900, § 11.

61-212 Water divisions; denomination.

The State of Nebraska is hereby divided into two water divisions, denominated water division No. 1 and water division No. 2, respectively.

Source: Laws 1895, c. 69, § 1, p. 244; R.S.1913, § 3378; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 10, p. 833; C.S.1922, § 8415; C.S.1929, § 46-510; R.S.1943, § 46-215; R.S.1943, (1998), § 46-215; Laws 2000, LB 900, § 12.

For administrative purposes, state is divided into two water divisions. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-213 Water division No. 1; boundaries.

Water division No. 1 shall consist of (1) all the lands of the state drained by the Platte Rivers and their tributaries lying west of the mouth of the Loup River and (2) all other lands lying south of the Platte and South Platte Rivers that may be watered from other superficial or subterranean streams not tributary to the Platte River.

Source: Laws 1895, c. 69, § 2, p. 244; R.S.1913, § 3379; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 11, p. 833; C.S.1922, § 8416; C.S.1929, § 46-511; R.S.1943, § 46-216; R.S.1943, (1998), § 46-216; Laws 2000, LB 900, § 13.

61-214 Water division No. 2; boundaries.

Water division No. 2 shall consist of (1) all lands that may be watered from the Loup, White, Niobrara, and Elkhorn Rivers and their tributaries and (2) all other lands of the state not included in any other water division.

Source: Laws 1895, c. 69, § 3, p. 245; Laws 1911, c. 153, § 2, p. 498; R.S.1913, § 3380; Laws 1919, c. 190, tit. VII, art. V, div. 1, § 12, p. 833; C.S.1922, § 8417; C.S.1929, § 46-512; R.S.1943, § 46-217; R.S.1943, (1998), § 46-217; Laws 2000, LB 900, § 14.

Snake River is within the Niobrara River basin or watershed. Ainsworth Irr. Dist. v. Bejot, 170 Neb. 257, 102 N.W.2d 416 (1960).

61-215 Water divisions; division supervisors.

There shall be one or more division supervisors acting for the Department of Natural Resources to administer the public water of the state in the water divisions created by section 61-212. Such a division supervisor, acting for the department, shall have the immediate direction and control of the distribution of water in such manner as directed by the department.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 3, p. 834; C.S.1922, § 8422; C.S.1929, § 81-6303; R.S.1943, § 46-218; Laws 1953, c. 157, § 1, p. 495; Laws 1987, LB 140, § 2; R.S.1943, (1998), § 46-218; Laws 2000, LB 900, § 15.

61-216 Water divisions; division supervisors; duties.

The division supervisor or supervisors shall, under the direction of the Department of Natural Resources, see that the laws relative to the distribution of water are executed in accordance with the rights of priority of appropriation.

Source: Laws 1919, c. 190, tit. VII, art. V, div. 2, § 4, p. 835; C.S.1922, § 8423; C.S.1929, § 81-6304; R.S.1943, § 46-219; Laws 1953, c. 157, § 2, p. 495; R.S.1943, (1998), § 46-219; Laws 2000, LB 900, § 16.

Under former law, Department of Roads and Irrigation was authorized to shut and lock headgates of junior appropriators when there was not sufficient water to supply the needs of senior appropriators. Platte Valley Irr. Dist. v. Tilley, 142 Neb. 122, 5 N.W.2d 252 (1942).

Right to shut and lock headgates is not exclusive remedy. Farmers & Merchants' Irr. Co. v. Cozad Irr. Co., 65 Neb. 3, 90 N.W. 951 (1902).

61-217 Department of Natural Resources Interstate Water Rights Cash Fund; created; use; investment.

The Department of Natural Resources Interstate Water Rights Cash Fund is created. The fund shall be used exclusively for the payment of expenses directly related to interstate water rights litigation. The fund shall contain proceeds transferred from the Nebraska Environmental Trust Fund, gifts, grants, and such other money as is appropriated or transferred by the Legislature. 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. This fund terminates on June 30, 2003.

Source: Laws 2002, Second Spec. Sess., LB 1, § 11.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents.

(1) The Water Resources Cash Fund is created. The fund shall be administered by the Department of Natural Resources. 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.

(2) The State Treasurer shall credit to the fund such money as is (a) transferred to the fund by the Legislature, (b) paid to the state as fees, deposits, payments, and repayments relating to the fund, both principal and interest, (c) donated as gifts, bequests, or other contributions to such fund from public or private entities, (d) made available by any department or agency of the United States if so directed by such department or agency, and (e) credited to the fund from the excise taxes imposed by section 66-1345.01 beginning January 1, 2013.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water in river basins, subbasins, or reaches which are deemed by the department overappropriated pursuant to section 46-713 or fully appropriated pursuant to section 46-714 or are bound by an interstate compact or decree or a formal state contract or agreement and (b) to the extent funds are not expended pursuant to subdivision (a) of this subsection, the department may conduct a statewide assessment of short-term and long-term water management activities and funding needs to meet statutory requirements in sections 46-713 to 46-718 and 46-739 and any requirements of an interstate compact or decree or formal state contract or agreement. The fund shall not be used to pay for administrative expenses or any salaries for the department or any political subdivision.

(4) It is the intent of the Legislature that two million seven hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2009-10 through FY2018-19.

(5)(a) Expenditures from the Water Resources Cash Fund may be made to natural resources districts eligible under subsection (3) of this section for activities to either achieve a sustainable balance of consumptive water uses or assure compliance with an interstate compact or decree or a formal state contract or agreement and shall require a match of local funding in an amount equal to or greater than forty percent of the total cost of carrying out the eligible activity. The department shall, no later than August 1 of each year, beginning in 2007, determine the amount of funding that will be made available to natural resources districts from the Water Resources Cash Fund and notify natural resources districts of this determination. The department shall adopt and promulgate rules and regulations governing application for and use of the Water Resources Cash Fund by natural resources districts. Such rules and regulations shall, at a minimum, include the following components:

(i) Require an explanation of how the planned activity will assure compliance with an interstate compact or decree or a formal state contract or agreement as required by section 46-715 and the controls, rules, and regulations designed to carry out the activity; and

(ii) A schedule of implementation of the activity or its components.

(b) Any natural resources district that fails to implement and enforce its controls, rules, and regulations as required by section 46-715 shall not be

eligible for funding from the Water Resources Cash Fund until it is determined by the department that compliance with the provisions required by section 46-715 has been established.

(6) The Department of Natural Resources shall submit an annual report to the Legislature no later than October 1 of each year, beginning in the year 2007, that shall detail the use of the Water Resources Cash Fund in the previous year. The report shall provide:

(a) Details regarding the use and cost of activities carried out by the department; and

(b) Details regarding the use and cost of activities carried out by each natural resources district that received funds from the Water Resources Cash Fund.

Source: Laws 2007, LB701, § 25.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

61-219 Compliance with interstate compact or decree stipulations; legislative intent.

It is the intent of the Legislature that the Department of Natural Resources may undertake measures in fiscal year 2006-07 to further facilitate compliance with interstate compact or decree stipulations.

Source: Laws 2007, LB701, § 32.

CHAPTER 62
NEGOTIABLE INSTRUMENTS

Article.
1. Uniform Negotiable Instruments Law. Repealed.
2. Collection and Payment by Banks of Checks and Other Instruments. Repealed.
3. Miscellaneous Provisions. 62-301 to 62-310.

Cross References

Actions upon designation of defendant, see section 25-312.
Bonds of the state and political subdivisions, generally, see Chapter 10.
Checks, no account or insufficient funds, see sections 28-611 and 28-611.01.
Forgery, generally, see Chapter 28, article 6.
Insurance premium notes, sale or pledge before policy delivery prohibited, see section 44-369.
Interest, see Chapter 45.
Negotiable instruments, see Article 3, Uniform Commercial Code.
Receiving stolen property, see section 28-517.
Secured transactions, see Article 9, Uniform Commercial Code.
Theft by deception, see section 28-512.
Theft by unlawful taking or disposition, see section 28-511.
Warehouse receipts, see Article 7, Uniform Commercial Code.

ARTICLE 1
UNIFORM NEGOTIABLE INSTRUMENTS LAW

Section
62-101. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-102. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-103. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-104. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-105. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-106. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-107. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-108. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-109. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-110. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-111. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-112. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-113. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-114. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-115. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-116. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-117. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-118. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-119. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-120. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-121. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-122. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-123. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-124. Repealed. Laws 1963, c. 544, art. 10, § 1.
62-125. Repealed. Laws 1963, c. 544, art. 10, § 1.
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62-1,163 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,164 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,165 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,166 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,167 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,168 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,169 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,170 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,171 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,172 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,173 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,174 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,175 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,176 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,177 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,178 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,179 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,180 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,181 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,182 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,183 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,184 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,185 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,186 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,187 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,188 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,189 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,190 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,191 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,192 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,193 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,194 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-1,195 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 2

COLLECTION AND PAYMENT BY BANKS OF CHECKS AND OTHER INSTRUMENTS

Section

62-201 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-202 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-203 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-204 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-205 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-206 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-207 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-208 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-209 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-210 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-211 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-212 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-213 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-214 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-215 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-216 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-217 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-218 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-219 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 3
MISCELLANEOUS PROVISIONS

Section

62-301 Holidays, enumerated; federal holiday schedule observed; exceptions; bank holidays.

(1) For the purposes of the Uniform Commercial Code and section 62-301.01, the following days shall be holidays: New Year's Day, January 1; Birthday of Martin Luther King, Jr., the third Monday in January; President's Day, the third Monday in February; Arbor Day, the last Friday in April; Memorial Day, the last Monday in May; Independence Day, July 4; Labor Day, the first Monday in September; Columbus Day, the second Monday in October; Veterans Day, November 11, and the federally recognized holiday therefor, or either of them; Thanksgiving Day, the fourth Thursday in November; the day after Thanksgiving; and Christmas Day, December 25. If any such holiday falls on Sunday, the following Monday shall be a holiday. If the date designated by the state for observance of any legal holiday enumerated in this section, except Veterans Day, is different from the date of observance of such holiday pursuant to a federal holiday schedule, the federal holiday schedule shall be observed.

(2) Any bank doing business in this state may, by a brief written notice at, on, or near its front door, fully dispense with or restrict, to such extent as it may determine, the hours within which it will be open for business.

(3) Any bank may close on Saturday if it states such fact by a brief written notice at, on, or near its front door. When such bank will, in observance of such a notice, not be open for general business, such day shall, with respect to the particular bank, be the equivalent of a holiday as fully as if such day were listed in subsection (1) of this section, and any act authorized, required, or permitted to be performed at, by, or with respect to such bank which will, in observance of such notice, not be open for general business, acting in its own behalf or in any capacity whatever, may be performed on the next succeeding business day and no liability or loss of rights on the part of any person shall result from such delay.

(4) Any bank which, by the notice provided for by subsection (3) of this section, has created the holiday for such bank may, without destroying the legal effect of the holiday for it and solely for the convenience of its customers,

remain open all or part of such day in a limited fashion by treating every transaction with its customers on such day as though the transaction had taken place immediately upon the opening of such bank on the first following business day.

(5) Whenever the word bank is used in this section it includes building and loan association, savings and loan association, credit union, savings bank, trust company, investment company, and any other type of financial institution.

Source: Laws 1905, c. 83, art. 18, § 195, p. 434; Laws 1911, c. 69, § 1, p. 306; R.S.1913, § 5512; Laws 1915, c. 98, § 1, p. 241; Laws 1921, c. 186, § 1, p. 698; C.S.1922, § 4805; C.S.1929, § 62-1706; Laws 1941, c. 187, § 1, p. 755; C.S.Supp.,1941, § 62-1706; R.S.1943, § 62-301; Laws 1945, c. 252, § 1, p. 789; Laws 1951, c. 204, § 1, p. 761; Laws 1953, c. 224, § 1, p. 790; Laws 1967, c. 395, § 1, p. 1239; Laws 1969, c. 844, § 2, p. 3180; Laws 1973, LB 34, § 2; Laws 1974, LB 729, § 1; Laws 1975, LB 218, § 2; Laws 1978, LB 855, § 2; Laws 1986, LB 825, § 1; Laws 1988, LB 909, § 2; Laws 2002, LB 1094, § 14; Laws 2003, LB 131, § 32.

Cross References

Banks, days considered legal holidays, see section 8-1,129.
Thanksgiving, proclamation by Governor, see section 84-104.

Status as a holiday under this section has no effect upon court procedure. Taylor Dairy Products Co. v. Owen, 139 Neb. 603, 298 N.W. 332 (1941).

Judicial sale may be held on Lincoln's Birthday. Reid v. Keys, 112 Neb. 242, 199 N.W. 533 (1924).

62-301.01 Holidays; transactions with bank; validity.

Nothing in any law of this state shall in any manner affect the validity of, or render void or voidable any transaction by a bank in this state because done or performed during any time other than regular banking hours; PROVIDED, that nothing herein shall be construed to compel any bank in this state which by law or custom is entitled to close at a fixed hour on any day or for the whole or any part of any holiday, to keep open for the transaction of business on any day after such hour, or on any holiday, except at its own option.

Source: Laws 1951, c. 204, § 2, p. 762.

62-302 Note for patent right; requirements; rights of subsequent parties.

A promissory note or other negotiable instrument, the consideration for which consists, in whole or in part, of the right to make, use or vend a patented invention, or an invention claimed to be patented, shall have written or printed prominently and legibly across the face thereof, and above the signature thereto, the words given for a patent right. Such instrument in the hands of any purchaser or holder shall be subject to the same defenses as it would be in the hands of the original owner or holder, and any person who purchases or becomes the holder of a promissory note or other negotiable instrument, knowing it to have been given for the consideration aforesaid, shall hold the same subject to such defenses, although the words given for a patent right are not written or printed upon its face.

Source: Laws 1905, c. 83, art. 19, § 196, p. 434; R.S.1913, § 5513; C.S.1922, § 4806; C.S.1929, § 62-1707; R.S.1943, § 62-302.

Where note given for patent right is not so endorsed, it is a defense between the original parties, or against one who is not a bona fide holder. Benton v. Sikyta, 84 Neb. 808, 122 N.W. 61 (1909).

62-303 Tuition notes or contracts of business colleges; requirements; limitation upon negotiation.

It shall be unlawful for any proprietor, officer, agent or representative of any business college, or the business or commercial department of any school doing business within the State of Nebraska, or without the state when operating or soliciting within the state, to contract for or receive for tuition or scholarship a negotiable note or negotiable contract, unless such negotiable note or notes or negotiable contract shall have printed in red ink prominently and legibly and in twenty-four point bold type diagonally across the face thereof, and above the signatures thereto, the words negotiable note given for tuition if a note, or the words negotiable contract note given for tuition and scholarship, if a contract, and unless a copy of said instrument shall be delivered to the makers thereof at the time of signing the same. It shall be unlawful for any such proprietor, agent or representative of any such school or department to sell or dispose of any such negotiable note or negotiable contract note, received in payment for tuition or scholarship, prior to three days from the entrance and personal registration of the student, for whom the same was purchased, in the matriculation register at the place of the location of the school or department.

Source: Laws 1915, c. 220, § 1, p. 489; C.S.1922, § 4807; C.S.1929, § 62-1708; R.S.1943, § 62-303; Laws 1947, c. 212, § 1, p. 693.

Cross References

Private postsecondary career school, contracts and evidence of indebtedness, see section 85-1645 et seq.

Foreign corporation soliciting and carrying on business in this state cannot enforce contract entered into and valid in another state if contract growing out of transaction is contrary to local laws. Refrigeration & Air Conditioning Institute, Inc. v. Hilyard, 146 Neb. 42, 18 N.W.2d 548 (1945).

Note for tuition for linotype school was void where makers were not furnished with copy of note. Mergenthaler Linotype Co. v. McNamee, 125 Neb. 71, 249 N.W. 92 (1933).

62-304 Violations; penalty.

Any person who shall violate any of the provisions of section 62-303 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1915, c. 220, § 2, p. 490; C.S.1922, § 4808; C.S.1929, § 62-1709; R.S.1943, § 62-304; Laws 1977, LB 39, § 107.

62-305 Tuition notes or contracts of business colleges; when void.

Any note or contract taken by any business college, or the business or commercial department of any other school, or by their agents or representatives, for tuition or scholarships, without first having complied with all the provisions of section 62-303, shall be void.

Source: Laws 1915, c. 220, § 3, p. 490; C.S.1922, § 4809; C.S.1929, § 62-1710; R.S.1943, § 62-305.

Foreign corporation obtaining contract for course of instruction without complying with statutes of Nebraska cannot enforce note under principle of comity. Refrigeration & Air Conditioning Institute, Inc. v. Hilyard, 146 Neb. 42, 18 N.W.2d 548 (1945).

62-306 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-307 Repealed. Laws 1949, c. 183, § 4.

62-308 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-309 Repealed. Laws 1963, c. 544, art. 10, § 1.

62-310 Repealed. Laws 1963, c. 544, art. 10, § 1.

CHAPTER 63
NEWSPAPERS AND PERIODICALS

Section

Cross References

Constitutional provisions:
Freedom of the press, see Article I, section 5, Constitution of Nebraska.
Publication of proposed constitutional amendments, see Article XVI, section 1, Constitution of Nebraska.
Advertisements:
False or misleading, see sections 28-1476 to 28-1478, 44-1525, and 59-1614.
State banner, use prohibited, see section 90-103 et seq.
Free Flow of Information Act, see section 20-147.
Jurors, reading newspaper, when grounds for challenge, see section 25-1636.
Legal publications and notices:
Interested party may select newspaper, see section 25-522.
Legal newspaper, defined, see section 25-523.
Proof of publication, see sections 25-1274 to 25-1277.
Rates, generally, see section 33-141 et seq.
Time and number of insertions, see sections 25-2227 and 25-2228.
Libel and slander, civil actions, measure of damages, see sections 25-840 and 25-840.01.
Obscene literature, prohibited distribution, see sections 28-807 to 28-829.
Press associations, see sections 86-601 to 86-609.
Sales and use tax exemption, see section 77-2704.07.
Sample ballot, publication of, see section 32-803 et seq.
Telegraph companies and press associations, discrimination prohibited, see sections 86-601 to 86-610.

63-101 Newspapers, magazines, periodicals; recipient, when not liable for subscription price.

No person in this state shall be compelled to pay for any newspaper, magazine or other publication which shall be mailed or sent to him without his having subscribed for or ordered it, or which shall be mailed or sent to him after the time of his subscription or order therefor has expired, notwithstanding that he may have received it.

Source: Laws 1905, c. 104, § 1, p. 500; R.S.1913, § 5514; C.S.1922, § 4810; C.S.1929, § 63-101; R.S.1943, § 63-101.

63-102 Books, pamphlets; printing copies in excess of contract prohibited.

It shall be unlawful for any person, firm or corporation who shall enter into contract for the printing, stereotyping, binding or publication of any book, pamphlet, circular, or other publication of any character or description, for any author, compiler or publisher, to print any greater number of copies of such book, pamphlet, circular, or other publication, than the number designated by the contract for such publication.

Source: Laws 1905, c. 202, § 1, p. 695; R.S.1913, § 5515; C.S.1922, § 4811; C.S.1929, § 63-102; R.S.1943, § 63-102.

63-103 Violations; penalty.

Any person, firm or corporation violating any of the provisions of section 63-102 shall upon conviction thereof be guilty of a Class IV misdemeanor and in addition thereto shall be liable to the author, compiler or publisher with whom such contract was made, for all damages which may accrue by reason of such unlawful publication.

Source: Laws 1905, c. 202, § 2, p. 695; R.S.1913, § 5516; C.S.1922, § 4812; C.S.1929, § 63-103; R.S.1943, § 63-103; Laws 1977, LB 39, § 108.

63-104 Transferred to section 69-2201.

63-105 Digital voice newspaper delivery system; legislative findings.

(1) The Legislature finds that:

(a) Newspapers are a significant and important source of daily information;

(b) As a written form of media, newspapers are able to provide indepth coverage of issues as well as coverage of a breadth of issues which may be absent in other electronic or broadcast media;

(c) While a newspaper's written format has advantages, such written format severely limits the ability of blind and other print-reading-impaired persons to obtain information from newspapers;

(d) This information deficit contributes to an unemployment rate estimated at seventy-five percent among working-age blind persons to whom the availability of such detailed news coverage would vastly improve opportunities for meaningful employment;

(e) There are a significant number of blind and other print-reading-impaired persons in Nebraska who would benefit from having timely and complete access to local and national newspapers;

(f) Due to technological advances, newspapers can be efficiently and effectively distributed by voice to enable access by blind and other print-reading-impaired persons; and

(g) The state should maintain a system by which blind and other print-reading-impaired persons can access the information newspapers provide.

(2) The purpose of this section and section 63-106 is to provide a digital voice newspaper delivery system to enable blind and other print-reading-impaired persons to access newspapers in a timely and comprehensive manner.

Source: Laws 2000, LB 352, § 20.

63-106 Digital voice newspaper delivery system; Commission for the Blind and Visually Impaired; duties; limit on charges.

(1) The Commission for the Blind and Visually Impaired shall establish standards and procedures for a statewide digital voice newspaper delivery system and shall oversee its operation. The commission shall:

(a) Enter into contracts for the operation of such system;

(b) Provide space for the location of distribution devices and other equipment necessary to operate the system;

(c) Provide for daily monitoring to assure prompt and accurate functioning;

(d) Advertise the system and recruit blind and other print-reading-impaired persons for user certification;

(e) Develop and implement procedures for user certification;

(f) Serve as a coordinator between the system operator and the certified users; and

(g) Adopt and promulgate rules and regulations to carry out this section and section 63-105.

(2) Any certified user of the system shall not be charged for access to the system other than instate and out-of-state long-distance charges incurred while accessing the system.

Source: Laws 2000, LB 352, § 21.

CHAPTER 64
NOTARIES PUBLIC

Article.
1. General Provisions.
   (a) Appointment and Powers. 64-101 to 64-117.
   (b) Seal. 64-118.
2. Recognition of Acknowledgments. 64-201 to 64-215.

Cross References

Acknowledgments, see sections 64-201 to 64-215 and 76-216 et seq.
Commission, fees for issuance of, see section 33-102.
County officers and employees, remit notarial fees to county treasury, see section 33-153.
Fees, see section 33-133.
Protest of note or bill as evidence of dishonor, see section 25-1213.
Short Form Act, Nebraska, see section 49-1501.

ARTICLE 1
GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section
64-101. Appointment; qualifications; term.
64-101.01. Written examination required.
64-102. Commission; how obtained; bond.
64-103. Commission; signature; seal; filing and approval of bond; delivery.
64-104. Notary public; commission; renewal; procedure.
64-105. Notarial acts prohibited; when.
64-105.01. Notary public; disqualified; when.
64-105.02. Notarization; when.
64-105.03. Notary public; unauthorized practice of law; prohibited.
64-105.04. Change of residence; duties.
64-106. Repealed. Laws 1969, c. 523, § 11.
64-107. Powers and duties; certificate or records; receipt in evidence.
64-107.01. Oaths and affirmations.
64-108. Summons; issuance, when authorized.
64-109. Civil liability of notary public; actions.
64-110. Repealed. Laws 1945, c. 145, § 15.
64-111. Repealed. Laws 1967, c. 396, § 11.
64-112. Removal from state; termination; notice to Secretary of State.
64-113. Removal; grounds; procedure; penalty.
64-114. Change of name; continue to act.
64-115. Repealed. Laws 1982, LB 592, § 2.
64-116. Transferred to section 64-104.
64-117. Repealed. Laws 1982, LB 592, § 2.

(b) SEAL

64-118. Seal; engraved or ink stamp; adopt; use.

(a) APPOINTMENT AND POWERS

64-101 Appointment; qualifications; term.

(1) The Secretary of State may appoint and commission such number of persons to the office of notary public as he or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 64-101.01.

(6) No appointment shall be made if such applicant has been convicted of a felony or other crime involving fraud or dishonesty.

(7) No appointment shall be made until such applicant has attained the age of nineteen years nor unless such applicant certifies to the Secretary of State under oath that he or she has carefully read and understands the laws relating to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to the office and keep records according to law.

(8) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

Source: Laws 1869, § 1, p. 20; G.S.1873, p. 493; Laws 1883, c. 58, § 1, p. 248; R.S.1913, § 5517; Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 467; R.S.1943, § 64-101; Laws 1945, c. 145, § 1, p. 487; Laws 1951, c. 205, § 1, p. 763; Laws 1967, c. 396, § 2, p. 1241; Laws 1971, LB 88, § 1; Laws 1976, LB 622, § 1; Laws 2004, LB 315, § 2.

The Governor is authorized to appoint such number of persons to the office of notary public as he shall deem necessary. Cohn v. Butterfield, 89 Neb. 849, 132 N.W. 400 (1911).

64-101.01 Written examination required.

The written examination required by section 64-101 shall be developed and administered by the Secretary of State and shall consist of questions relating to laws, procedures, and ethics for notaries public. All applicants for commission as a notary public on and after July 16, 2004, shall be required to take and pass the examination prior to being commissioned.

Source: Laws 2004, LB 315, § 3.

64-102 Commission; how obtained; bond.

Any person may apply for a commission authorizing the applicant to act as a notary public anywhere in the State of Nebraska, and thereupon the Secretary of State may, at his or her discretion, issue a commission authorizing such notary public to act as such anywhere in the State of Nebraska. A general commission shall not authorize the holder thereof to act as a notary public anywhere in the State of Nebraska until a bond in the sum of fifteen thousand dollars, with an incorporated surety company as surety, has been executed and

approved by and filed in the office of the Secretary of State. Upon the filing of such bond with the Secretary of State and the issuance of such commission, such notary public shall be authorized and empowered to perform any and all the duties of a notary public in any and all the counties in the State of Nebraska. Such bond shall be conditioned for the faithful performance of the duties of such office. Such person so appointed to the office of notary public shall make oath or affirmation, to be endorsed on such bond, and subscribed by him or her before some officer authorized by law to administer oaths, and by him or her certified thereon, that he or she will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially discharge and perform the duties of the office of notary public.

Source: Laws 1919, c. 123, § 1, p. 293; Laws 1921, c. 99, § 2, p. 365; C.S.1922, § 4813; C.S.1929, § 64-101; Laws 1943, c. 136, § 1, p. 468; R.S.1943, § 64-102; Laws 1945, c. 145, § 2, p. 489; Laws 1967, c. 396, § 3, p. 1242; Laws 1988, LB 1030, § 47; Laws 2004, LB 315, § 4.

64-103 Commission; signature; seal; filing and approval of bond; delivery.

When any person is appointed to the office of notary public, the Secretary of State shall cause his or her signature or a facsimile thereof to be affixed to the commission and he or she shall affix thereto the great seal of the state. Upon the filing and approval of the bond, as provided for in section 64-102, the Secretary of State shall mail or deliver the commission to the applicant. The form and format of the commission shall be prescribed by the Secretary of State.

Source: Laws 1869, § 2, p. 21; G.S.1873, p. 493; R.S.1913, § 5518; C.S.1922, § 4814; C.S.1929, § 64-102; R.S.1943, § 64-103; Laws 1945, c. 145, § 3, p. 489; Laws 1963, c. 368, § 1, p. 1186; Laws 1967, c. 396, § 4, p. 1243; Laws 1988, LB 1030, § 48; Laws 2004, LB 315, § 5.

64-104 Notary public; commission; renewal; procedure.

Commissions for general notaries public may be renewed within thirty days prior to the date of expiration by filing a renewal application along with the payment of the fee prescribed in section 33-102 and a new bond with the Secretary of State. The bond required for a renewal of such commission shall be in the same manner and form as provided in section 64-102. The renewal application shall be in the manner and form as prescribed by the Secretary of State. Such renewal application made prior to the date of the expiration of any general notary public commission need not be accompanied by any petition. Any renewal application for such commission made after the date of expiration of the commission shall be made in the same manner as a new application for such commission as a general notary public.

Source: Laws 1967, c. 396, § 9, p. 1245; R.S.1943, (1986), § 64-116; Laws 1994, LB 1004, § 5.

64-105 Notarial acts prohibited; when.

(1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1 and 2, if the principal:

(a) Is not in the presence of the notary public at the time of the notarial act; and

(b) Is not personally known to the notary public or identified by the notary public through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the individual and shows to the notary public documentary identification as described in subdivision (a)(i) of this subsection; and

(b) Personal knowledge of identity or personally known means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Source: Laws 2004, LB 315, § 6.

64-105.01 Notary public; disqualified; when.

A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives.

Source: Laws 2004, LB 315, § 7.

64-105.02 Notarization; when.

(1) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

(a) The mark is affixed in the presence of the notary public and of two witnesses unaffected by the document;

(b) Both witnesses sign their own names beside the mark;

(c) The notary public writes below the mark: ''Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary public''; and

(d) The notary public notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(2) A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

(a) The person directs the notary public to do so in the presence of two witnesses unaffected by the document;

(b) The notary public signs the person's name in the presence of the person and the witnesses;

(c) Both witnesses sign their own names beside the signature;

(d) The notary public writes below the signature: ''Signature affixed by notary public in the presence of (names and addresses of person and two witnesses)''; and

(e) The notary public notarizes the signature through an acknowledgment, jurat, or signature witnessing.

Source: Laws 2004, LB 315, § 8.

64-105.03 Notary public; unauthorized practice of law; prohibited.

(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.

(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.

(3) A notary public who is not an attorney shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.

(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: ''I am not an attorney and have no authority to give advice on immigration or other legal matters''.

(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.

(7) This section does not preclude a notary public who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.

(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.

Source: Laws 2004, LB 315, § 9.

64-105.04 Change of residence; duties.

A notary public shall notify the Secretary of State of any change of his or her residence no later than forty-five days after such change. Information provided on the change-of-address form shall include the notary public's name as it appears on his or her commission, the date the commission expires, and the notary public's new address. The Secretary of State shall prescribe forms consistent with the requirements of this section.

Source: Laws 2004, LB 315, § 10.

64-106 Repealed. Laws 1969, c. 523, § 11.

64-107 Powers and duties; certificate or records; receipt in evidence.

A notary public is authorized and empowered, within the state: (1) To administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; (3) to demand acceptance or payment of any foreign, inland, domestic bill of exchange, promissory note or other obligation in writing, and to protest the same for nonacceptance or nonpayment, as the case may be, and give notice to endorsers, makers, drawers or acceptors of such demand or nonacceptance or nonpayment; and (4) to exercise and perform such other powers and duties as by the law of nations, and according to commercial usage, or by the laws of the United States, or of any other state or territory of the United States, or of any other government or country, may be exercised and performed by notaries public. Over his signature and official seal, he shall certify the performance of such duties so exercised and performed under the provisions of this section, which certificate shall be received in all courts of this state as presumptive evidence of the facts therein certified to.

Source: Laws 1869, § 6, p. 22; G.S.1873, p. 494; R.S.1913, § 5522; C.S.1922, § 4818; C.S.1929, § 64-106; R.S.1943, § 64-107; Laws 1945, c. 145, § 7, p. 492; Laws 1967, c. 396, § 6, p. 1243.

Certificate of acknowledgment of notary, in proper form, is sufficient to authorize deed to be received in evidence without further proof of execution. Neneman v. Rickley, 110 Neb. 446, 194 N.W. 447 (1923).

Giving notice of dishonor is official duty, and for neglect of same, notary and sureties are liable. Williams v. Parks, 63 Neb. 747, 89 N.W. 395 (1902).

Fees for protesting local bank check are recoverable against drawer and drawee. German Nat. Bank of Beatrice v. Beatrice Nat. Bank, 63 Neb. 246, 88 N.W. 480 (1901).

Notary must sign name to jurat of affidavit. Holmes v. Crooks, 56 Neb. 466, 76 N.W. 1073 (1898).

Certificate is presumptive evidence of facts therein, including statement that affiant signed affidavit. Smith v. Johnson, 43 Neb. 754, 62 N.W. 217 (1895).

Affidavit is void where jurat shows same was taken outside jurisdiction of notary. Byrd v. Cochran, 39 Neb. 109, 58 N.W. 127 (1894).

Collecting bank, delivering bill to notary to protest, generally is not liable for his default, but is where notary is manager of bank. Wood River Bank v. First Nat. Bank of Omaha, 36 Neb. 744, 55 N.W. 239 (1893).

In suit on stay bond, certificate of notary to acknowledgment of justification of surety is sufficient to make out prima facie case that surety appeared before notary and signed bond. Emerson-Brantingham Imp. Co. v. Johnson, 1 F.2d 212 (8th Cir. 1924).

Certificate of notary is presumptive evidence of facts, and fees therefor are taxable as costs in federal courts. Baker v. Howell, 44 F. 113 (Cir. Ct., D. Neb. 1890).

64-107.01 Oaths and affirmations.

Oaths and affirmations may be administered, in all cases whatsoever, by notaries public.

Source: R.S.1866, p. 274; Laws 1909, c. 92, § 1, p. 388; R.S.1913, § 5530; C.S.1922, § 4826; C.S.1929, § 65-101; R.S.1943, § 65-101; Laws 1951, c. 207, § 1, p. 768; Laws 1972, LB 1032, § 266; R.S.1943, (1986), § 65-101; Laws 1990, LB 822, § 38; Laws 1990, LB 821, § 40.

64-108 Summons; issuance, when authorized.

Every notary public, when notice by a party to any civil suit pending in any court of this state upon any adverse party for the taking of any testimony of witnesses by deposition, or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him or her, or when a special commission issued out of any court of any state or country without this state, together with notice for the taking of

testimony by depositions or commissions, has been deposited with him or her, is empowered to issue summons and command the presence before him or her of witnesses. All sheriffs and constables in this state are required to serve and return all process issued by notaries public in the taking of testimony of witnesses by commission or deposition.

Source: Laws 1869, § 7, p. 23; G.S.1873, p. 495; R.S.1913, § 5523; C.S.1922, § 4819; C.S.1929, § 64-107; R.S.1943, § 64-108; Laws 2005, LB 348, § 18.

Notary public has right to issue order of commitment, finding witness in contempt for refusing to answer a proper question, and same rule applies to refusal to testify in a hearing before referee appointed by court. State v. Degele, 137 Neb. 810, 291 N.W. 554 (1940).

Notary need not order witness to answer questions before committing for contempt where witness refuses to answer on ground of privilege and is asked if he is familiar with penalty for refusal to answer. Ehlers v. State, 133 Neb. 241, 274 N.W. 570 (1937).

Section is constitutional, and notary may punish witness for contempt for refusing to give deposition. Olmsted v. Edson, 71 Neb. 17, 98 N.W. 415 (1904); Dogge v. State, 21 Neb. 272, 31 N.W. 929 (1887).

Notary cannot punish persons for misdemeanors or misbehavior during taking of deposition. Courtnay v. Knox, 31 Neb. 652, 48 N.W. 763 (1891).

This section authorizes a notary to issue a subpoena only after notice of deposition has been deposited with the reporter. Burke v. Harman, 6 Neb. App. 309, 574 N.W.2d 156 (1998).

A witness may be compelled by process to appear before a notary and answer questions to depositions. Roschynialski v. Hale, 201 F. 1017 (D. Neb. 1913).

64-109 Civil liability of notary public; actions.

If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary public, and his sureties, and a recovery in such action shall not be a bar to any future action for other causes to the full amount of the bond.

Source: Laws 1869, § 8, p. 23; G.S.1873, p. 495; R.S.1913, § 5524; C.S.1922, § 4820; C.S.1929, § 64-108; R.S.1943, § 64-109.

64-110 Repealed. Laws 1945, c. 145, § 15.

64-111 Repealed. Laws 1967, c. 396, § 11.

64-112 Removal from state; termination; notice to Secretary of State.

Every notary public removing from the State of Nebraska shall notify the Secretary of State of such removal. Such a removal shall terminate the term of his office.

Source: Laws 1869, § 12, p. 25; G.S.1873, p. 496; Laws 1883, c. 58, § 2, p. 249; R.S.1913, § 5528; C.S.1922, § 4824; C.S.1929, § 64-112; R.S.1943, § 64-112; Laws 1945, c. 145, § 9, p. 493; Laws 1967, c. 396, § 7, p. 1244.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. Such appointee may summon witnesses, in the manner provided by section 64-108, to appear at the time specified in the notice, and he or she may

take the testimony of such witnesses in writing, in the same manner as is by law provided for taking depositions, and certify the same to the Secretary of State. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf, which cross-examination and testimony shall be likewise certified to the Secretary of State. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she is satisfied that the charges are substantially proved, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, or (b) being convicted of a felony or other crime involving fraud or dishonesty.

Source: Laws 1869, § 14, p. 25; G.S.1873, p. 497; R.S.1913, § 5529; C.S.1922, § 4825; C.S.1929, § 64-113; R.S.1943, § 64-113; Laws 1945, c. 145, § 10, p. 493; Laws 1967, c. 396, § 8, p. 1244; Laws 2004, LB 315, § 11.

Under former law where charges of malfeasance in office were brought to the Governor against a notary public, Governor was required to hold hearing, and if satisfied that charges were proven, remove the notary from office. Cohn v. Butterfield, 89 Neb. 849, 132 N.W. 400 (1911).

64-114 Change of name; continue to act.

Any person, whose name is legally changed after a commission as a notary public is issued to him or her, may continue to act as such notary public and use the original commission, seal, and name until the expiration or termination of such commission. The bond given by such notary public shall continue in effect, regardless of such legal change of name of such notary public, if the notary public uses the name under which the commission is issued.

Source: Laws 1945, c. 145, § 13, p. 495.

64-115 Repealed. Laws 1982, LB 592, § 2.

64-116 Transferred to section 64-104.

64-117 Repealed. Laws 1982, LB 592, § 2.

(b) SEAL

64-118 Seal; engraved or ink stamp; adopt; use.

All persons, officers, and governmental and nongovernmental bodies and associations heretofore authorized by law to adopt and use a seal on official documents are hereby authorized to adopt and use either an engraved or ink stamp seal for such purposes, unless the use of ink stamp seals for such purposes is specifically prohibited by law.

Source: Laws 1971, LB 653, § 12.

Cross References

Additional requirements for notary public seal, see section 64-210.

ARTICLE 2
RECOGNITION OF ACKNOWLEDGMENTS

Section

64-201 Notarial acts, defined; performed; effect.

For the purposes of sections 64-201 to 64-210, unless the context otherwise requires: Notarial acts means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

(1) A notary public authorized to perform notarial acts in the place in which the act is performed;

(2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

(3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform notarial acts in the place in which the act is performed;

(4) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed

forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

(5) Any other person authorized to perform notarial acts in the place in which the act is performed.

Source: Laws 1969, c. 523, § 1, p. 2139.

64-202 Notarial act; performance; proof of authority; maintenance of records.

(1) If the notarial act is performed by any of the persons described in sections 64-201 to 64-204, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his or her authority shall not be required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(b) The official seal of the person performing the notarial act is affixed to the document; or

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) An apostille in the form prescribed by the Hague Convention of October 5, 1961, shall conclusively establish that the signature of the notarial officer is genuine and that the officer holds the designated office. The Secretary of State or his or her deputy shall be authorized to sign the apostille.

(4) The Secretary of State may authorize the use of computers to maintain necessary records dealing with notaries public in the State of Nebraska.

Source: Laws 1969, c. 523, § 2, p. 2140; Laws 1988, LB 1030, § 49.

64-203 Certificate; contents.

The person taking an acknowledgment shall certify that:

(1) The person acknowledging appeared before him and acknowledged he executed the instrument; and

(2) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

Source: Laws 1969, c. 523, § 3, p. 2141.

64-204 Certificate of acknowledgment; form; acceptance.

The form of a certificate of acknowledgment used by a person whose authority is recognized under section 64-201 shall be accepted in this state if:

(1) The certificate is in a form prescribed by the laws or regulations of this state;

(2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or

(3) The certificate contains the words acknowledged before me, or their substantial equivalent.

Source: Laws 1969, c. 523, § 4, p. 2141.

64-205 Acknowledgment, defined.

The words acknowledged before me means:

(1) That the person acknowledging appeared before the person taking the acknowledgment;

(2) That he or she acknowledged he or she executed the instrument;

(3) That, in the case of:

(i) A natural person, he or she executed the instrument for the purposes therein stated;

(ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;

(iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;

(iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;

(v) A person acknowledging as principal by an attorney in fact, he or she executed the instrument by proper authority as the act of the principal for the purposes therein stated;

(vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper authority and he or she executed the instrument in the capacity and for the purposes therein stated; and

(4) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.

Source: Laws 1969, c. 523, § 5, p. 2141; Laws 1993, LB 121, § 393.

64-206 Statutory short forms of acknowledgment; use of other forms.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as Statutory Short Forms of Acknowledgment and may be

referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

(1) For an individual acting in his or her own right:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(2) For a corporation:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(3) For a partnership:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(4) For a limited liability company:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging member or agent), member (or agent) on behalf of (name of limited liability company), a limited liability company.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(5) For an individual acting as principal by an attorney in fact:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(6) By any Public Officer, trustee, or personal representative:

State of . . . . . .

County of . . . . . .

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

Source: Laws 1969, c. 523, § 6, p. 2142; Laws 1993, LB 121, § 394.

64-207 Prior notarial acts; effect.

A notarial act performed prior to August 25, 1969, is not affected by sections 64-201 to 64-210. Sections 64-201 to 64-210 provide an additional method of proving notarial acts. Nothing in sections 64-201 to 64-210 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

Source: Laws 1969, c. 523, § 7, p. 2144.

64-208 Sections, how interpreted.

Sections 64-201 to 64-210 shall be so interpreted as to make uniform the laws of those states which enact them.

Source: Laws 1969, c. 523, § 8, p. 2144.

64-209 Act, how cited.

Sections 64-201 to 64-210 may be cited as the Uniform Recognition of Acknowledgments Act.

Source: Laws 1969, c. 523, § 9, p. 2144.

64-210 Ink stamp seal; contents.

(1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official ink stamp seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, his or her name as commissioned, and the date of expiration of his or her commission.

(2) A notary public shall authenticate all of his or her official acts with such seal.

(3) A notary public whose commission was issued by the Secretary of State before September 1, 2007, is not required to purchase a new ink stamp seal in order to comply with this section until the notary public's commission expires. Upon renewal, each notary public shall have engraved on his or her official ink stamp seal all of the information required in subsection (1) of this section.

Source: Laws 1969, c. 523, § 10, p. 2144; Laws 1971, LB 88, § 2; Laws 2004, LB 315, § 12; Laws 2007, LB382, § 1.

64-211 Acknowledgment of written instrument; attorneys; real estate broker or salesman; oath; authorized; prior acknowledgments validated.

(1) It shall be lawful for any attorney or any employer or associate of any such attorney, or for any stockholder, officer, or employee of any professional corporation authorized to practice law and who is a notary public to take the acknowledgment of any written instrument given in connection with the professional activities of such attorney or corporation and to administer an oath to any person executing any such instrument.

(2) It shall be lawful for any real estate broker or salesman or any employee or associate of any such broker and who is a notary public to take the acknowledgment of any written instrument given to or by any client of such broker and to administer an oath to any person or persons executing any such instrument.

(3) Acknowledgments taken or oaths administered prior to February 9, 1976, by any person described in subsections (1) and (2) of this section are hereby ratified and shall in all respects be lawful, valid, and binding.

Source: Laws 1975, LB 121, § 1; Laws 1976, LB 622, § 2.

Although this section allows a lawyer to take acknowledgments, he may not do so when he is an interested party. Nat. Bank of Commerce Trust & Savings Assn. v. Rhodes, 207 Neb. 44, 295 N.W.2d 711 (1980).

64-212 Acknowledgment of written instrument; insurance company; credit union; oath; authorized.

It shall be lawful for a member or shareholder, an appointive officer, elective officer, agent, director, or employee of an insurance company or a credit union who is a notary public to take the acknowledgment of any person to any written instrument executed to or by the insurance company or credit union and to administer an oath to any shareholder, director, elected or appointed officer, employee, or agent of such insurance company or credit union.

Source: Laws 1947, c. 247, § 1, p. 771; Laws 1949, c. 221, § 1, p. 622; Laws 1951, c. 253, § 1, p. 873; Laws 1957, c. 315, § 2, p. 1133; R.R.S.1943, § 76-217.02; Laws 1976, LB 622, § 3; Laws 1976, LB 704, § 1; Laws 2002, LB 1094, § 15.

64-213 Acknowledgments of written instruments; insurance company; credit union; oath; prior acknowledgments validated.

Acknowledgments heretofore taken of any person to any written instrument given to or by an insurance company or credit union, or any oath administered to any member, director, elected officer, shareholder, appointive officer, employee, or agent of an insurance company or credit union, by any notary public, who was a member, shareholder, appointive officer, agent, or employee of the insurance company or credit union, and not a director or elected officer thereof, shall be deemed to be lawful, valid, and binding.

Source: R.S.1866, c. 43, § 3, p. 280; R.S.1913, § 6198; C.S.1922, § 5597; C.S.1929, § 76-203; R.S.1943, § 76-217; Laws 1947, c. 244, § 1, p. 768; Laws 1959, c. 347, § 1, p. 1233; R.R.S.1943, § 76-217.03; Laws 1976, LB 622, § 4; Laws 2002, LB 1094, § 16.

64-214 Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.

(1) It is lawful for any stockholder, director, officer, employee, or agent of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee, or agent of the bank.

(2) Acknowledgments heretofore taken of any person to any written instrument given to or by a bank or any oath administered to any stockholder, director, officer, employee, or agent of a bank by any notary public who was a stockholder, director, officer, employee, or agent of the bank shall be deemed to be lawful, valid, and binding.

Source: Laws 1957, c. 316, § 1, p. 1134; R.R.S.1943, § 76-217.04; Laws 1976, LB 622, § 5; Laws 2008, LB851, § 26.

64-215 Acknowledgments of written instruments; savings and loan association; oath; authorized; prior acknowledgments validated.

It is lawful for any shareholder, director, employee, agent, or any elected or appointed officer of a savings and loan association, who is a notary public, (1) to take the acknowledgment of any person to any written instrument given to or by the savings and loan association and (2) to administer an oath to any other shareholder, director, officer, employee, or agent of the savings and loan association. Acknowledgments heretofore taken of any person to any written instrument given to or by a savings and loan association, or any oath administered to any shareholder, director, employee, agent, or elected or appointed officer of a savings and loan association by any notary public who was a shareholder, director, employee, agent, or any elected or appointed officer of the savings and loan association, shall be deemed to be lawful, valid, and binding.

Source: Laws 1957, c. 315, § 1, p. 1132; R.R.S.1943, § 76-217.05; Laws 1976, LB 622, § 6; Laws 2003, LB 131, § 33.

CHAPTER 65
OATHS AND AFFIRMATIONS

Section
65-101. Transferred to section 64-107.01.

65-101 Transferred to section 64-107.01.

CHAPTER 66
OILS, FUELS, AND ENERGY

Article.

Cross References

Agricultural liens, see section 52-901 et seq.
Agricultural production input liens, see section 52-1401 et seq.
Lighting and thermal efficiency standards, see section 81-1608 et seq.
Pipelines for oil and gas:
Easements, see section 57-401 et seq.
Public Service Commission, jurisdiction, see section 75-501.
Regulatory powers of:
Cities of the first class, see sections 16-209 and 16-227.
Cities of the metropolitan class, see section 14-102.
Cities of the primary class, see sections 15-207 and 15-255.
Cities of the second class and villages, see sections 17-137, 17-139, and 17-556.
Shortage of vital resources, see section 84-162 et seq.
State Fire Marshal, powers, see sections 81-502 and 81-520.

ARTICLE 1
EXPLOSIVE LIQUIDS AND GASES

Cross References

Explosives, use in transportation, penalty, see sections 28-1213 to 28-1239.
Fish and game, use in taking prohibited, see sections 37-531, 37-533, and 37-554.
Liquefied petroleum gas, regulations, see sections 57-501 to 57-507.
Natural gas, underground storage of, see sections 57-601 to 57-609.

Section

66-101 Repealed. Laws 1990, LB 856, § 7.

66-102 Repealed. Laws 1990, LB 856, § 7.

66-103 Gasoline and other explosives; sale; containers or portable tanks; type required.

Every person within this state retailing gasoline, benzine, and other similar types of high explosives in less than carload lots shall deliver the same to the purchaser only in containers or portable tanks painted vermillion red and having the word gasoline, benzine, or whatever name such explosive is known by plainly printed on it in English. All such words shall be in letters sufficiently large to attract attention.

Source: Laws 1907, c. 86, § 1, p. 305; R.S.1913, § 5754; C.S.1922, § 5099; C.S.1929, § 66-103; R.S.1943, § 66-103; Laws 1985, LB 441, § 1.

66-103.01 Containers or portable tanks, defined.

For the purposes of sections 66-103 to 66-106, containers or portable tanks shall mean containers or portable tanks which conform to standards which the State Fire Marshal shall adopt and promulgate by rules and regulations. The State Fire Marshal may adopt the standards, or any part of such standards, recommended for containers or portable tanks by the National Fire Protection Association.

Source: Laws 1985, LB 441, § 2.

66-104 Gasoline and other explosives; purchase; containers or portable tanks; type required.

Every person within this state purchasing gasoline or other high explosives of that nature for his or her own use shall procure and keep the same only in containers or portable tanks painted and stamped as required by section 66-103. This section and section 66-103 shall not affect sales, purchase, or the keeping for use of such explosives if the quantity is one quart or less.

Source: Laws 1907, c. 86, § 3, p. 305; R.S.1913, § 5756; C.S.1922, § 5101; C.S.1929, § 66-105; R.S.1943, § 66-104; Laws 1985, LB 441, § 3.

66-105 Kerosene; delivery; container or portable tank prohibited.

No person shall deliver kerosene, or what is known as coal oil, in any container or portable tank painted or stamped as provided by section 66-103.

Source: Laws 1907, c. 86, § 2, p. 305; R.S.1913, § 5755; C.S.1922, § 5100; C.S.1929, § 66-104; R.S.1943, § 66-105; Laws 1985, LB 441, § 4.

66-106 Kerosene; use or storage; container or portable tank prohibited.

No person keeping for use or using kerosene, otherwise known as coal oil, shall put or keep the same in any container or portable tank painted or stamped as provided by section 66-103.

Source: Laws 1907, c. 86, § 4, p. 305; R.S.1913, § 5757; C.S.1922, § 5102; C.S.1929, § 66-106; R.S.1943, § 66-106; Laws 1985, LB 441, § 5.

66-107 Violation; penalty.

Any person violating any of the provisions of sections 66-103 to 66-106 shall upon conviction be guilty of a Class III misdemeanor.

Source: Laws 1907, c. 86, § 5, p. 305; R.S.1913, § 5758; C.S.1922, § 5103; C.S.1929, § 66-107; R.S.1943, § 66-107; Laws 1977, LB 39, § 110.

ARTICLE 2

PAINTS AND OILS

Section
66-201. Repealed. Laws 1963, c. 374, § 1.
66-202. Repealed. Laws 1963, c. 374, § 1.
66-203. Repealed. Laws 1963, c. 374, § 1.
66-204. Repealed. Laws 1963, c. 374, § 1.
66-205. Repealed. Laws 1963, c. 374, § 1.
66-206. Repealed. Laws 1963, c. 374, § 1.
66-207. Repealed. Laws 1963, c. 374, § 1.
66-208. Repealed. Laws 1963, c. 374, § 1.
66-209. Repealed. Laws 1963, c. 374, § 1.
66-210. Repealed. Laws 1963, c. 374, § 1.
66-211. Repealed. Laws 1963, c. 374, § 1.
66-212. Repealed. Laws 1963, c. 374, § 1.
66-213. Repealed. Laws 1963, c. 374, § 1.
66-214. Repealed. Laws 1963, c. 374, § 1.
66-215. Repealed. Laws 1963, c. 374, § 1.

66-201 Repealed. Laws 1963, c. 374, § 1.

66-202 Repealed. Laws 1963, c. 374, § 1.

66-203 Repealed. Laws 1963, c. 374, § 1.

66-204 Repealed. Laws 1963, c. 374, § 1.

66-205 Repealed. Laws 1963, c. 374, § 1.

66-206 Repealed. Laws 1963, c. 374, § 1.

66-207 Repealed. Laws 1963, c. 374, § 1.

66-208 Repealed. Laws 1963, c. 374, § 1.

66-209 Repealed. Laws 1963, c. 374, § 1.

66-210 Repealed. Laws 1963, c. 374, § 1.

66-211 Repealed. Laws 1963, c. 374, § 1.

66-212 Repealed. Laws 1963, c. 374, § 1.

66-213 Repealed. Laws 1963, c. 374, § 1.

66-214 Repealed. Laws 1963, c. 374, § 1.

66-215 Repealed. Laws 1963, c. 374, § 1.

ARTICLE 3
OIL INSPECTION

Section
66-301. Repealed. Laws 1980, LB 834, § 66.
66-302. Repealed. Laws 1980, LB 834, § 66.
66-303. Repealed. Laws 1983, LB 264, § 3.
66-304. Repealed. Laws 1983, LB 264, § 3.
66-305. Repealed. Laws 1967, c. 398, § 2.
66-306. Repealed. Laws 1983, LB 264, § 3.
66-307. Repealed. Laws 1983, LB 264, § 3.
66-308. Repealed. Laws 1983, LB 264, § 3.
66-309. Repealed. Laws 1983, LB 264, § 3.
66-310. Repealed. Laws 1983, LB 264, § 3.
66-311. Repealed. Laws 1983, LB 264, § 3.
66-312. Repealed. Laws 1983, LB 264, § 3.
66-312.01. Repealed. Laws 1983, LB 264, § 3.
66-313. Repealed. Laws 1961, c. 284, § 1.
66-314. Repealed. Laws 1983, LB 264, § 3.
66-315. Repealed. Laws 1983, LB 264, § 3.
66-316. Repealed. Laws 1983, LB 264, § 3.
66-317. Repealed. Laws 1983, LB 264, § 3.
66-318. Repealed. Laws 1983, LB 264, § 3.
66-319. Repealed. Laws 1983, LB 264, § 3.
66-320. Repealed. Laws 1983, LB 264, § 3.
66-321. Repealed. Laws 1983, LB 264, § 3.
66-322. Repealed. Laws 1983, LB 264, § 3.
66-323. Repealed. Laws 1983, LB 264, § 3.
66-324. Repealed. Laws 1983, LB 264, § 3.
66-325. Repealed. Laws 1983, LB 264, § 3.
66-326. Repealed. Laws 1983, LB 264, § 3.

66-301 Repealed. Laws 1980, LB 834, § 66.

66-302 Repealed. Laws 1980, LB 834, § 66.

66-303 Repealed. Laws 1983, LB 264, § 3.

66-304 Repealed. Laws 1983, LB 264, § 3.

66-305 Repealed. Laws 1967, c. 398, § 2.

66-306 Repealed. Laws 1983, LB 264, § 3.

66-307 Repealed. Laws 1983, LB 264, § 3.

66-308 Repealed. Laws 1983, LB 264, § 3.

66-309 Repealed. Laws 1983, LB 264, § 3.

66-310 Repealed. Laws 1983, LB 264, § 3.

66-311 Repealed. Laws 1983, LB 264, § 3.

66-312 Repealed. Laws 1983, LB 264, § 3.

66-312.01 Repealed. Laws 1983, LB 264, § 3.

66-313 Repealed. Laws 1961, c. 284, § 1.

66-314 Repealed. Laws 1983, LB 264, § 3.

66-315 Repealed. Laws 1983, LB 264, § 3.

66-316 Repealed. Laws 1983, LB 264, § 3.

66-317 Repealed. Laws 1983, LB 264, § 3.

66-318 Repealed. Laws 1983, LB 264, § 3.

66-319 Repealed. Laws 1983, LB 264, § 3.

66-320 Repealed. Laws 1983, LB 264, § 3.

66-321 Repealed. Laws 1983, LB 264, § 3.

66-322 Repealed. Laws 1983, LB 264, § 3.

66-323 Repealed. Laws 1983, LB 264, § 3.

66-324 Repealed. Laws 1983, LB 264, § 3.

66-325 Repealed. Laws 1983, LB 264, § 3.

66-326 Repealed. Laws 1983, LB 264, § 3.

ARTICLE 4
MOTOR VEHICLE FUEL TAX

Cross References

Aircraft fuel tax, see sections 3-148 to 3-151.
Alternative Fuel Tax Act, see section 66-684.
Compressed Fuel Tax Act, see section 66-697.

Section
66-401. Transferred to section 66-482.
66-402. Transferred to section 66-483.
66-403. Transferred to section 66-484.
66-404. Transferred to section 66-485.
66-405. Repealed. Laws 1973, LB 528, § 20.
66-405.01. Repealed. Laws 1981, LB 360, § 13.
66-406. Repealed. Laws 1991, LB 627, § 148.
66-407. Transferred to section 66-486.
66-408. Transferred to section 66-487.
66-409. Transferred to section 66-488.

Section	
66-410.	Transferred to section 66-489.
66-410.01.	Transferred to section 66-490.
66-410.02.	Transferred to section 66-491.
66-410.03.	Transferred to section 66-492.
66-410.04.	Transferred to section 66-493.
66-410.05.	Transferred to section 66-494.
66-410.06.	Repealed. Laws 1991, LB 627, § 148.
66-410.07.	Repealed. Laws 1991, LB 627, § 148.
66-411.	Transferred to section 66-495.
66-412.	Transferred to section 66-496.
66-413.	Repealed. Laws 1991, LB 627, § 148.
66-414.	Transferred to section 66-497.
66-415.	Transferred to section 66-498.
66-416.	Repealed. Laws 1986, LB 1027, § 226.
66-416.01.	Repealed. Laws 1986, LB 1027, § 226.
66-417.	Repealed. Laws 1973, LB 528, § 20.
66-418.	Repealed. Laws 1991, LB 627, § 148.
66-418.01.	Repealed. Laws 1991, LB 627, § 148.
66-418.02.	Transferred to section 66-449.01.
66-418.03.	Repealed. Laws 1991, LB 627, § 148.
66-419.	Repealed. Laws 1991, LB 627, § 148.
66-420.	Transferred to section 66-4,103.
66-421.	Transferred to section 66-499.
66-422.	Repealed. Laws 1969, c. 530, § 9.
66-423.	Repealed. Laws 1969, c. 530, § 9.
66-423.01.	Transferred to section 66-4,101.
66-423.02.	Transferred to section 66-4,102.
66-424.	Transferred to section 66-4,100.
66-424.01.	Repealed. Laws 1969, c. 530, § 9.
66-424.02.	Repealed. Laws 1969, c. 530, § 9.
66-424.03.	Repealed. Laws 1971, LB 33, § 1.
66-425.	Repealed. Laws 1959, c. 175, § 34.
66-426.	Repealed. Laws 1957, c. 284, § 3.
66-426.01.	Transferred to section 66-4,104.
66-427.	Repealed. Laws 1991, LB 627, § 148.
66-428.	Transferred to section 66-4,105.
66-429.	Transferred to section 66-4,106.
66-430.	Repealed. Laws 1991, LB 627, § 148.
66-431.	Repealed. Laws 1991, LB 627, § 148.
66-432.	Repealed. Laws 1991, LB 627, § 148.
66-433.	Transferred to section 66-4,107.
66-434.	Transferred to section 66-4,108.
66-435.	Transferred to section 66-4,109.
66-436.	Transferred to section 66-4,110.
66-437.	Transferred to section 66-4,111.
66-438.	Transferred to section 66-4,112.
66-439.	Transferred to section 66-4,113.
66-440.	Transferred to section 66-4,117.
66-441.	Transferred to section 66-4,114.
66-442.	Transferred to section 66-4,115.
66-443.	Repealed. Laws 1991, LB 627, § 148.
66-444.	Transferred to section 66-4,116.
66-445.	Transferred to section 66-4,118.
66-446.	Transferred to section 66-4,119.
66-447.	Transferred to section 66-4,120.
66-448.	Transferred to section 66-4,121.
66-449.	Transferred to section 66-4,122.
66-449.01.	Transferred to section 66-4,130.
66-450.	Transferred to section 66-4,123.
66-451.	Repealed. Laws 1991, LB 627, § 148.
66-452.	Transferred to section 66-4,124.

Section
66-453. Repealed. Laws 1991, LB 627, § 148.
66-454. Repealed. Laws 1991, LB 627, § 148.
66-455. Repealed. Laws 1991, LB 627, § 148.
66-456. Repealed. Laws 1991, LB 627, § 148.
66-457. Repealed. Laws 1991, LB 627, § 148.
66-458. Transferred to section 66-4,125.
66-459. Transferred to section 66-4,126.
66-460. Transferred to section 66-4,127.
66-461. Transferred to section 66-4,128.
66-461.01. Transferred to section 66-4,129.
66-462. Transferred to section 66-4,131.
66-463. Repealed. Laws 1972, LB 343, § 25.
66-464. Repealed. Laws 1991, LB 627, § 148.
66-465. Transferred to section 66-4,132.
66-465.01. Repealed. Laws 1991, LB 11, § 2.
66-466. Repealed. Laws 1991, LB 627, § 148.
66-467. Transferred to section 66-4,133.
66-467.01. Transferred to section 66-4,134.
66-468. Transferred to section 66-4,135.
66-469. Transferred to section 66-4,136.
66-470. Transferred to section 66-4,137.
66-471. Transferred to section 66-4,138.
66-472. Transferred to section 66-4,139.
66-473. Transferred to section 66-4,140.
66-474. Transferred to section 66-4,141.
66-474.01. Transferred to section 66-4,142.
66-475. Transferred to section 66-4,143.
66-476. Transferred to section 66-4,144.
66-477. Transferred to section 66-4,145.
66-478. Transferred to section 66-4,146.
66-479. Transferred to section 66-4,147.
66-480. Transferred to section 66-4,148.
66-481. Transferred to section 66-4,149.
66-482. Terms, defined.
66-483. Producer, supplier, distributor, wholesaler, importer, or exporter; application for license; contents.
66-484. Producer, supplier, distributor, wholesaler, importer, or exporter; license required.
66-485. Producer, supplier, distributor, wholesaler, exporter, or importer; security.
66-486. Motor fuel tax; collection; commission.
66-487. Producer, supplier, distributor, wholesaler, exporter, and importer; records required.
66-488. Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.
66-489. Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.
66-489.01. Motor fuels blending agent or fuel expander; when taxed.
66-489.02. Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
66-490. Repealed. Laws 2004, LB 983, § 71.
66-491. Repealed. Laws 2004, LB 983, § 71.
66-492. Repealed. Laws 2004, LB 983, § 71.
66-493. Repealed. Laws 2000, LB 1067, § 37.
66-494. Repealed. Laws 2004, LB 983, § 71.
66-495. Purchase of undyed diesel fuel; exemption certificate; requirements; prohibited acts; penalty.
66-495.01. Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment.

66-401 Transferred to section 66-482.

66-402 Transferred to section 66-483.

66-403 Transferred to section 66-484.

66-404 Transferred to section 66-485.

66-405 Repealed. Laws 1973, LB 528, § 20.

66-405.01 Repealed. Laws 1981, LB 360, § 13.

66-406 Repealed. Laws 1991, LB 627, § 148.

66-407 Transferred to section 66-486.

66-408 Transferred to section 66-487.

66-409 Transferred to section 66-488.

66-410 Transferred to section 66-489.

66-410.01 Transferred to section 66-490.

66-410.02 Transferred to section 66-491.

66-410.03 Transferred to section 66-492.

66-410.04 Transferred to section 66-493.

66-410.05 Transferred to section 66-494.

66-410.06 Repealed. Laws 1991, LB 627, § 148.

66-410.07 Repealed. Laws 1991, LB 627, § 148.

66-411 Transferred to section 66-495.

66-412 Transferred to section 66-496.

66-413 Repealed. Laws 1991, LB 627, § 148.

66-414 Transferred to section 66-497.

66-415 Transferred to section 66-498.

66-416 Repealed. Laws 1986, LB 1027, § 226.

66-416.01 Repealed. Laws 1986, LB 1027, § 226.

66-417 Repealed. Laws 1973, LB 528, § 20.

66-418 Repealed. Laws 1991, LB 627, § 148.

66-418.01 Repealed. Laws 1991, LB 627, § 148.

66-418.02 Transferred to section 66-449.01.

66-418.03 Repealed. Laws 1991, LB 627, § 148.

66-419 Repealed. Laws 1991, LB 627, § 148.

66-420 Transferred to section 66-4,103.

66-421 Transferred to section 66-499.

66-422 Repealed. Laws 1969, c. 530, § 9.

66-423 Repealed. Laws 1969, c. 530, § 9.

66-423.01 Transferred to section 66-4,101.

66-423.02 Transferred to section 66-4,102.

66-424 Transferred to section 66-4,100.

66-424.01 Repealed. Laws 1969, c. 530, § 9.

66-424.02 Repealed. Laws 1969, c. 530, § 9.

66-424.03 Repealed. Laws 1971, LB 33, § 1.

66-425 Repealed. Laws 1959, c. 175, § 34.

66-426 Repealed. Laws 1957, c. 284, § 3.

66-426.01 Transferred to section 66-4,104.

66-427 Repealed. Laws 1991, LB 627, § 148.

66-428 Transferred to section 66-4,105.

66-429 Transferred to section 66-4,106.

66-430 Repealed. Laws 1991, LB 627, § 148.

66-431 Repealed. Laws 1991, LB 627, § 148.

66-432 Repealed. Laws 1991, LB 627, § 148.

66-433 Transferred to section 66-4,107.

66-434 Transferred to section 66-4,108.

66-435 Transferred to section 66-4,109.

66-436 Transferred to section 66-4,110.

66-437 Transferred to section 66-4,111.

66-438 Transferred to section 66-4,112.

66-439 Transferred to section 66-4,113.

66-440 Transferred to section 66-4,117.

66-441 Transferred to section 66-4,114.

66-442 Transferred to section 66-4,115.

66-443 Repealed. Laws 1991, LB 627, § 148.

66-444 Transferred to section 66-4,116.

66-445 Transferred to section 66-4,118.

66-446 Transferred to section 66-4,119.

66-447 Transferred to section 66-4,120.

66-448 Transferred to section 66-4,121.

66-449 Transferred to section 66-4,122.

66-449.01 Transferred to section 66-4,130.

66-450 Transferred to section 66-4,123.

66-451 Repealed. Laws 1991, LB 627, § 148.

66-452 Transferred to section 66-4,124.

66-453 Repealed. Laws 1991, LB 627, § 148.

66-454 Repealed. Laws 1991, LB 627, § 148.

66-455 Repealed. Laws 1991, LB 627, § 148.

66-456 Repealed. Laws 1991, LB 627, § 148.

66-457 Repealed. Laws 1991, LB 627, § 148.

66-458 Transferred to section 66-4,125.

66-459 Transferred to section 66-4,126.

66-460 Transferred to section 66-4,127.

66-461 Transferred to section 66-4,128.

66-461.01 Transferred to section 66-4,129.

66-462 Transferred to section 66-4,131.

66-463 Repealed. Laws 1972, LB 343, § 25.

66-464 Repealed. Laws 1991, LB 627, § 148.

66-465 Transferred to section 66-4,132.

66-465.01 Repealed. Laws 1991, LB 11, § 2.

66-466 Repealed. Laws 1991, LB 627, § 148.

66-467 Transferred to section 66-4,133.

66-467.01 Transferred to section 66-4,134.

66-468 Transferred to section 66-4,135.

66-469 Transferred to section 66-4,136.

66-470 Transferred to section 66-4,137.

66-471 Transferred to section 66-4,138.

66-472 Transferred to section 66-4,139.

66-473 Transferred to section 66-4,140.

66-474 Transferred to section 66-4,141.

66-474.01 Transferred to section 66-4,142.

66-475 Transferred to section 66-4,143.

66-476 Transferred to section 66-4,144.

66-477 Transferred to section 66-4,145.

66-478 Transferred to section 66-4,146.

66-479 Transferred to section 66-4,147.

66-480 Transferred to section 66-4,148.

66-481 Transferred to section 66-4,149.

66-482 Terms, defined.

For purposes of sections 66-482 to 66-4,149:

(1) Motor vehicle shall have the same definition as in section 60-339;

(2) Motor vehicle fuel shall include all products and fuel commonly or commercially known as gasoline, including casing head or natural gasoline, and shall include any other liquid and such other volatile and inflammable liquids as may be produced, compounded, or used for the purpose of operating or propelling motor vehicles, motorboats, or aircraft or as an ingredient in the manufacture of such fuel. Agricultural ethyl alcohol produced for use as a motor vehicle fuel shall be considered a motor vehicle fuel. Motor vehicle fuel shall not include the products commonly known as methanol, kerosene oil, kerosene distillate, crude petroleum, naphtha, and benzine with a boiling point over two hundred degrees Fahrenheit, residuum gas oil, smudge oil, leaded automotive racing fuel with an American Society of Testing Materials research method octane number in excess of one hundred five, and any petroleum product with an initial boiling point under two hundred degrees Fahrenheit, a ninety-five percent distillation (recovery) temperature in excess of four hundred sixty-four degrees Fahrenheit, an American Society of Testing Materials research method octane number less than seventy, and an end or dry point of distillation of five hundred seventy degrees Fahrenheit maximum;

(3) Agricultural ethyl alcohol shall mean ethyl alcohol produced from cereal grains or agricultural commodities grown within the continental United States and which is a finished product that is a nominally anhydrous ethyl alcohol meeting American Society for Testing and Materials D4806 standards. For the purpose of sections 66-482 to 66-4,149, the purity of the ethyl alcohol shall be determined excluding denaturant and the volume of alcohol blended with gasoline for motor vehicle fuel shall include the volume of any denaturant required pursuant to law;

(4) Alcohol blend shall mean a blend of agricultural ethyl alcohol in gasoline or other motor vehicle fuel, such blend to contain not less than five percent by volume of alcohol;

(5) Supplier shall mean any person who owns motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state;

(6) Distributor shall mean any person who acquires ownership of motor fuels directly from a producer or supplier at or from a barge, barge line, pipeline terminal, or ethanol or biodiesel facility in this state;

(7) Wholesaler shall mean any person, other than a producer, supplier, distributor, or importer, who acquires motor fuels for resale;

(8) Retailer shall mean any person who acquires motor fuels from a producer, supplier, distributor, wholesaler, or importer for resale to consumers of such fuel;

(9) Importer shall mean any person who owns motor fuels at the time such fuels enter the State of Nebraska by any means other than barge, barge line, or pipeline. Importer shall not include a person who imports motor fuels in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected;

(10) Exporter shall mean any person who acquires ownership of motor fuels from any licensed producer, supplier, distributor, wholesaler, or importer exclusively for use or resale in another state;

(11) Gross gallons shall mean measured gallons without adjustment or correction for temperature or barometric pressure;

(12) Diesel fuel shall mean all combustible liquids and biodiesel which are suitable for the generation of power for diesel-powered vehicles, except that diesel fuel shall not include kerosene;

(13) Compressed fuel shall mean any fuel defined as compressed fuel in section 66-6,100;

(14) Person shall mean any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in sections 66-482 to 66-4,149, the word person as applied to a partnership, a limited liability company, or an association shall mean the partners or members thereof;

(15) Department shall mean the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(16) Semiannual period shall mean either the period which begins on January 1 and ends on June 30 of each year or the period which begins on July 1 and ends on December 31 of each year;

(17) Producer shall mean any person who manufactures agricultural ethyl alcohol or biodiesel at an ethanol or biodiesel facility in this state;

(18) Highway shall mean every way or place generally open to the use of the public for the purpose of vehicular travel, even though such way or place may be temporarily closed or travel thereon restricted for the purpose of construction, maintenance, repair, or reconstruction;

(19) Kerosene shall mean kerosene meeting the specifications as found in the American Society for Testing and Materials publication D3699 entitled Standard Specifications for Kerosene;

(20) Biodiesel shall mean mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to American Society for Testing and Materials D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel;

(21) Motor fuels shall mean motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel;

(22) Ethanol facility shall mean a plant which produces agricultural ethyl alcohol under the provisions described in section 66-1344; and

(23) Biodiesel facility shall mean a plant which produces biodiesel.

Source: Laws 1925, c. 172, § 1, p. 448; Laws 1929, c. 150, § 1, p. 525; C.S.1929, § 66-401; Laws 1935, c. 3, § 15, p. 63; Laws 1935, Spec. Sess., c. 13, § 1, p. 86; Laws 1939, c. 86, § 1, p. 366; C.S.Supp.,1941, § 66-401; R.S.1943, § 66-401; Laws 1955, c. 246, § 1, p. 777; Laws 1963, c. 377, § 1, p. 1214; Laws 1963, c. 375, § 2, p. 1206; Laws 1981, LB 360, § 1; Laws 1987, LB 523, § 5; Laws 1988, LB 1039, § 1; R.S.1943, (1990), § 66-401; Laws 1991, LB 627, § 9; Laws 1993, LB 121, § 395; Laws 1994, LB 1160, § 55; Laws 1995, LB 182, § 28; Laws 1996, LB 1121, § 1; Laws 1998, LB 1161, § 14; Laws 2004, LB 479, § 1; Laws 2004, LB 983, § 5; Laws 2005, LB 274, § 267; Laws 2008, LB846, § 2.

Cross References

For additional definitions, see section 66-712.

Motor fuels tax law is constitutional. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

Dry cleaner's solvents capable of use for operating motor vehicles are subject to tax. Pantorium v. McLaughlin, 116 Neb. 61, 215 N.W. 798 (1927).

The Nebraska gasoline tax is an excise tax upon use of gasoline, and is collected for convenience from the dealer. Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964).

66-483 Producer, supplier, distributor, wholesaler, importer, or exporter; application for license; contents.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall file an application with the department. The application shall be filed upon a form prepared and furnished by the department. If the applicant is an individual, the application shall include the applicant's social security number. The application shall contain such information as the department deems necessary.

Source: Laws 1925, c. 172, § 2, p. 449; Laws 1929, c. 149, § 1, p. 520; C.S.1929, § 66-402; Laws 1933, c. 106, § 1, p. 433; C.S.Supp.,1941, § 66-402; R.S.1943, § 66-402; R.S.1943, (1990), § 66-402; Laws 1991, LB 627, § 10; Laws 1992, LB 1013, § 3; Laws 1994, LB 1160, § 56; Laws 1997, LB 752, § 149; Laws 2004, LB 983, § 6.

66-484 Producer, supplier, distributor, wholesaler, importer, or exporter; license required.

Before engaging in business as a producer, supplier, distributor, wholesaler, importer, or exporter, a person shall procure a license from the department

permitting him or her to transact such business within the State of Nebraska. After reviewing the application required in section 66-483, the department may issue a license as provided in this section.

Source: Laws 1925, c. 172, § 3, p. 449; Laws 1929, c. 149, § 2, p. 521; C.S.1929, § 66-403; Laws 1931, c. 114, § 1, p. 333; Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S.1943, § 66-403; Laws 1969, c. 528, § 1, p. 2160; Laws 1973, LB 528, § 1; Laws 1981, LB 360, § 2; R.S.1943, (1990), § 66-403; Laws 1991, LB 627, § 11; Laws 1994, LB 1160, § 57; Laws 2004, LB 983, § 7.

Increase in tax does not relieve sureties from obligation on bond. State v. Smith, 135 Neb. 423, 281 N.W. 851 (1938).

66-485 Producer, supplier, distributor, wholesaler, exporter, or importer; security.

The department, for the first year of a new license or whenever it deems it necessary to insure compliance with sections 66-482 to 66-4,149, may require any producer, supplier, distributor, wholesaler, exporter, or importer subject to such sections to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately three times the total estimated average monthly tax liability payable by such producer, supplier, distributor, wholesaler, or importer pursuant to such sections. Such security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. In the case of an exporter, the amount and duration of the security shall be fixed by the department. Such security shall run to the Department of Revenue and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such producer, supplier, distributor, wholesaler, exporter, or importer is liable, whether such liability was incurred prior to or after such security is filed.

Source: Laws 1933, c. 106, § 2, p. 434; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-404; Laws 1949, c. 186, § 1, p. 537; Laws 1969, c. 528, § 2, p. 2160; Laws 1973, LB 397, § 1; Laws 1973, LB 528, § 2; Laws 1981, LB 360, § 3; R.S.1943, (1990), § 66-404; Laws 1991, LB 627, § 12; Laws 1994, LB 1160, § 58; Laws 2000, LB 1067, § 1; Laws 2004, LB 983, § 8; Laws 2008, LB846, § 3.

66-486 Motor fuel tax; collection; commission.

(1) In lieu of the expense of collecting and remitting the motor vehicle fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of five percent on the first five thousand dollars and two and one-half percent upon all amounts above five thousand dollars remitted each reporting period.

(2) In lieu of the expense of collecting and remitting the diesel fuel tax and furnishing the security pursuant to Chapter 66, article 4, and complying with the statutes and rules and regulations related thereto, the producer, supplier, distributor, wholesaler, or importer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of

one percent upon all amounts in excess of five thousand dollars remitted each reporting period.

(3) Except as otherwise provided in Chapter 66, article 4, the per-gallon amount of the tax shall be added to the selling price of every gallon of such motor fuels sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the producer, supplier, distributor, wholesaler, or importer as specified in Chapter 66, article 4, shall be as agents of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in Chapter 66, article 4. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in Chapter 66, article 4.

(4) In consideration of receiving the commission, the producer, supplier, distributor, wholesaler, or importer shall not be entitled to any deductions, credits, or refunds arising out of such producer's, supplier's, distributor's, wholesaler's, or importer's failure or inability to collect any such taxes from any subsequent purchaser of motor fuels.

(5) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1933, c. 106, § 2, p. 435; C.S.Supp.,1941, § 66-403; R.S. 1943, § 66-407; Laws 1969, c. 528, § 3, p. 2160; Laws 1973, LB 528, § 4; R.S.1943, (1990), § 66-407; Laws 1991, LB 627, § 13; Laws 1994, LB 1160, § 59; Laws 1998, LB 1161, § 15; Laws 2001, LB 168, § 1; Laws 2004, LB 983, § 9.

The commission allowance characterized the dealer as a collection agent. Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964).

66-487 Producer, supplier, distributor, wholesaler, exporter, and importer; records required.

(1) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall keep a complete and accurate record of all gallonage of motor fuels, to be based on gross gallons, received, purchased, refined, manufactured, or obtained and imported by a producer, supplier, distributor, wholesaler, or importer, which record shall show the name and address of the person from whom each transfer or purchase of motor fuels so received or imported was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each transfer or purchase, and a complete and accurate record of the number of gallons, to be based on gross gallons, of motor fuels imported, produced, refined, manufactured, or compounded and the date of importation, production, refining, manufacturing, or compounding. If any licensed producer, supplier, distributor, wholesaler, or importer sells to another licensed producer, supplier, distributor, wholesaler, importer, or exporter any motor fuels, such seller shall keep as part of its records the name, address, and license number of the producer, supplier, distributor, wholesaler, importer, or exporter to whom the motor fuels were

sold along with the date, quantity, and location where the motor fuels were sold.

(2) Every licensed producer, supplier, distributor, wholesaler, exporter, and importer shall include the information prescribed in subsection (1) of this section with the return required by section 66-488.

(3) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years following the date of filing fuel tax reports supported by such records or for a period of five years if the required reports are not filed.

Source: Laws 1925, c. 172, § 4, p. 450; Laws 1927, c. 151, § 1, p. 405; Laws 1929, c. 149, § 3, p. 521; C.S.1929, § 66-404; Laws 1933, c. 106, § 3, p. 435; C.S.Supp.,1941, § 66-404; R.S.1943, § 66-408; Laws 1967, c. 397, § 2, p. 1246; Laws 1988, LB 1039, § 2; R.S.1943, (1990), § 66-408; Laws 1991, LB 627, § 14; Laws 1994, LB 1160, § 60; Laws 2000, LB 1067, § 2; Laws 2001, LB 168, § 2; Laws 2004, LB 983, § 10.

66-488 Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.

(1) Every producer, supplier, distributor, wholesaler, importer, and exporter who engages in the sale, distribution, delivery, and use of motor fuels shall render and have on file with the department a return reporting the number of gallons of motor fuels, based on gross gallons, received, imported, or exported and unloaded and emptied or caused to be received, imported, or exported and unloaded and emptied by such producer, supplier, distributor, wholesaler, or importer in the State of Nebraska and the number of gallons of motor fuels produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska, during the preceding reporting period, and defining the nature of such motor fuels. The return shall also show such information as the department reasonably requires for the proper administration and enforcement of sections 66-482 to 66-4,149. The return shall contain a declaration, by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the return and shall be in lieu of such verification. The return shall be signed by the producer, supplier, distributor, wholesaler, importer, or exporter or a principal officer, general agent, managing agent, attorney in fact, chief accountant, or other responsible representative of the producer, supplier, distributor, wholesaler, importer, or exporter, and such return shall be entitled to be received in evidence in all courts of this state and shall be prima facie evidence of the facts therein stated. The producer, supplier, distributor, wholesaler, importer, or exporter shall file the return in such format as prescribed by the department on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date for such return falls on a Saturday, Sunday, or legal holiday, the next secular or business day shall be the final filing date. The return shall be considered filed on time if transmitted or postmarked before midnight of the final filing date.

(2) For purposes of this section, reporting period means calendar month unless otherwise provided by rules and regulations of the department, but under no circumstance shall such reporting period extend beyond an annual basis.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 448; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 127; Laws 1937, c. 148, § 1, p. 566; Laws 1939, c. 86, § 2, p. 367; Laws 1941, c. 133, § 1, p. 522; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(1), p. 473; Laws 1943, c. 141, § 1(1), p. 482; R.S.1943, § 66-409; Laws 1963, c. 376, § 2, p. 1210; R.S.1943, (1990), § 66-409; Laws 1991, LB 627, § 15; Laws 1994, LB 1160, § 61; Laws 2000, LB 1067, § 3; Laws 2001, LB 168, § 3; Laws 2004, LB 983, § 11; Laws 2008, LB846, § 4.

66-489 Producer, supplier, distributor, wholesaler, or importer; motor fuel tax; excise tax; amount; when payable; exemptions; equalization fee; section, how construed; refund.

(1) At the time of filing the return required by section 66-488, such producer, supplier, distributor, wholesaler, or importer shall, in addition to the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146 and in addition to the other taxes provided for by law, pay a tax of seven and one-half cents per gallon upon all motor fuels as shown by such return, except that there shall be no tax on the motor fuels reported if (a) the required taxes on the motor fuels have been paid, (b) the motor fuels have been sold to a licensed exporter exclusively for resale or use in another state, (c) the motor fuels have been sold from a Nebraska barge line terminal, pipeline terminal, refinery, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, by a licensed producer or supplier to a licensed distributor, (d) the motor fuels have been sold by a licensed distributor or licensed importer to a licensed distributor or to a licensed wholesaler and the seller acquired ownership of the motor fuels directly from a licensed producer or supplier at or from a refinery, barge, barge line, pipeline terminal, or ethanol or biodiesel facility, including motor fuels stored offsite in bulk, in this state or was the first importer of such fuel into this state, or (e) as otherwise provided in this section. Such producer, supplier, distributor, wholesaler, or importer shall remit such tax to the department.

(2) As part of filing the return required by section 66-488, each producer of ethanol shall, in addition to other taxes imposed by the motor fuel laws, pay an excise tax of one and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and two and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, on natural gasoline purchased for use as a denaturant by the producer at an ethanol facility. All taxes, interest, and penalties collected under this subsection shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund, except that commencing January 1, 2005, through December 31, 2009, one and one-quarter cents per gallon of such excise tax shall be credited to the Ethanol Production Incentive Cash Fund. For fiscal years 2007-08 through 2011-12, if the total receipts from the excise tax authorized in this subsection and designated for deposit in the Agricultural Alcohol Fuel Tax Fund exceed five hundred

fifty thousand dollars, the State Treasurer shall deposit amounts in excess of five hundred fifty thousand dollars in the Ethanol Production Incentive Cash Fund.

(3)(a) Motor fuels, methanol, and all blending agents or fuel expanders shall be exempt from the taxes imposed by this section and sections 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146, when the fuels are used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(b) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in this section, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(c) Nothing in this section shall be construed as permitting motor fuels to be sold tax exempt. The department shall refund tax paid on motor fuels used in buses deemed exempt by this section.

(4) Natural gasoline purchased for use as a denaturant by a producer at an ethanol facility as defined in section 66-1333 shall be exempt from the motor fuels tax imposed by subsection (1) of this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(5) Unless otherwise provided by an agreement entered into between the State of Nebraska and the governing body of any federally recognized Indian tribe within the State of Nebraska, motor fuels purchased on a Nebraska Indian reservation where the purchaser is a Native American who resides on the reservation shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(6) Motor fuels purchased for use by the United States Government or its agencies shall be exempt from the motor fuels tax imposed by this section as well as the tax imposed pursuant to sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146.

(7) In the case of diesel fuel, there shall be no tax on the motor fuels reported if (a) the diesel fuel has been indelibly dyed and chemically marked in accordance with regulations issued by the Secretary of the Treasury of the United States under 26 U.S.C. 4082 or (b) the diesel fuel contains a concentration of sulphur in excess of five-hundredths percent by weight or fails to meet a cetane index minimum of forty and has been indelibly dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545.

(8) The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1925, c. 172, § 5, p. 450; Laws 1927, c. 151, § 2, p. 406; Laws 1929, c. 149, § 4, p. 522; Laws 1929, c. 166, § 1, p. 572; C.S.1929, § 66-405; Laws 1931, c. 113, § 1, p. 331; Laws 1933, c. 106, § 4, p. 436; Laws 1933, c. 110, § 3, p. 449; Laws 1935, c. 161, § 1, p. 586; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws

1937, c. 148, § 1, p. 566; Laws 1939, c. 87, § 2, p. 367; Laws 1941, c. 133, § 1, p. 523; C.S.Supp.,1941, § 66-405; Laws 1943, c. 138, § 2(2), p. 474; Laws 1943, c. 141, § 1(2), p. 483; R.S.1943, § 66-410; Laws 1953, c. 225, § 1, p. 792; Laws 1955, c. 247, § 1, p. 780; Laws 1957, c. 282, § 1, p. 1028; Laws 1963, c. 376, § 3, p. 1211; Laws 1965, c. 391, § 1, p. 1249; Laws 1967, c. 397, § 3, p. 1248; Laws 1969, c. 528, § 4, p. 2161; Laws 1969, c. 529, § 1, p. 2167; Laws 1971, LB 776, § 2; Laws 1972, LB 1208, § 1; Laws 1977, LB 139, § 2; Laws 1977, LB 52, § 2; Laws 1979, LB 571, § 3; Laws 1980, LB 722, § 6; Laws 1981, LB 104, § 1; Laws 1981, LB 360, § 4; Laws 1985, LB 346, § 1; Laws 1988, LB 1039, § 3; Laws 1990, LB 1124, § 2; R.S.1943, (1990), § 66-410; Laws 1991, LB 627, § 16; Laws 1994, LB 1160, § 62; Laws 1996, LB 1121, § 3; Laws 2004, LB 983, § 12; Laws 2004, LB 1065, § 1; Laws 2006, LB 1003, § 5; Laws 2007, LB322, § 12; Laws 2008, LB846, § 5.

Question of proper method of allocation and distribution of gas tax raised. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

Tax is an excise tax upon use and distribution of gasoline in the state and does not violate the commerce clause or due process and equal protection clauses of the United States Constitution. State v. Smith, 135 Neb. 423, 281 N.W. 851 (1938); Burke v. Bass, 123 Neb. 297, 242 N.W. 606 (1932).

Supreme Court refused to entertain jurisdiction of suit, under declaratory judgments act, to declare gasoline tax collected under alleged unconstitutional act a trust fund. Arlington Oil Co. v. Hall, 130 Neb. 674, 266 N.W. 583 (1936).

This section, prior to its amendment in 1937, was declared unconstitutional as a violation of section 1, Article II, and section 1, Article III, Constitution of Nebraska. Smithberger v. Banning, 130 Neb. 354, 265 N.W. 10 (1936); Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935).

County is not exempt from payment of excise tax. State v. Cheyenne County, 127 Neb. 619, 256 N.W. 67 (1934).

Dry cleaner's solvents capable of use for operating motor vehicles are subject to tax. Pantorium v. McLaughlin, 116 Neb. 61, 215 N.W. 798 (1927).

Tax imposed by this section has its realistic impact upon the consumer. Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964).

66-489.01 Motor fuels blending agent or fuel expander; when taxed.

Methanol, benzine, benzol, naphtha, kerosene, and any other volatile, flammable, or combustible liquid suitable for use as a motor fuels blending agent or fuel expander shall be exempt from the taxes imposed under sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 unless and until such methanol, benzine, benzol, naphtha, kerosene, or other blending agent or fuel expander is blended with motor fuels or placed directly into the supply tank of a licensed motor vehicle. Any person blending such products with motor fuels or placing such products into the supply tank of a licensed motor vehicle shall pay the taxes imposed under such sections directly to the department on forms provided by the department at the same time as the motor fuels with which it is blended become subject to taxation or, if the tax imposed on the motor fuels has already been paid, upon blending. The taxes imposed by this section shall not apply to fuel additives which are used to enhance engine performance or prevent fuel line freezing or clogging when placed directly into the supply tank of a motor vehicle in quantities of one quart or less.

Source: Laws 1996, LB 1121, § 2; Laws 2004, LB 983, § 13; Laws 2008, LB846, § 6.

66-489.02 Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-488, the producer, supplier, distributor,

wholesaler, or importer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline for the gallons of the motor fuels as shown by the return, except that there shall be no tax on the motor fuels reported if they are otherwise exempted by sections 66-482 to 66-4,149.

(2) The department shall calculate the average wholesale price of gasoline on April 1, 2009, and on each April 1 and October 1 thereafter. The average wholesale price on April 1 shall apply to returns for the tax periods beginning on and after July 1, and the average wholesale price on October 1 shall apply to returns for the tax periods beginning on and after January 1. The average wholesale price shall be determined using data available from the Energy Information Administration of the United States Department of Energy and shall be a single, statewide average wholesale price per gallon of gasoline sold in the state over the previous six-month period, excluding any state or federal excise tax or environmental fees. The change in the average wholesale price between two six-month periods shall be adjusted so that the increase or decrease in the tax provided for in this section or section 66-6,109.02 does not exceed one cent per gallon.

(3) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Roads;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 11.

66-490 Repealed. Laws 2004, LB 983, § 71.

66-491 Repealed. Laws 2004, LB 983, § 71.

66-492 Repealed. Laws 2004, LB 983, § 71.

66-493 Repealed. Laws 2000, LB 1067, § 37.

66-494 Repealed. Laws 2004, LB 983, § 71.

66-495 Purchase of undyed diesel fuel; exemption certificate; requirements; prohibited acts; penalty.

(1) A purchaser of undyed diesel fuel may present an exemption certificate to the seller when not more than fifty gallons of such fuel is placed directly into the supply tank of a temperature control unit or power take-off unit. To qualify for this exemption, the supply tank of the temperature control unit or power take-off unit cannot be connected to the engine which provides motive power to a motor vehicle or connected to any fuel supply tank connected to the engine of a motor vehicle.

(2) The seller of undyed diesel fuel may in good faith accept the exemption certificate and sell undyed diesel fuel without collecting the tax. The seller may

accept an exemption certificate for multiple purchases. Such a certificate shall be renewed annually. If the seller is a producer, supplier, distributor, wholesaler, or importer, the seller may deduct the number of gallons sold without the tax from the return for the period during which the fuel was sold or for a subsequent period. If the seller is not a producer, supplier, distributor, wholesaler, or importer, the seller may provide a monthly exemption certificate to the producer, distributor, wholesaler, or importer or other supplier of the taxed diesel fuel for the total number of gallons of undyed diesel fuel sold without tax during the prior month.

(3) Receipt of an exemption certificate taken in good faith shall be conclusive proof for the seller that the sale was exempt.

(4) Any person who wrongfully claims an exemption and presents an exemption certificate shall be liable for the tax on the diesel fuel. The department shall, on the basis of information available, determine the tax that would have been due on such transaction and assess the tax against such person.

(5) Any person who unlawfully issues an exemption certificate shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2004, LB 983, § 14.

66-495.01 Diesel fuels; restrictions on use; inspections authorized; violations; penalties; government vehicles; treatment.

(1) Except as provided in subsection (5) of this section, the fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with undyed diesel fuel that has not been taxed or diesel fuel which contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel.

(2) No retailer of diesel fuel shall sell or offer to sell diesel fuel that contains any evidence of the dye or chemical marker added pursuant to the regulations promulgated under 26 U.S.C. 4082 or 42 U.S.C. 7545 indicating untaxed low-sulphur or high-sulphur diesel fuel unless the fuel dispensing device is clearly marked with a notice that the fuel is dyed or chemically marked.

(3) Any law enforcement officer, any carrier enforcement officer, or any agent of the department who has reasonable grounds to suspect a violation of this section may inspect the fuel in the fuel supply tank of any motor vehicle or the fuel storage facilities and dispensing devices of any diesel fuel retailer to determine compliance with this section. Fuel inspections may also be conducted in the course of safety or other inspections authorized by law.

(4) Any person who violates any provision of this section or who refuses to permit an inspection authorized by this section shall be guilty of a Class IV misdemeanor and shall be subject to an administrative penalty of two hundred fifty dollars for the first such violation. If the person had another violation under this section within the last five years, the person shall be subject to an administrative penalty of one thousand dollars for the current violation. If the person had two or more violations under this section within the last five years, the person shall be subject to an administrative penalty of two thousand five hundred dollars for the current violation. All such penalties shall be assessed

against the owner of the vehicle as of the date of the violation. The penalty shall be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(5) Any motor vehicle owned or leased by any state, county, municipality, or other political subdivision may be operated on the highways of this state with dyed diesel fuel, except high-sulphur diesel fuel dyed in accordance with regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to 42 U.S.C. 7545, if the taxes imposed by sections 66-482 to 66-4,149 are paid to the department by the state, county, municipality, or other political subdivision. The state, county, municipality, or other political subdivision shall pay the tax and file a return concerning the tax to the department in like manner and form as is required under sections 66-489.02, 66-4,105, and 66-4,106.

(6) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 2004, LB 983, § 15; Laws 2008, LB846, § 7.

66-496 Stored fuel; payment of tax; when; reports.

(1) No tax shall be collected with respect to motor fuels imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state or refined at a refinery in this state and stored thereat until the motor fuels are withdrawn for sale or use in this state or are loaded at the terminal or refinery into transportation equipment for shipment or delivery to a destination in this state. No tax shall be collected with respect to motor fuels manufactured at an ethanol or biodiesel facility in this state nor with respect to motor fuels owned by a producer, but stored at another location in this state, until the motor fuels are withdrawn for sale or use in this state or are loaded at the ethanol or biodiesel facility or other storage into transportation equipment for shipment or delivery to a destination in this state.

(2) When motor fuels are withdrawn or loaded as provided in this section, the producer, supplier, or distributor in this state shall be liable for payment of the motor fuels tax.

(3) The person owning and operating such refinery, barge, barge line terminal, pipeline terminal, or ethanol or biodiesel facility may, at the department's request, make and file such verified reports of operations within the state which may include reporting all motor fuels loaded within this state for delivery in another state and such other information as shall be required by the department.

Source: Laws 1935, c. 161, § 1, p. 588; Laws 1935, Spec. Sess., c. 16, § 1, p. 128; Laws 1937, c. 148, § 1, p. 567; Laws 1939, c. 87, § 2, p. 368; Laws 1941, c. 133, § 1, p. 524; C.S.Supp.,1941, § 66-405;

Laws 1943, c. 138, § 2(5), p. 475; Laws 1943, c. 141, § 1(5), p. 484; R.S.1943, § 66-412; Laws 1955, c. 248, § 1, p. 783; Laws 1969, c. 528, § 9, p. 2164; Laws 1973, LB 528, § 7; Laws 1988, LB 1039, § 4; R.S.1943, (1990), § 66-412; Laws 1991, LB 627, § 23; Laws 1994, LB 1160, § 67; Laws 2004, LB 983, § 16.

66-497 Repealed. Laws 1994, LB 1160, § 127.

66-498 Tax previously paid; credit allowed; when.

If such tax has been paid upon any of the ingredients or compounds under the provisions of section 66-489, credit shall be allowed for such tax previously paid, in computing the tax upon such compound, so that the motor fuels used in the compound are not taxed twice.

Source: Laws 1925, c. 172, § 6, p. 451; C.S.1929, § 66-406; R.S.1943, § 66-415; R.S.1943, (1990), § 66-415; Laws 2004, LB 983, § 17.

66-499 Tax received; credit to Highway Trust Fund; credits and refunds; balance to Highway Cash Fund.

Unless otherwise provided, all sums of money received under sections 66-489 and 66-4,105 by the State Treasurer shall be credited to the Highway Trust Fund. Credits and refunds of the tax provided for in such sections allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Cash Fund.

Source: Laws 1925, c. 172, § 12, p. 453; Laws 1929, c. 166, § 2, p. 574; C.S.1929, § 66-411; Laws 1933, c. 110, § 1, p. 446; Laws 1937, c. 148, § 4, p. 568; Laws 1939, c. 87, § 2, p. 359; Laws 1941, c. 133, § 2, p. 524; Laws 1941, c. 134, § 10, p. 535; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(1), p. 470; Laws 1943, c. 139, § 1(1), p. 477; R.S.1943, § 66-421; Laws 1947, c. 214, § 1, p. 696; Laws 1969, c. 530, § 1, p. 2170; Laws 1969, c. 584, § 62, p. 2384; Laws 1972, LB 1065, § 1; Laws 1972, LB 343, § 1; Laws 1986, LB 599, § 15; Laws 1989, LB 258, § 4; R.S.1943, (1990), § 66-421; Laws 1991, LB 627, § 25; Laws 2004, LB 983, § 18; Laws 2008, LB846, § 8.

66-4,100 Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.

The Highway Cash Fund and the Roads Operations Cash Fund are hereby created. If bonds are issued pursuant to subsection (2) of section 39-2223, the balance of the share of the Highway Trust Fund allocated to the Department of Roads and deposited into the Highway Restoration and Improvement Bond Fund as provided in subsection (6) of section 39-2215 and the balance of the money deposited in the Highway Restoration and Improvement Bond Fund as provided in section 39-2215.01 shall be transferred by the State Treasurer, on or before the last day of each month, to the Highway Cash Fund. If no bonds are issued pursuant to subsection (2) of section 39-2223, the share of the Highway Trust Fund allocated to the Department of Roads shall be transferred

by the State Treasurer on or before the last day of each month to the Highway Cash Fund.

The Legislature may direct the State Treasurer to transfer funds from the Highway Cash Fund to the Roads Operations Cash Fund. Both funds shall be expended by the department (1) for acquiring real estate, road materials, equipment, and supplies to be used in the construction, reconstruction, improvement, and maintenance of state highways, (2) for the construction, reconstruction, improvement, and maintenance of state highways, including grading, drainage, structures, surfacing, roadside development, landscaping, and other incidentals necessary for proper completion and protection of state highways as the department shall, after investigation, find and determine shall be for the best interests of the highway system of the state, either independent of or in conjunction with federal-aid money for highway purposes, (3) for the share of the department of the cost of maintenance of state aid bridges, (4) for planning studies in conjunction with federal highway funds for the purpose of analyzing traffic problems and financial conditions and problems relating to state, county, township, municipal, federal, and all other roads in the state and for incidental costs in connection with the federal-aid grade crossing program for roads not on state highways, (5) for tests and research by the department or proportionate costs of membership, tests, and research of highway organizations when participated in by the highway departments of other states, (6) for the payment of expenses and costs of the Board of Examiners for County Highway and City Street Superintendents as set forth in section 39-2310, and (7) for support of the public transportation assistance program established under section 13-1209 and the intercity bus system assistance program established under section 13-1213.

Any money in the Highway Cash Fund and the Roads Operations Cash Fund not needed for current operations of the department shall, as directed by the Director-State Engineer to the State Treasurer, be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, subject to approval by the board of each investment. All income received as a result of such investment shall be placed in the Highway Cash Fund.

Source: Laws 1937, c. 148, § 4, p. 570; Laws 1939, c. 84, § 2, p. 363; Laws 1941, c. 133, § 2, p. 525; Laws 1941, c. 134, § 10, p. 536; C.S.Supp.,1941, § 66-411; Laws 1943, c. 138, § 1(4), p. 472; Laws 1943, c. 139, § 1(4), p. 479; R.S.1943, § 66-424; Laws 1947, c. 214, § 4, p. 698; Laws 1953, c. 131, § 15, p. 410; Laws 1965, c. 393, § 1, p. 1257; Laws 1969, c. 530, § 3, p. 2171; Laws 1971, LB 21, § 1; Laws 1972, LB 1496, § 2; Laws 1986, LB 599, § 16; Laws 1988, LB 632, § 19; Laws 1990, LB 602, § 3; R.S. 1943, (1990), § 66-424; Laws 1994, LB 1066, § 51; Laws 1994, LB 1194, § 15; Laws 2004, LB 1144, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-4,101 Highway Allocation Fund; share of counties and municipalities; how used.

Any county may by resolution of the county board, any city may by ordinance of the mayor and city council, and any village may by ordinance of the chairperson and board of trustees issue bonds for the construction of roads of the county and street and state highway or federal-aid routes of cities and villages and to pay the interest on and to retire any such bonds by pledging funds received from the Highway Allocation Fund. Any city of the primary class may by ordinance of the mayor and city council issue bonds for the construction of offstreet parking facilities of such city and to pay the interest on and to retire any such bonds by pledging funds received from the Highway Allocation Fund.

The issuance of bonds by any county, city, or village under the authority of this section shall not be subject to any charter or statutory limitations of indebtedness or be subject to any restrictions imposed upon or conditions precedent to the exercise of the powers of counties, cities, and villages to issue bonds or evidences of indebtedness which may be contained in such charters or other statutes. Any county, city, or village which has heretofore or may hereafter issue bonds under the authority of this section shall levy property taxes upon all the taxable property in such county, city, or village issuing such bonds at such rate or rates within any applicable charter, statutory, or constitutional limitations as will provide funds which, together with receipts from the Highway Allocation Fund pledged to the payment of such bonds and any other money made available and used for that purpose, will be sufficient to pay the principal of and interest on such bonds as they severally mature.

Source: Laws 1965, c. 392, § 2, p. 1254; Laws 1967, c. 401, § 2, p. 1259; Laws 1969, c. 530, § 2, p. 2170; Laws 1972, LB 866, § 4; R.S.1943, (1990), § 66-423.01; Laws 1992, LB 719A, § 157.

66-4,102 Highway Allocation Fund; street intersection, defined.

As used in sections 66-4,101 and 66-4,102, street intersection shall include geometric design elements extending beyond the intersection of two streets to include construction involving curvature for turning movements, turning roadways, deceleration and acceleration lanes, median lanes, median openings, design and construction for U-turns, sight distances, and channelization, together with necessary traffic controls, including such construction as is necessary for traffic both entering and leaving the actual street intersection.

Source: Laws 1965, c. 392, § 3, p. 1254; Laws 1972, LB 1065, § 2; R.S.1943, (1990), § 66-423.02.

66-4,103 Interstate commerce exemption.

The provisions of sections 66-482 to 66-4,103 shall not apply or be construed to apply to foreign or interstate commerce, except insofar as the same may be permitted under the provisions of the Constitution and laws of the United States.

Source: Laws 1925, c. 172, § 10, p. 452; C.S.1929, § 66-409; R.S.1943, § 66-420; Laws 1987, LB 523, § 8; R.S.1943, (1990), § 66-420; Laws 2008, LB846, § 9.

Since tax imposed is upon use and distribution of gasoline, it is not a tax on interstate commerce. State v. Smith, 135 Neb. 423, 281 N.W. 851 (1938); Burke v. Bass, 123 Neb. 297, 242 N.W. 606 (1932).

66-4,104 Transferred to section 66-525.

66-4,105 Motor fuels; use; excise tax; amount; use, defined.

There is hereby levied and imposed an excise tax of seven and one-half cents per gallon, increased by the amounts imposed or determined under sections 66-489.02, 66-4,140, 66-4,145, and 66-4,146, upon the use of all motor fuels used in this state and due the State of Nebraska under section 66-489. Users of motor fuels subject to taxation under this section shall be allowed the same exemptions, deductions, and rights of reimbursement as are authorized and permitted by Chapter 66, article 4, other than any commissions provided under such article. For purposes of this section and section 66-4,106, use shall mean the purchase or consumption of motor fuels in this state. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1931, c. 130, § 1, p. 363; Laws 1935, c. 155, § 2, p. 573; Laws 1935, Spec. Sess., c. 16, § 2, p. 129; Laws 1937, c. 148, § 2, p. 567; Laws 1939, c. 84, § 3, p. 363; Laws 1941, c. 133, § 3, p. 526; C.S.Supp.,1941, § 66-416; Laws 1943, c. 138, § 3, p. 476; R.S.1943, § 66-428; Laws 1953, c. 225, § 3, p. 794; Laws 1955, c. 247, § 3, p. 781; Laws 1957, c. 282, § 3, p. 1029; Laws 1963, c. 379, § 1, p. 1218; Laws 1965, c. 391, § 3, p. 1251; Laws 1969, c. 529, § 2, p. 2168; Laws 1971, LB 776, § 3; Laws 1972, LB 1208, § 3; Laws 1973, LB 397, § 4; Laws 1977, LB 139, § 3; Laws 1977, LB 52, § 3; Laws 1979, LB 571, § 4; Laws 1980, LB 722, § 8; Laws 1981, LB 104, § 2; Laws 1981, LB 360, § 7; Laws 1984, LB 767, § 14; Laws 1985, LB 346, § 3; Laws 1988, LB 1039, § 5; Laws 1990, LB 1124, § 3; R.S.1943, (1990), § 66-428; Laws 1991, LB 627, § 27; Laws 1994, LB 1160, § 68; Laws 2004, LB 983, § 19; Laws 2008, LB846, § 10.

The provisions of Laws 1979, LB 571, creating a one-cent gasoline tax for the development of alcohol plants and facilities, is severable and may stand alone even though the rest of LB 571 was held to be void. State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979).

Question of proper method of allocation and distribution of gas tax raised. State ex rel. Heintze v. County of Adams, 162 Neb. 127, 75 N.W.2d 539 (1956).

An excise tax on gasoline does not violate the commerce clause or the due process and equal protection clauses of the federal Constitution. State v. Smith, 135 Neb. 423, 281 N.W. 851 (1938).

Supreme Court refused to entertain suit under declaratory judgments act to declare act unconstitutional and tax paid thereunder a trust fund. Arlington Oil Co. v. Hall, 130 Neb. 674, 266 N.W. 583 (1936).

This section, prior to its amendment in 1937, was declared unconstitutional as a violation of section 1, Article II, and section 1, Article III, Constitution of Nebraska. Smithberger v. Banning, 130 Neb. 354, 265 N.W. 10 (1936); Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935).

The tax imposed by this section attaches to the use of the fuel. Standard Oil Co. v. Kurtz, 330 F.2d 178 (8th Cir. 1964).

66-4,106 Excise tax; payment; report; duty to collect.

Every person using motor fuels subject to taxation on the use thereof under sections 66-4,105 and 66-4,114 shall pay the excise taxes and make a report concerning the same to the department in like manner, form, and time as is required by sections 66-488 and 66-489 for producers, suppliers, distributors, wholesalers, or importers of motor fuels. No such payment of tax or report shall be required if such tax has been paid and the report has been made for such user by any producer, supplier, distributor, wholesaler, or importer licensed under section 66-484. Producers, suppliers, distributors, wholesalers, or importers or other persons having paid such tax or liable for its payment shall collect the amount thereof from any person to whom such motor fuels are sold in this state along with the selling price thereof.

Source: Laws 1931, c. 130, § 2, p. 364; C.S.Supp.,1941, § 66-417; Laws 1943, c. 141, § 2, p. 485; R.S.1943, § 66-429; Laws 1963, c. 373,

§ 9, p. 1199; Laws 1988, LB 1039, § 6; R.S.1943, (1990), § 66-429; Laws 1991, LB 627, § 28; Laws 1994, LB 1160, § 69; Laws 2004, LB 983, § 20.

66-4,107 Transferred to section 66-526.

66-4,108 Transferred to section 66-527.

66-4,109 Transferred to section 66-528.

66-4,110 Transferred to section 66-529.

66-4,111 Transferred to section 66-530.

66-4,112 Transferred to section 66-531.

66-4,113 Transferred to section 66-719.01.

66-4,114 Motor fuels; importation; liable for tax; exception.

Motor fuels in the supply tank of any qualified motor vehicle as defined in section 66-1416 which is regularly connected with the carburetor of the engine of any such vehicle and which is brought into this state shall be liable for the payment of the tax imposed by this state upon motor fuels under sections 66-489, 66-489.02, and 66-4,105 except when a trip permit is used as provided in the International Fuel Tax Agreement Act.

Source: Laws 1935, c. 160, § 2, p. 584; C.S.Supp.,1941, § 66-426; R.S. 1943, § 66-441; Laws 1967, c. 403, § 1, p. 1262; Laws 1981, LB 360, § 8; R.S.1943, (1990), § 66-441; Laws 1991, LB 627, § 37; Laws 1992, LB 1013, § 5; Laws 1996, LB 1218, § 18; Laws 2000, LB 1067, § 7; Laws 2004, LB 983, § 21; Laws 2008, LB846, § 12.

Cross References

International Fuel Tax Agreement Act, see section 66-1401.

66-4,115 Repealed. Laws 2000, LB 1067, § 37.

66-4,116 Motor fuels; transportation; interstate commerce exempt.

The Legislature declares that it does not intend to place any burden upon the transportation of motor fuels in interstate commerce under such circumstances as the Constitution and statutes of the United States of America preclude, but deems the tax provided for in section 66-4,114 and the regulations as provided herein to be necessary to the effective collection of a tax on motor fuels used in motor vehicles upon the highways of this state.

Source: Laws 1935, c. 160, § 5, p. 585; C.S.Supp.,1941, § 66-429; R.S. 1943, § 66-444; R.S.1943, (1990), § 66-444; Laws 2004, LB 983, § 22.

66-4,117 Motor vehicle fuel tax law; enforcement; rules and regulations.

The department or any peace officer of this state shall enforce sections 66-4,114 to 66-4,117. The department shall adopt and promulgate reasonable

rules and regulations intended to collect revenue arising under such sections and for the payment thereof.

Source: Laws 1935, c. 160, § 1, p. 583; C.S.Supp.,1941, § 66-425; R.S. 1943, § 66-440; R.S.1943, (1990), § 66-440; Laws 1991, LB 627, § 36.

66-4,118 Repealed. Laws 2004, LB 983, § 71.

66-4,119 Repealed. Laws 2004, LB 983, § 71.

66-4,120 Repealed. Laws 2004, LB 983, § 71.

66-4,121 Repealed. Laws 2004, LB 983, § 71.

66-4,122 Repealed. Laws 2001, LB 168, § 15.

66-4,123 Repealed. Laws 2001, LB 168, § 15.

66-4,124 Repealed. Laws 2004, LB 983, § 71.

66-4,124.01 Tax credit gasoline; certain purchases; repeal of section, effect.

The repeal of section 66-4,124 by Laws 2004, LB 983, applies to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 2004, LB 983, § 24.

66-4,125 Repealed. Laws 2004, LB 983, § 71.

66-4,126 Repealed. Laws 2004, LB 983, § 71.

66-4,127 Repealed. Laws 2004, LB 983, § 71.

66-4,128 Repealed. Laws 2004, LB 983, § 71.

66-4,129 Repealed. Laws 2004, LB 983, § 71.

66-4,130 Repealed. Laws 2004, LB 983, § 71.

66-4,131 Repealed. Laws 2004, LB 983, § 71.

66-4,132 Repealed. Laws 2004, LB 983, § 71.

66-4,133 Repealed. Laws 1993, LB 364, § 26.

66-4,134 Repealed. Laws 2004, LB 983, § 71.

66-4,135 Repealed. Laws 1993, LB 364, § 26.

66-4,136 Repealed. Laws 1993, LB 364, § 26.

66-4,137 Repealed. Laws 1993, LB 364, § 26.

66-4,138

Note: This section was transferred in 1991 from section 66-471. Laws 1985, LB 346, section 9 provided for a repeal of section 66-471 with an operative date of January 1, 1993.

66-4,139

Note: This section was transferred in 1991 from section 66-472. Laws 1985, LB 346, section 9 provided for a repeal of section 66-472 with an operative date of January 1, 1993.

66-4,140 Motor fuels; excise tax; disposition; payment.

(1) Each producer, supplier, distributor, wholesaler, or importer required by section 66-489 to pay motor fuels taxes shall, in addition to all other taxes provided by law, pay an excise tax at a rate set pursuant to section 66-4,144 for motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska as motor fuels suitable for retail sale. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund if bonds are issued pursuant to subsection (2) of section 39-2223 and to the Highway Cash Fund if no bonds are issued pursuant to such subsection.

(2) Producers, suppliers, distributors, wholesalers, and importers of motor fuels subject to taxation under subsection (1) of this section shall pay such excise tax and shall make a report concerning the tax in like manner, form, and time and be allowed the same exemptions, deductions, and rights of reimbursement as are authorized producers, suppliers, distributors, wholesalers, or importers for taxes paid pursuant to Chapter 66, article 4.

Source: Laws 1980, LB 722, § 1; Laws 1986, LB 599, § 18; Laws 1988, LB 632, § 20; Laws 1988, LB 1039, § 7; Laws 1989, LB 258, § 6; Laws 1990, LB 602, § 4; R.S.1943, (1990), § 66-473; Laws 1991, LB 627, § 54; Laws 1994, LB 1160, § 73; Laws 2004, LB 983, § 23.

66-4,141 Excise tax; tax rate per gallon; computations.

(1) Upon receipt of the cost figures required by section 66-4,143, the department shall determine the statewide average cost by dividing the total amount paid for motor fuels by the State of Nebraska, excluding any state and federal taxes, by the total number of gallons of motor fuels purchased during the reporting period.

(2) After computing the statewide average cost as required in subsection (1) of this section, the department shall multiply such statewide average cost by the tax rate established pursuant to section 66-4,144.

(3) In making the computations required by subsections (1) and (2) of this section, gallonage reported shall be rounded to the nearest gallon and total costs shall be rounded to the nearest dollar. All other computations shall be made with three decimal places, except that after all computations have been made the tax per gallon shall be rounded to the nearest one-tenth of one cent.

(4) The tax rate per gallon computed pursuant to this section shall be distributed to all licensed motor fuels producers, suppliers, distributors, wholesalers, importers, and compressed fuel retailers at least five days prior to the first day of any semiannual period during which the tax is to be adjusted. Such

tax rate shall be utilized in computing the taxes due for the period specified by the department.

Source: Laws 1980, LB 722, § 3; Laws 1981, LB 172, § 3; Laws 1985, LB 112, § 1; Laws 1990, LB 1124, § 6; R.S.1943, (1990), § 66-474; Laws 1991, LB 627, § 55; Laws 1994, LB 1160, § 74; Laws 1995, LB 182, § 33; Laws 1998, LB 1161, § 16; Laws 2000, LB 1067, § 8; Laws 2004, LB 983, § 25.

66-4,142 Repealed. Laws 2004, LB 983, § 71.

66-4,143 Materiel administrator; submit report; contents.

(1) The materiel administrator of the Department of Administrative Services shall on or before the tenth day of the fifth calendar month following the end of a semiannual period submit to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue a report providing the total cost and number of gallons of motor fuels purchased by the State of Nebraska during the preceding month. In providing such information, the materiel administrator shall total only those purchases which were fifty or more gallons and shall separately identify the amount of any state or federal tax which was included in the price paid.

(2) The department shall provide any assistance the materiel administrator may need in performing his or her duties under this section.

Source: Laws 1980, LB 722, § 10; Laws 1981, LB 172, § 4; R.S.1943, (1990), § 66-475; Laws 1991, LB 627, § 57; Laws 1994, LB 1160, § 76; Laws 1995, LB 182, § 35; Laws 1998, LB 1161, § 17; Laws 2004, LB 983, § 26.

66-4,144 Highway Restoration and Improvement Bond Fund; Highway Cash Fund; maintain adequate balance; setting of excise tax rates; procedure; Department of Roads; provide information.

(1) In order to insure that an adequate balance in the Highway Restoration and Improvement Bond Fund is maintained to meet the debt service requirements of bonds to be issued by the commission under subsection (2) of section 39-2223, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108 for each year during which such bonds are outstanding necessary to provide in each such year money equal in amount to not less than one hundred twenty-five percent of such year's bond principal and interest payment requirements. The department shall adjust the rate as certified by the Director-State Engineer. Such rate shall be in addition to the rate of excise tax set pursuant to subsection (2) of this section. Each such rate shall be effective from July 1 of a stated year through June 30 of the succeeding year or during such other period not longer than one year as the Director-State Engineer certifies to be consistent with the principal and interest requirements of such bonds. Such excise tax rates set pursuant to this subsection may be increased, but such excise tax rates shall not be subject to reduction or elimination unless the Director-State Engineer has received from the State Highway Commission notice of reduced principal and interest requirements for such bonds, in which event the Director-State Engineer shall certify the new rate or rates to the department. The new rate or rates, if any, shall become effective on the first day of the following semiannual period.

(2) In order to insure that there is maintained an adequate Highway Cash Fund balance to meet expenditures from such fund as appropriated by the Legislature, by June 15 or five days after the adjournment of the regular legislative session each year, whichever is later, the Director-State Engineer shall certify to the department the excise tax rate to be imposed by sections 66-4,140 and 66-6,108. The department shall adjust the rate as certified by the Director-State Engineer to be effective from July 1 through June 30 of the succeeding year. The rate of excise tax for a given July 1 through June 30 period set pursuant to this subsection shall be in addition to and independent of the rate or rates of excise tax set pursuant to subsection (1) of this section for such period. The Director-State Engineer shall determine the cash and investment balances of the Highway Cash Fund at the beginning of each fiscal year under consideration and the estimated receipts to the Highway Cash Fund from each source which provides at least one million dollars annually to such fund. The rate of excise tax shall be an amount sufficient to meet the appropriations made from the Highway Cash Fund by the Legislature. Such rate shall be set in increments of one-tenth of one percent.

(3) The Department of Roads shall provide to the Legislative Fiscal Analyst a copy of the information that is submitted to the Department of Revenue and used to set or adjust the excise tax rate.

(4) If the actual receipts received to date added to any projections or modified projections of deposits to the Highway Cash Fund for the current fiscal year are less than ninety-nine percent or greater than one hundred two percent of the appropriation for the current fiscal year, the Director-State Engineer shall certify to the department the adjustment in rate necessary to meet the appropriations made from the Highway Cash Fund by the Legislature. The department shall adjust the rate as certified by the Director-State Engineer to be effective on the first day of the following semiannual period.

(5) Nothing in this section shall be construed to abrogate the duties of the Department of Roads or attempt to change any highway improvement program schedule.

Source: Laws 1980, LB 722, § 5; Laws 1981, LB 172, § 5; Laws 1988, LB 632, § 21; R.S.1943, (1990), § 66-476; Laws 1991, LB 255, § 1; Laws 1994, LB 1160, § 77; Laws 1995, LB 182, § 36; Laws 1997, LB 397, § 5; Laws 1998, LB 1161, § 18; Laws 2000, LB 1067, § 10; Laws 2000, LB 1135, § 11; Laws 2004, LB 983, § 27.

66-4,145 Additional excise tax.

In addition to the tax imposed by sections 66-489, 66-489.02, and 66-4,140, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels received, imported, produced, refined, manufactured, blended, or compounded by such producer, supplier, distributor, wholesaler, or importer within the State of Nebraska. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1980, LB 722, § 14; Laws 1985, LB 112, § 2; Laws 1988, LB 1039, § 8; R.S.1943, (1990), § 66-477; Laws 1991, LB 627, § 58; Laws 1994, LB 1160, § 78; Laws 2004, LB 983, § 28; Laws 2008, LB846, § 13.

66-4,146 Fuels; use; additional excise tax.

In addition to the tax imposed by sections 66-489, 66-489.02, 66-4,140, and 66-4,145, each producer, supplier, distributor, wholesaler, and importer required by section 66-489 to pay motor fuels taxes shall pay an excise tax of two and eight-tenths cents per gallon on all motor fuels used in the State of Nebraska. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1980, LB 722, § 15; Laws 1985, LB 112, § 3; Laws 1988, LB 1039, § 9; R.S.1943, (1990), § 66-478; Laws 1991, LB 627, § 59; Laws 1994, LB 1160, § 79; Laws 2004, LB 983, § 29; Laws 2008, LB846, § 14.

66-4,146.01 Floor-stocks tax on agricultural ethyl alcohol; rate; payment.

(1) There is hereby imposed a floor-stocks tax on agricultural ethyl alcohol owned by any person on January 1, 2005, if:

(a) No tax was imposed on such fuel under section 66-489 as the section existed on December 31, 2004; and

(b) Tax would have been imposed on such fuel by section 66-489 as the section existed for periods prior to January 1, 2005.

(2) The rate of the tax imposed by this section shall be the amount of tax imposed under section 66-489 on December 31, 2004.

(3) Any person owning agricultural ethyl alcohol on January 1, 2005, to which the tax imposed by this section applies shall be liable for such tax. The tax imposed by this section shall be paid before July 1, 2005, and shall be paid in such manner as the department prescribes.

Source: Laws 2004, LB 983, § 30.

66-4,147 Receipts from excise tax; disposition.

The receipts from the tax established under sections 66-4,145, 66-4,146, and 66-6,109 shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, exporters, importers, or retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Allocation Fund.

Source: Laws 1980, LB 722, § 17; Laws 1986, LB 599, § 19; Laws 1989, LB 258, § 7; R.S.1943, (1990), § 66-479; Laws 1991, LB 627, § 60; Laws 1994, LB 1160, § 80; Laws 1995, LB 182, § 37; Laws 2000, LB 1067, § 11; Laws 2004, LB 983, § 31.

66-4,147.01 Taxes, interest, and penalties; disposition.

All taxes, interest, and penalties collected under Chapter 66, article 4, shall be remitted to the State Treasurer for credit to the Highway Trust Fund or Highway Cash Fund as appropriate.

Source: Laws 2000, LB 1067, § 6.

66-4,148 Highway Allocation Fund; distribution of funds.

(1) The State Treasurer shall monthly distribute the receipts accruing to the Highway Allocation Fund pursuant to section 66-4,147. One-half of such

receipts shall be distributed to the various counties and municipal counties for road purposes and one-half of such receipts shall be distributed to the various municipalities and municipal counties for street purposes.

(2) The distribution of funds to the respective cities, counties, and municipal counties under subsection (1) of this section shall be based on the provisions of Chapter 39, article 25.

Source: Laws 1980, LB 722, § 18; Laws 1986, LB 599, § 20; R.S.1943, (1990), § 66-480; Laws 2001, LB 142, § 53.

66-4,149 Rules and regulations.

The department shall adopt and promulgate rules and regulations, prescribe forms, and perform all duties necessary to carry out its duties relating to the motor fuels tax.

Source: Laws 1980, LB 722, § 13; R.S.1943, (1990), § 66-481; Laws 1991, LB 627, § 61; Laws 2004, LB 983, § 32.

ARTICLE 5

TRANSPORTATION OF FUELS

Cross References

Motor carriers, regulations, see section 75-301 et seq.

Section

66-501 Sections, purpose; how construed.

Sections 66-501 to 66-512 and 66-525 to 66-531 are for the purpose of aiding in the administration and enforcement of the motor fuel laws of this state. Such sections shall not be construed to apply to any person transporting motor vehicle fuel or diesel fuel within the State of Nebraska if such fuel is for such person's own agricultural, quarrying, industrial, or other nonhighway use.

Source: Laws 1935, c. 130, § 1, p. 462; Laws 1937, c. 146, § 1, p. 558; C.S.Supp.,1941, § 66-801; R.S.1943, § 66-501; Laws 1991, LB 627, § 62; Laws 1993, LB 440, § 4; Laws 1994, LB 1160, § 81.

66-502 Liquid fuel carriers license; issuance.

The Department of Revenue shall issue a liquid fuel carriers license to the owner and lessee of every car, automobile, truck, trailer, vehicle, or other means of transportation using the highways for the transportation of motor vehicle fuel or diesel fuel into, within, or out of the State of Nebraska. Such licenses shall be issued by the department on receipt of applications from owners and lessees of such vehicles on forms provided by the department. If the applicant is an individual, the application shall include the applicant's social security number. Such licenses may be denied according to the provisions of section 66-729. The liquid fuel carriers license shall be valid until suspended, revoked for cause, or otherwise canceled and shall not be transferable.

Source: Laws 1935, c. 130, § 2, p. 462; C.S.Supp.,1941, § 66-802; R.S. 1943, § 66-502; Laws 1967, c. 397, § 14, p. 1253; Laws 1969, c. 526, § 1, p. 2147; Laws 1991, LB 627, § 63; Laws 1993, LB 440, § 5; Laws 1994, LB 1160, § 82; Laws 1997, LB 752, § 150; Laws 2004, LB 983, § 33.

66-502.01 Motor vehicle equipped with cargo tank; restrictions.

Any motor vehicle that is equipped with a cargo tank for the purpose of transporting motor vehicle fuel or diesel fuel shall be equipped with a suitable fuel supply tank and shall not have a fuel connection of any nature running from the cargo tank to the fuel supply tank or to the carburetor of such motor vehicle with which to draw fuel from the cargo tank.

Source: Laws 1994, LB 1160, § 83.

66-503 License; other documents; possession required; motor fuel delivery permit number required; when; inspections; enforcement.

(1) Every person in charge of any vehicle in which motor vehicle fuel or diesel fuel is carried into, within, or out of the State of Nebraska shall have and keep a copy of the liquid fuel carriers license with him or her during the entire transportation and also a copy of the bill of sale, bill of lading, manifest, purchase order, sales invoice or delivery ticket, or similar documentation covering all such motor vehicle fuel or diesel fuel which is individually

numbered and dated and shows the kind and amount of the motor vehicle fuel or diesel fuel, where obtained and of whom, the destination state or delivery location, and the name and address of the owner and of the consignee or purchaser, if applicable. Such person shall exhibit every such paper or document, immediately upon demand, to the department, any employee thereof, or any peace officer of this state.

(2)(a) Any person importing motor vehicle fuel or diesel fuel into the State of Nebraska for the purpose of delivery in this state who does not have in his or her possession an original unaltered bill of sale, bill of lading, or manifest identifying Nebraska as the destination state shall obtain a motor fuel delivery permit number prior to delivering such fuel. A separate motor fuel delivery permit number shall be required each time such person enters Nebraska for the purpose of delivering motor vehicle fuel or diesel fuel in Nebraska. Prior to issuance of a motor fuel delivery permit number, the person shall provide his or her Nebraska liquid fuel carriers license number, the type and amount of fuel being imported, where obtained, the destination, the original bill of sale, bill of lading, or manifest number, if applicable, and such other information as the Department of Revenue deems necessary.

(b) Any person obtaining motor vehicle fuel or diesel fuel from a bulk fuel storage facility located in this state, other than a pipeline terminal, barge line terminal, or refinery, who exits this state and returns with all or any portion of such fuel remaining shall not be deemed to be importing such remaining fuel and shall not be required to obtain a motor fuel delivery permit number if such person maintains the documents and papers required by subsection (1) of this section establishing that such remaining fuel was obtained from a bulk fuel storage facility located in this state.

(3) Any person transporting motor vehicle fuel or diesel fuel shall be deemed to have given his or her consent to submit to an inspection of licenses and permits required for the transportation of fuel and the documents and papers required by this section for the purpose of determining compliance with the motor fuel laws. The issuance of a motor fuel delivery permit number under this section shall be deemed to be the issuance of a permit for purposes of enforcing the motor fuel laws.

(4) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or ordinances of any city or village or any carrier enforcement officer who has reasonable grounds to believe that a vehicle is transporting motor vehicle fuel or diesel fuel may require the operator of such vehicle to display any or all licenses and permits required for the transportation of fuel and the documents and papers required by this section. Such law enforcement officer or carrier enforcement officer may make a record of any of the information contained on the licenses or permits or any of the information from the bill of sale, bill of lading, manifest, or other documents and papers required by sections 66-501 to 66-512 and 66-525 to 66-531.

(5) The Legislature declares that it does not intend to place any burden upon the transportation of motor vehicle fuel or diesel fuel in interstate commerce under such circumstances as federal law and the Constitution of the United States preclude.

Source: Laws 1935, c. 130, § 3, p. 463; C.S.Supp.,1941, § 66-803; R.S. 1943, § 66-503; Laws 1955, c. 255, § 1, p. 797; Laws 1969, c.

526, § 2, p. 2148; Laws 1991, LB 11, § 1; Laws 1991, LB 627, § 64; Laws 1993, LB 440, § 6; Laws 1994, LB 1160, § 84; Laws 1999, LB 143, § 1.

66-504 Repealed. Laws 1981, LB 360, § 13.

66-505 Motor fuel transportation; vehicles; display required; rules and regulations.

Every vehicle used in transporting motor vehicle fuel or diesel fuel subject to sections 66-501 to 66-512 and 66-525 to 66-531 shall have the name and address of the owner of the vehicle displayed in the form and manner required by 49 C.F.R. 390.21. The Department of Revenue shall adopt, promulgate, and enforce such rules and regulations as it deems proper and necessary for the proper administration and enforcement of such sections.

Source: Laws 1935, c. 130, § 4, p. 464; C.S.Supp.,1941, § 66-804; R.S. 1943, § 66-505; Laws 1991, LB 627, § 65; Laws 1993, LB 440, § 7; Laws 1994, LB 1160, § 85.

66-506 Repealed. Laws 1963, c. 373, § 21.

66-507 Repealed. Laws 1963, c. 373, § 21.

66-508 Repealed. Laws 1951, c. 209, § 1.

66-509 Repealed. Laws 1963, c. 373, § 21.

66-510 Repealed. Laws 1963, c. 373, § 21.

66-511 Repealed. Laws 1980, LB 834, § 66.

66-512 Unlawful acts; prohibited.

It shall be unlawful for any person (1) to transport any motor vehicle fuel or diesel fuel within, into, or across this state in violation of any of the provisions of sections 66-501 to 66-512 and 66-525 to 66-531, (2) to fail to comply with any of the provisions of such sections or of the rules, regulations, or requirements of the Department of Revenue to which he or she is subject, (3) to falsify any bill of sale, bill of lading, manifest, invoice, purchase order, or report, (4) to make, exhibit, or deliver to the department any false bill of sale, bill of lading, manifest, invoice, purchase order, or report, (5) to make, carry, or display any false document or paper referred to in this section, (6) to unlawfully evade, assist, or abet any other person in unlawfully evading any motor vehicle fuel or diesel fuel taxes imposed by the state, or (7) to deliver motor vehicle fuel or diesel fuel to a destination state not on an original unaltered bill of sale, bill of lading, or manifest carried by such person except when a motor fuel delivery permit number has been obtained or as otherwise provided in section 66-503.

Source: Laws 1935, c. 130, § 8, p. 466; Laws 1937, c. 146, § 14, p. 563; C.S.Supp.,1941, § 66-808; R.S.1943, § 66-512; Laws 1955, c. 256, § 1, p. 799; Laws 1963, c. 373, § 12, p. 1200; Laws 1991, LB 627, § 66; Laws 1993, LB 440, § 8; Laws 1994, LB 1160, § 86.

66-513 Repealed. Laws 1963, c. 373, § 21.

66-514 Repealed. Laws 1993, LB 440, § 19.

66-515 Repealed. Laws 1993, LB 440, § 19.

66-516 Repealed. Laws 1993, LB 440, § 19.

66-517 Repealed. Laws 1993, LB 440, § 19.

66-518 Repealed. Laws 1993, LB 440, § 19.

66-519 Repealed. Laws 1993, LB 440, § 19.

66-520 Repealed. Laws 1993, LB 440, § 19.

66-520.01 Repealed. Laws 1991, LB 627, § 148.

66-521 Repealed. Laws 1947, c. 215, § 1.

66-522 Repealed. Laws 1991, LB 627, § 148.

66-523 Repealed. Laws 1947, c. 215, § 1.

66-524 Repealed. Laws 1991, LB 627, § 148.

66-525 Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

The department may require every railroad or railroad company, motor truck or motor truck transportation company, water transportation company, pipeline company, and other person transporting or bringing into the State of Nebraska or transporting from a refinery, ethanol or biodiesel facility, pipeline, pipeline terminal, or barge terminal within the State of Nebraska for the purpose of delivery within or export from this state any motor vehicle fuel or diesel fuel which is or may be produced and compounded for the purpose of operating or propelling any motor vehicle, to furnish a return on forms prescribed by the department to be delivered and on file in the office of the department by the twenty-fifth day of each calendar month, showing all quantities of such motor vehicle fuel or diesel fuel transported during the preceding calendar month for which the report is made, giving the name of the consignee, the point at which delivery was made, the date of delivery, the method of delivery, the quantity of each such shipment, and such other information as the department requires.

Source: Laws 1957, c. 284, § 1, p. 1032; Laws 1963, c. 376, § 5, p. 1211; Laws 1967, c. 397, § 9, p. 1251; R.S.1943, (1990), § 66-426.01; Laws 1991, LB 627, § 26; R.S.Supp.,1992, § 66-4,104; Laws 1994, LB 1160, § 87; Laws 2000, LB 1067, § 12; Laws 2004, LB 983, § 34.

66-526 Motor vehicle fuel or diesel fuel; unlawful transportation; vehicle declared nuisance.

Any car, automobile, truck, pipeline, airplane, vehicle, or means of transportation which is engaged in or used for the unlawful transportation of motor vehicle fuel or diesel fuel is declared a common nuisance, and there shall be no property rights of any kind whatsoever in any car, automobile, truck, pipeline, airplane, vehicle, or other means of transportation which is engaged in or used

for the unlawful transportation of motor vehicle fuel or diesel fuel except as provided in sections 66-527 to 66-531.

Source: Laws 1933, c. 47, § 2, p. 258; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-433; R.S.1943, (1990), § 66-433; Laws 1991, LB 627, § 29; R.S.Supp.,1992, § 66-4,107; Laws 1994, LB 1160, § 88.

66-527 Unlawful transportation; search and seizure; arrest; administrative penalty; terms, defined.

(1) Any peace officer or agent of the department, having probable cause to believe that a vehicle is being used for the unlawful transportation of motor vehicle fuel or diesel fuel, shall make a search thereof with or without a warrant, and in every case when a search is made with or without a warrant and it appears that any provision of sections 66-501 to 66-512 and 66-526 to 66-531 has been violated, the peace officer or agent shall take such fuel being unlawfully transported, the vehicle, and the person in charge thereof into custody, a complaint shall be filed within thirty days of the seizure against such party, fuel, and vehicle, a warrant shall issue, and such party, fuel, and vehicle shall be held for trial as in a criminal action. The vehicle and the fuel so seized shall not be taken from the possession of any officer or agent seizing and holding them by writ of replevin or other proceedings.

(2) In addition, any person who violates any provision of sections 66-501 to 66-512 and 66-526 to 66-531 is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties under this subsection shall be assessed against the owner of the vehicle as of the date of the violation. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 1933, c. 47, § 2, p. 258; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-434; Laws 1983, LB 302, § 4; R.S.1943, (1990), § 66-434; Laws 1991, LB 627, § 30; R.S.Supp.,1992, § 66-4,108; Laws 1994, LB 1160, § 89; Laws 2000, LB 1067, § 13.

66-528 Unlawful transportation; conviction; effect.

Final judgment of conviction in a criminal action brought under section 66-527 shall be in all cases a bar to any suits for the recovery of the fuel transported thereby or other personal property actually and directly used in connection therewith, or the value of the same, or for damages alleged to arise by reason of the seizing of such vehicle and the fuel contained therein, and upon conviction judgment shall be entered directing that the fuel transported and other personal property actually and directly used in connection with such

violation may be put to official use by the confiscating agency for a period of not more than two years or shall be ordered sold by the court at public sale on ten days' notice, and the remaining proceeds, after the motor vehicle fuel or diesel fuel tax and cost of collection have been remitted to the appropriate fund or person, shall be remitted into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures. The purchaser of such fuel or property shall take title thereto free and clear of all rights, title, and interest of all persons claiming to be owners thereof or claiming to have liens thereon.

Source: Laws 1933, c. 47, § 2, p. 259; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-435; R.S.1943, (1990), § 66-435; Laws 1991, LB 627, § 31; R.S.Supp.,1992, § 66-4,109; Laws 1994, LB 1160, § 90; Laws 1997, LB 345, § 2.

66-529 Unlawful transportation; conviction; sale of vehicle.

The court, upon conviction of the person so arrested, unless good cause to the contrary is shown by the owner or lienor, shall order a sale by public auction of the vehicle seized or the vehicle may be put to official use by the confiscating agency for a period of not more than two years. The officer making the sale, after deducting the expenses of keeping the vehicle, the fee for the seizure, and the cost of sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at such hearing or in other proceedings brought for such purpose, as being bona fide and having been created without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of motor vehicle fuel or diesel fuel and shall pay the balance of the proceeds into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures. Notice of the hearing upon the proceedings for the forfeiture and confiscation of such vehicle shall be given all interested parties by publication in one issue of a legal newspaper published in the county or, if such newspaper is not published in the county, in a legal newspaper of general circulation in the county at least ten days prior to the date of hearing.

Source: Laws 1933, c. 47, § 2, p. 259; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-436; Laws 1986, LB 960, § 36; R.S.1943, (1990), § 66-436; Laws 1991, LB 627, § 32; R.S.Supp.,1992, § 66-4,110; Laws 1994, LB 1160, § 91; Laws 1997, LB 345, § 3.

66-530 Unlawful transportation; no arrest; sale of fuel and vehicle; procedure.

If the person operating the vehicle used for the unlawful transportation of motor vehicle fuel or diesel fuel is not apprehended or arrested, the officer or agent shall take the vehicle and fuel into custody, a complaint shall be filed charging that the vehicle was so unlawfully used, and the court shall fix a time for hearing upon the complaint. Notice of the hearing shall be given to all persons interested by publication at least ten days before the hearing in a legal newspaper published in such county or, if none is published in the county, in a legal newspaper of general circulation in the county. If the court finds at such hearing that such vehicle was used for the unlawful transportation of motor vehicle fuel or diesel fuel, judgment shall be entered directing that the fuel conveyed and any other personal property actually and directly used in connec-

tion with such violation shall be ordered sold by the court at a public sale on ten days' notice. The remaining proceeds, after the state motor vehicle fuel or diesel fuel tax and cost of collection have been remitted to the appropriate fund or person, shall be paid into the temporary school fund to be used for the support of the common schools as in the case of fines and forfeitures, and like proceedings shall be had against the vehicle as provided in section 66-529 where the person in charge is arrested and convicted.

Source: Laws 1933, c. 47, § 2, p. 260; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-437; Laws 1986, LB 960, § 37; R.S.1943, (1990), § 66-437; Laws 1991, LB 627, § 33; R.S.Supp.,1992, § 66-4,111; Laws 1994, LB 1160, § 92; Laws 1997, LB 345, § 4.

66-531 Unlawful transportation; delay in proceedings; intervention by lienor or owner of vehicle.

When it appears that any undue delay will result in the disposition of the criminal proceedings against the person or persons arrested, the owner or lienor of any vehicle seized as provided in sections 66-527 to 66-530 may be proceeded against in the manner prescribed in section 66-530. The court shall not allow the claim or lien of any person or persons who, prior to the time the vehicle was seized, knew, should have known, or had good cause to believe that the vehicle was being used or would be or was likely to be used for the unlawful transportation of motor vehicle fuel or diesel fuel. In all cases the burden of proof shall be on such claimants to show that they did not know, should not have known, and did not have good cause to believe that such vehicle was being used or would be or was likely to be used for the unlawful transportation of motor vehicle fuel or diesel fuel.

Source: Laws 1933, c. 47, § 2, p. 260; C.S.Supp.,1941, § 66-423; R.S. 1943, § 66-438; R.S.1943, (1990), § 66-438; Laws 1991, LB 627, § 34; R.S.Supp.,1992, § 66-4,112; Laws 1994, LB 1160, § 93.

ARTICLE 6

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

Cross References

Motor vehicle fuel tax, see section 66-482 et seq.

(a) SPECIAL FUEL TAX

Section
66-601. Repealed. Laws 1994, LB 1160, § 127.
66-601.01. Repealed. Laws 1994, LB 1160, § 127.
66-602. Repealed. Laws 1994, LB 1160, § 127.
66-603. Repealed. Laws 1991, LB 627, § 148.
66-604. Repealed. Laws 1969, c. 530, § 9.
66-605. Repealed. Laws 1994, LB 1160, § 127.
66-605.01. Repealed. Laws 1994, LB 1160, § 127.
66-605.02. Repealed. Laws 1994, LB 1160, § 127.
66-605.03. Repealed. Laws 1994, LB 1160, § 127.
66-605.04. Repealed. Laws 1994, LB 1160, § 127.
66-605.05. Repealed. Laws 1994, LB 1160, § 127.
66-605.06. Repealed. Laws 1994, LB 1160, § 127.
66-605.07. Repealed. Laws 1994, LB 1160, § 127.
66-606. Repealed. Laws 1991, LB 627, § 148.
66-606.01. Repealed. Laws 1994, LB 1160, § 127.
66-607. Repealed. Laws 1994, LB 1160, § 127.

Section
66-608. Repealed. Laws 1994, LB 1160, § 127.
66-609. Repealed. Laws 1994, LB 1160, § 127.
66-610. Repealed. Laws 1973, LB 528, § 20.
66-610.01. Transferred to section 66-733.
66-610.02. Transferred to section 66-734.
66-610.03. Transferred to section 66-735.
66-610.04. Transferred to section 66-736.
66-610.05. Repealed. Laws 1991, LB 627, § 148.
66-610.06. Transferred to section 66-737.
66-611. Repealed. Laws 1991, LB 627, § 148.
66-612. Repealed. Laws 1994, LB 1160, § 127.
66-613. Repealed. Laws 1994, LB 1160, § 127.
66-614. Repealed. Laws 1991, LB 627, § 148.
66-615. Repealed. Laws 1991, LB 627, § 148.
66-616. Repealed. Laws 1994, LB 1160, § 127.
66-617. Repealed. Laws 1994, LB 1160, § 127.
66-618. Repealed. Laws 1994, LB 1160, § 127.
66-619. Repealed. Laws 1994, LB 1160, § 127.
66-620. Repealed. Laws 1994, LB 1160, § 127.
66-621. Repealed. Laws 1991, LB 627, § 148.
66-622. Repealed. Laws 1967, c. 406, § 2.
66-623. Repealed. Laws 1991, LB 627, § 148.
66-624. Repealed. Laws 1991, LB 627, § 148.
66-625. Repealed. Laws 1991, LB 627, § 148.
66-626. Repealed. Laws 1991, LB 627, § 148.
66-627. Repealed. Laws 1991, LB 627, § 148.
66-628. Repealed. Laws 1986, LB 1027, § 226.
66-628.01. Repealed. Laws 1986, LB 1027, § 226.
66-629. Repealed. Laws 1994, LB 1160, § 127.
66-630. Repealed. Laws 1991, LB 627, § 148.
66-631. Repealed. Laws 1991, LB 627, § 148.
66-632. Repealed. Laws 1994, LB 1160, § 127.
66-633. Repealed. Laws 1994, LB 1160, § 127.
66-634. Repealed. Laws 1981, LB 360, § 13.
66-634.01. Repealed. Laws 1994, LB 1160, § 127.
66-635. Repealed. Laws 1994, LB 1160, § 127.
66-636. Repealed. Laws 1991, LB 627, § 148.
66-637. Repealed. Laws 1991, LB 627, § 148.
66-637.01. Repealed. Laws 1991, LB 627, § 148.
66-638. Repealed. Laws 1994, LB 1160, § 127.
66-639. Transferred to section 66-601.01.
66-640. Repealed. Laws 1967, c. 402, § 1.
66-641. Repealed. Laws 1994, LB 1160, § 127.
66-642. Repealed. Laws 1994, LB 1160, § 127.
66-643. Repealed. Laws 1994, LB 1160, § 127.
66-644. Repealed. Laws 1994, LB 1160, § 127.
66-645. Repealed. Laws 1994, LB 1160, § 127.
66-646. Repealed. Laws 1991, LB 627, § 148.
66-646.01. Repealed. Laws 1994, LB 1160, § 127.
66-646.02. Repealed. Laws 1992, LB 1013, § 21.
66-647. Repealed. Laws 1994, LB 1160, § 127.
66-648. Repealed. Laws 1994, LB 1160, § 127.
66-649. Repealed. Laws 1991, LB 627, § 148.

(b) DIESEL FUEL TAX

66-650. Repealed. Laws 2004, LB 983, § 71.
66-651. Repealed. Laws 2004, LB 983, § 71.
66-652. Repealed. Laws 2004, LB 983, § 71.
66-653. Repealed. Laws 2004, LB 983, § 71.
66-654. Repealed. Laws 2004, LB 983, § 71.
66-655. Repealed. Laws 2004, LB 983, § 71.

Section
66-6,109.02. Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
66-6,110. Retailer; return; filing requirements.
66-6,111. Tax computation.
66-6,112. Taxes, interest, and penalties; disposition.
66-6,113. Compressed fuel tax; collection; commission.
66-6,114. Retailer; records.
66-6,115. Prohibited acts; violation; penalty; transport and delivery vehicles.
66-6,116. Enforcement; rules and regulations.

(a) SPECIAL FUEL TAX

66-601 Repealed. Laws 1994, LB 1160, § 127.

66-601.01 Repealed. Laws 1994, LB 1160, § 127.

66-602 Repealed. Laws 1994, LB 1160, § 127.

66-603 Repealed. Laws 1991, LB 627, § 148.

66-604 Repealed. Laws 1969, c. 530, § 9.

66-605 Repealed. Laws 1994, LB 1160, § 127.

66-605.01 Repealed. Laws 1994, LB 1160, § 127.

66-605.02 Repealed. Laws 1994, LB 1160, § 127.

66-605.03 Repealed. Laws 1994, LB 1160, § 127.

66-605.04 Repealed. Laws 1994, LB 1160, § 127.

66-605.05 Repealed. Laws 1994, LB 1160, § 127.

66-605.06 Repealed. Laws 1994, LB 1160, § 127.

66-605.07 Repealed. Laws 1994, LB 1160, § 127.

66-606 Repealed. Laws 1991, LB 627, § 148.

66-606.01 Repealed. Laws 1994, LB 1160, § 127.

66-607 Repealed. Laws 1994, LB 1160, § 127.

66-608 Repealed. Laws 1994, LB 1160, § 127.

66-609 Repealed. Laws 1994, LB 1160, § 127.

66-610 Repealed. Laws 1973, LB 528, § 20.

66-610.01 Transferred to section 66-733.

66-610.02 Transferred to section 66-734.

66-610.03 Transferred to section 66-735.

66-610.04 Transferred to section 66-736.

66-610.05 Repealed. Laws 1991, LB 627, § 148.

66-610.06 Transferred to section 66-737.

66-611 Repealed. Laws 1991, LB 627, § 148.

66-612 Repealed. Laws 1994, LB 1160, § 127.

66-613 Repealed. Laws 1994, LB 1160, § 127.

66-614 Repealed. Laws 1991, LB 627, § 148.

66-615 Repealed. Laws 1991, LB 627, § 148.

66-616 Repealed. Laws 1994, LB 1160, § 127.

66-617 Repealed. Laws 1994, LB 1160, § 127.

66-618 Repealed. Laws 1994, LB 1160, § 127.

66-619 Repealed. Laws 1994, LB 1160, § 127.

66-620 Repealed. Laws 1994, LB 1160, § 127.

66-621 Repealed. Laws 1991, LB 627, § 148.

66-622 Repealed. Laws 1967, c. 406, § 2.

66-623 Repealed. Laws 1991, LB 627, § 148.

66-624 Repealed. Laws 1991, LB 627, § 148.

66-625 Repealed. Laws 1991, LB 627, § 148.

66-626 Repealed. Laws 1991, LB 627, § 148.

66-627 Repealed. Laws 1991, LB 627, § 148.

66-628 Repealed. Laws 1986, LB 1027, § 226.

66-628.01 Repealed. Laws 1986, LB 1027, § 226.

66-629 Repealed. Laws 1994, LB 1160, § 127.

66-630 Repealed. Laws 1991, LB 627, § 148.

66-631 Repealed. Laws 1991, LB 627, § 148.

66-632 Repealed. Laws 1994, LB 1160, § 127.

66-633 Repealed. Laws 1994, LB 1160, § 127.

66-634 Repealed. Laws 1981, LB 360, § 13.

66-634.01 Repealed. Laws 1994, LB 1160, § 127.

66-635 Repealed. Laws 1994, LB 1160, § 127.

66-636 Repealed. Laws 1991, LB 627, § 148.

66-637 Repealed. Laws 1991, LB 627, § 148.

66-637.01 Repealed. Laws 1991, LB 627, § 148.

66-638 Repealed. Laws 1994, LB 1160, § 127.

66-639 Transferred to section 66-601.01.

66-640 Repealed. Laws 1967, c. 402, § 1.

66-641 Repealed. Laws 1994, LB 1160, § 127.

66-642 Repealed. Laws 1994, LB 1160, § 127.

66-643 Repealed. Laws 1994, LB 1160, § 127.

66-644 Repealed. Laws 1994, LB 1160, § 127.

66-645 Repealed. Laws 1994, LB 1160, § 127.

66-646 Repealed. Laws 1991, LB 627, § 148.

66-646.01 Repealed. Laws 1994, LB 1160, § 127.

66-646.02 Repealed. Laws 1992, LB 1013, § 21.

66-647 Repealed. Laws 1994, LB 1160, § 127.

66-648 Repealed. Laws 1994, LB 1160, § 127.

66-649 Repealed. Laws 1991, LB 627, § 148.

(b) DIESEL FUEL TAX

66-650 Repealed. Laws 2004, LB 983, § 71.

66-651 Repealed. Laws 2004, LB 983, § 71.

66-652 Repealed. Laws 2004, LB 983, § 71.

66-653 Repealed. Laws 2004, LB 983, § 71.

66-654 Repealed. Laws 2004, LB 983, § 71.

66-655 Repealed. Laws 2004, LB 983, § 71.

66-656 Repealed. Laws 2004, LB 983, § 71.

66-657 Repealed. Laws 2004, LB 983, § 71.

66-658 Repealed. Laws 2004, LB 983, § 71.

66-659 Repealed. Laws 2004, LB 983, § 71.

66-660 Repealed. Laws 2004, LB 983, § 71.

66-661 Repealed. Laws 2004, LB 983, § 71.

66-662 Repealed. Laws 2004, LB 983, § 71.

66-663 Repealed. Laws 2004, LB 983, § 71.

66-664 Repealed. Laws 2004, LB 983, § 71.

66-665 Repealed. Laws 2004, LB 983, § 71.

66-666 Repealed. Laws 2004, LB 983, § 71.

66-667 Repealed. Laws 2004, LB 983, § 71.

66-668 Repealed. Laws 2004, LB 983, § 71.

66-669 Repealed. Laws 2004, LB 983, § 71.

66-670 Repealed. Laws 2004, LB 983, § 71.

66-671 Repealed. Laws 2004, LB 983, § 71.

66-672 Repealed. Laws 2004, LB 983, § 71.

66-673 Repealed. Laws 2004, LB 983, § 71.

66-674 Repealed. Laws 2004, LB 983, § 71.

66-675 Repealed. Laws 2004, LB 983, § 71.

66-676 Repealed. Laws 2004, LB 983, § 71.

66-677 Repealed. Laws 2004, LB 983, § 71.

66-678 Repealed. Laws 2004, LB 983, § 71.

66-679 Repealed. Laws 2004, LB 983, § 71.

66-680 Repealed. Laws 2004, LB 983, § 71.

66-681 Repealed. Laws 2004, LB 983, § 71.

66-682 Repealed. Laws 2004, LB 983, § 71.

66-683 Repealed. Laws 2004, LB 983, § 71.

(c) ALTERNATIVE FUEL TAX

66-684 Act, how cited.

Sections 66-684 to 66-695 shall be known as the Alternative Fuel Tax Act.

Source: Laws 1994, LB 1160, § 35; Laws 1995, LB 182, § 44; Laws 2000, LB 1067, § 21.

66-685 Purpose of act.

The purpose of the Alternative Fuel Tax Act is to supplement the provisions of the tax upon motor fuels by requiring any person who operates on the highways of this state a motor vehicle powered by alternative fuel to purchase an alternative fuel user permit to pay such person's estimated fuel use tax liability.

Source: Laws 1994, LB 1160, § 36; Laws 1995, LB 182, § 45; Laws 2004, LB 983, § 35.

66-686 Terms, defined.

For purposes of the Alternative Fuel Tax Act:

(1) Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws which is used to power a motor vehicle. Alternative fuel does not include motor vehicle fuel as defined in

section 66-482, diesel fuel as defined in section 66-482, or compressed fuel as defined in section 66-6,100;

(2) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue;

(3) Motor vehicle has the same definition as in section 60-339; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision.

Source: Laws 1994, LB 1160, § 37; Laws 1995, LB 182, § 46; Laws 2004, LB 983, § 36; Laws 2005, LB 274, § 268.

66-687 Permit required; when.

Every person registering a motor vehicle designed or modified to be propelled in whole by alternative fuel shall obtain from the department an annual alternative fuel user permit for each motor vehicle propelled by alternative fuel. A person shall obtain all required alternative fuel user permits within thirty days of becoming an alternative fuel user.

Source: Laws 1994, LB 1160, § 38; Laws 1995, LB 182, § 47; Laws 2004, LB 983, § 37.

66-688 Application; form; fee; distribution.

The department shall prescribe the form of the application which shall require the applicant to provide the following information: (1) The name and address of the owner or person registering the motor vehicle; (2) a description of the motor vehicle which shall include the mileage on the motor vehicle as of the date of application; and (3) such other information as may be necessary for the proper implementation of the Alternative Fuel Tax Act. The application shall be submitted to the department accompanied by a fee of seventy-five dollars per vehicle. All alternative fuel user permit fees collected by the department shall be deposited in the Highway Trust Fund.

Source: Laws 1994, LB 1160, § 39; Laws 1995, LB 182, § 48.

66-689 Repealed. Laws 1995, LB 182, § 72.

66-690 Repealed. Laws 1995, LB 182, § 72.

66-691 Permit; nontransferable; credit; procedure.

An alternative fuel user permit shall not be transferable either to a new vehicle or to a new owner. Upon the transfer of ownership of any motor vehicle having an alternative fuel user permit, the transferor shall be credited with the number of unexpired months remaining in the registration period, except that when such a vehicle is transferred within the same month in which acquired, no credit for such month shall be allowed. If a transferor acquires another motor vehicle for which an alternative fuel user permit is required at the time of transfer, the credit provided by this section shall be applied toward payment of the alternative fuel user permit fee then due. Otherwise, such transferor shall file a claim for a refund of the amount of the credit with the department. No

person shall be entitled to a refund if the amount of the credit is less than two dollars.

Source: Laws 1994, LB 1160, § 42; Laws 1995, LB 182, § 49.

66-691.01 Repealed. Laws 2000, LB 1067, § 37.

66-692 Repealed. Laws 1995, LB 182, § 72.

66-693 Repealed. Laws 1995, LB 182, § 72.

66-694 Prohibited acts; violation; penalty.

No alternative-fuel-powered motor vehicle registered or required to be registered in this state shall be operated on the highways of this state unless a valid alternative fuel user permit has been obtained from the department. Any motor vehicle operator who violates this section shall be subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 1994, LB 1160, § 45; Laws 1995, LB 182, § 50; Laws 2000, LB 1067, § 22.

66-695 Enforcement; rules and regulations.

The department shall enforce the Alternative Fuel Tax Act and rules and regulations adopted pursuant to the act. The department shall adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1994, LB 1160, § 46.

66-696 Repealed. Laws 2000, LB 1067, § 37.

(d) COMPRESSED FUEL TAX

66-697 Act, how cited.

Sections 66-697 to 66-6,116 shall be known and may be cited as the Compressed Fuel Tax Act.

Source: Laws 1995, LB 182, § 1; Laws 1996, LB 1121, § 4; Laws 2008, LB846, § 15.

66-698 Purpose of act.

The purpose of the Compressed Fuel Tax Act is to supplement the provisions of the tax upon motor fuels by imposing a tax upon all compressed fuel sold or distributed for use in motor vehicles registered or required to be registered for operation upon the highways of this state.

Source: Laws 1995, LB 182, § 2; Laws 2000, LB 1067, § 23; Laws 2004, LB 983, § 38.

66-699 Definitions, where found.

For purposes of the Compressed Fuel Tax Act, the definitions found in sections 66-6,100 to 66-6,105 shall be used.

Source: Laws 1995, LB 182, § 3.

66-6,100 Compressed fuel, defined.

Compressed fuel means compressed natural gas, liquefied petroleum gas, liquefied natural gas, butane, and any other type of compressed gas or compressed liquid suitable for fueling a motor vehicle. Compressed fuel does not include motor vehicle fuel as defined in section 66-482 or diesel fuel as defined in section 66-482.

Source: Laws 1995, LB 182, § 4; Laws 2004, LB 983, § 39.

66-6,101 Department, defined.

Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue.

Source: Laws 1995, LB 182, § 5.

66-6,102 Gallon equivalent, defined.

Gallon equivalent means the amount of any nonliquid compressed fuel that is deemed to be the equivalent of a gallon of gasoline according to the National Institute of Standards and Technology Handbook 130 entitled Method of Sale of Commodities Regulation, Paragraph 2.27.1.3.

Source: Laws 1995, LB 182, § 6.

66-6,103 Motor vehicle, defined.

Motor vehicle has the same definition as in section 60-339.

Source: Laws 1995, LB 182, § 7; Laws 2005, LB 274, § 269.

66-6,104 Person, defined.

Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine or imprisonment is prescribed or imposed in the Compressed Fuel Tax Act, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1995, LB 182, § 8.

66-6,105 Retailer, defined.

Retailer means any person engaged in the business of selling or otherwise providing compressed fuel to consumers of the fuel for use in motor vehicles. Retailer also includes any person, other than a consumer of compressed fuel, who has equipment capable of dispensing compressed fuel into a motor vehicle.

Source: Laws 1995, LB 182, § 9.

66-6,106 Retailer's license; application; issuance; security requirements.

(1) Before engaging in business as a retailer, a person shall obtain a license to transact such business in the State of Nebraska. An application for a retailer's license shall be made to the department on a form prepared and furnished by the department. The application shall contain such information as the department deems necessary. If the applicant is an individual, the application shall include the applicant's social security number.

(2) After reviewing an application received in proper form, the department may issue to the applicant a retailer's license. The department may refuse to issue such license to any person according to the provisions of section 66-729. Each retailer's license shall be valid until suspended or revoked for cause or otherwise canceled and shall not be transferable.

(3) The department, for the first year of a new license or whenever it deems it necessary to insure compliance with the Compressed Fuel Tax Act, may require any retailer subject to the act to place with the department such security as it determines. The amount and duration of the security shall be fixed by the department and shall be approximately two times the estimated average quarterly tax liability payable by such retailer pursuant to the act, unless such retailer is required to file monthly tax returns pursuant to section 66-6,110, in which case the amount of the security shall be approximately three times the estimated monthly tax liability payable by the retailer. The security shall consist of a surety bond executed by a surety company duly licensed and authorized to do business within this state in the amount specified by the department. The security shall run to the department and be conditioned upon the payment of all taxes, interest, penalties, and costs for which such retailer is liable, whether such liability was incurred prior to or after the security is filed.

Source: Laws 1995, LB 182, § 10; Laws 1997, LB 752, § 152; Laws 2004, LB 983, § 40.

66-6,107 Excise tax; amount.

In addition to the tax imposed pursuant to sections 66-6,108, 66-6,109, and 66-6,109.02, an excise tax of seven and one-half cents per gallon or gallon equivalent is levied and imposed on all compressed fuel sold for use in registered motor vehicles. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1995, LB 182, § 11; Laws 2004, LB 983, § 41; Laws 2008, LB846, § 16.

66-6,108 Excise tax; amount; credits and refunds; allocation.

Each retailer shall, in addition to all other taxes provided by law, pay an excise tax at the rate set pursuant to section 66-4,144 on all gallons or gallon equivalents of compressed fuel sold for use in registered motor vehicles. All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to retailers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated to the Highway Restoration and Improvement Bond Fund if bonds are issued pursuant to subsection (2) of section 39-2223 and to the Highway Cash Fund if no bonds are issued pursuant to such subsection.

Source: Laws 1995, LB 182, § 12.

66-6,109 Excise tax; amount.

In addition to the tax imposed by sections 66-6,107, 66-6,108, and 66-6,109.02, each retailer shall pay an excise tax of two and eight-tenths cents per gallon or gallon equivalent on all compressed fuel sold for use in registered

motor vehicles. The changes made to this section by Laws 2008, LB 846, apply for tax periods beginning on and after July 1, 2009.

Source: Laws 1995, LB 182, § 13; Laws 2008, LB846, § 18.

66-6,109.01 Fuel used for buses; exemption from tax; when; equalization fee; section, how construed; refund.

(1) Compressed fuel shall be exempt from the taxes imposed under the Compressed Fuel Tax Act when the fuel is used for buses equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities or within a radius of six miles thereof.

(2) The owner or agent of any bus equipped to carry more than seven persons for hire and engaged entirely in the transportation of passengers for hire within municipalities, or within a radius of six miles thereof, in lieu of the excise tax provided for in the act, shall pay an equalization fee of a sum equal to twice the amount of the registration fee applicable to such vehicle under the laws of this state. Such equalization fee shall be paid in the same manner as the registration fee and be disbursed and allocated as registration fees.

(3) Nothing in this section shall be construed as permitting compressed fuel to be sold tax exempt. The department shall refund tax paid on compressed fuel used in buses deemed exempt by this section.

Source: Laws 1996, LB 1121, § 5; Laws 2004, LB 983, § 42.

66-6,109.02 Retailer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.

(1) For tax periods beginning on and after July 1, 2009, at the time of filing the return required by section 66-6,110, the retailer shall, in addition to the other taxes provided for by law, pay a tax at the rate of five percent of the average wholesale price of gasoline calculated pursuant to section 66-489.02 for the gallons of the compressed fuel as shown by the return, except that there shall be no tax on the compressed fuel reported if it is otherwise exempted by the Compressed Fuel Tax Act.

(2) All sums of money received under this section shall be credited to the Highway Trust Fund. Credits and refunds of such tax allowed to producers, suppliers, distributors, wholesalers, or importers shall be paid from the Highway Trust Fund. The balance of the amount credited, after credits and refunds, shall be allocated as follows:

(a) Sixty-six percent to the Highway Cash Fund for the Department of Roads;

(b) Seventeen percent to the Highway Allocation Fund for allocation to the various counties for road purposes; and

(c) Seventeen percent to the Highway Allocation Fund for allocation to the various municipalities for street purposes.

Source: Laws 2008, LB846, § 17.

66-6,110 Retailer; return; filing requirements.

Each retailer shall file a tax return with the department on forms prescribed by the department. Annual returns are required if the retailer's yearly tax liability is less than two hundred fifty dollars. Quarterly returns are required if the retailer's yearly tax liability is at least two hundred fifty dollars but less than

six thousand dollars. Monthly returns are required if the retailer's yearly tax liability is at least six thousand dollars. The return shall contain a declaration by the person making the return to the effect that the statements contained in the return are true and are made under penalties of law, which declaration has the same force and effect as a verification of the return and is in lieu of such verification. The return shall show such information as the department reasonably requires for the proper administration and enforcement of the Compressed Fuel Tax Act. The retailer shall file the return in such format as prescribed by the department on or before the twenty-fifth day of the next succeeding calendar month following the reporting period to which it relates. If the final filing date falls on a Saturday, Sunday, or legal holiday, the next secular or business day is the final filing date. The return is filed on time if transmitted or postmarked before midnight of the final filing date.

Source: Laws 1995, LB 182, § 14; Laws 2000, LB 1067, § 24; Laws 2001, LB 168, § 11; Laws 2004, LB 983, § 43.

66-6,111 Tax computation.

The taxes imposed by sections 66-6,107, 66-6,108, and 66-6,109 shall be computed by each retailer by multiplying the tax rate established in sections 66-6,107, 66-6,108, and 66-6,109 by the number of gallons or gallon equivalents of compressed fuel sold for use in registered motor vehicles.

Source: Laws 1995, LB 182, § 15; Laws 2004, LB 983, § 44; Laws 2008, LB846, § 19.

66-6,112 Taxes, interest, and penalties; disposition.

All taxes, interest, and penalties collected under the Compressed Fuel Tax Act shall be remitted to the State Treasurer for credit to the Highway Trust Fund or Highway Cash Fund as appropriate.

Source: Laws 1995, LB 182, § 16.

66-6,113 Compressed fuel tax; collection; commission.

(1) In lieu of the expense of remitting the compressed fuel tax and complying with the statutes and rules and regulations related thereto, every retailer shall be entitled to deduct and withhold a commission of two percent upon the first five thousand dollars and one-half of one percent upon all amounts in excess of five thousand dollars remitted each tax period.

(2) Except as otherwise provided in the Compressed Fuel Tax Act, the per-gallon amount of the tax shall be added to the selling price of every gallon of such compressed fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax. The tax shall be a direct tax on the retail or ultimate consumer precollected for the purpose of convenience and facility to the consumer. The levy and assessment on the retailer as specified in the act shall be as an agent of the state for the precollection of the tax. The provisions of this section shall in no way affect the method of collecting the tax as provided in the act. The tax imposed by this section shall be collected and paid at the time, in the manner, and by those persons specified in the act.

(3) In consideration of receiving the commission provided under subsection (1) of this section, the retailer shall not be entitled to any deductions, credits, or

refunds arising out of such retailer's failure or inability to collect any such taxes from any subsequent purchaser of compressed fuel.

Source: Laws 1995, LB 182, § 17; Laws 1998, LB 1161, § 22.

66-6,114 Retailer; records.

Every retailer shall prepare and maintain such records as the department reasonably requires with respect to inventories, receipts, purchases, and sales or other dispositions of compressed fuel. The records required by this section shall be retained for a minimum period of three years or for five years if the required returns or reports are not filed and shall be available at all reasonable times for audit and examination by the department to determine liability for the payment of the taxes and penalties under the Compressed Fuel Tax Act.

Source: Laws 1995, LB 182, § 18.

66-6,115 Prohibited acts; violation; penalty; transport and delivery vehicles.

(1) The fuel supply tank of a motor vehicle registered or required to be registered for operation on the highway shall not contain or be used with compressed fuel unless the taxes imposed by the Compressed Fuel Tax Act are paid to the retailer of the fuel at the time the fuel is purchased. Any person who violates this section is guilty of a Class IV misdemeanor and, in addition to the taxes imposed by the act, is subject to an administrative penalty of one thousand dollars for each violation to be assessed and collected by the department. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Trust Fund. All such penalties shall be assessed against the owner of the vehicle as of the date of the violation.

(2) The department shall by rule or regulation adopt a standard miles-per-gallon rating for compressed fuel transport and delivery vehicles that are not equipped with a separate fuel supply tank. The miles-per-gallon rating adopted shall be used by the owners of the vehicles to calculate the amount of fuel tax owed to the state on the fuel consumed from the vehicle's cargo tank for purposes of operating the vehicle. The owners of the vehicles shall pay the excise taxes imposed by the act and make a report concerning the taxes to the department in like manner, form, and time as is required by the act for retailers of compressed fuel.

(3) For purposes of this section:

(a) Owner means registered owner, titleholder, lessee entitled to possession of the motor vehicle, or anyone otherwise maintaining a possessory interest in the motor vehicle, but does not include anyone who, without participating in the use or operation of the motor vehicle and otherwise not engaged in the purpose for which the motor vehicle is being used, holds indicia of ownership primarily to protect his or her security interest in the motor vehicle or who acquired ownership of the motor vehicle pursuant to a foreclosure of a security interest in the motor vehicle; and

(b) Use means to operate, fuel, or otherwise employ.

Source: Laws 1995, LB 182, § 19; Laws 2000, LB 1067, § 25.

66-6,116 Enforcement; rules and regulations.

The department shall enforce the Compressed Fuel Tax Act and the rules and regulations adopted pursuant to the act. The department may adopt and promulgate rules and regulations to carry out the act.

Source: Laws 1995, LB 182, § 20.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section

66-701 Repealed. Laws 1980, LB 954, § 65.

66-702 Repealed. Laws 1980, LB 954, § 65.

66-703 Repealed. Laws 1980, LB 954, § 65.

66-704 Repealed. Laws 1980, LB 954, § 65.

66-705 Repealed. Laws 1980, LB 954, § 65.

66-706 Repealed. Laws 1980, LB 954, § 65.

66-707 Repealed. Laws 1980, LB 954, § 65.

66-708 Repealed. Laws 1980, LB 954, § 65.

66-709 Repealed. Laws 1980, LB 954, § 65.

66-710 Repealed. Laws 1980, LB 954, § 65.

66-711 Repealed. Laws 1980, LB 954, § 65.

66-712 Terms, defined.

For purposes of Chapter 66, articles 4, 5, 6, and 14, and sections 66-712 to 66-737:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, except that for purposes of enforcement of Chapter 66, article 14, department means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(2) Motor fuel means any fuel defined as motor vehicle fuel in section 66-482, any fuel defined as diesel fuel in section 66-482, and any fuel defined as compressed fuel in section 66-6,100;

(3) Motor fuel laws means the provisions of Chapter 66, articles 4, 5, and 6 and sections 66-712 to 66-737, except that for purposes of enforcement of Chapter 66, article 14, motor fuel laws means the provisions of Chapter 66, article 14, and sections 66-712 to 66-737; and

(4) Person means any individual, firm, partnership, limited liability company, company, agency, association, corporation, state, county, municipality, or other political subdivision. Whenever a fine, imprisonment, or both are prescribed or imposed in sections 66-712 to 66-737, the word person as applied to a partnership, a limited liability company, or an association means the partners or members thereof.

Source: Laws 1991, LB 627, § 107; Laws 1993, LB 121, § 398; Laws 1994, LB 1160, § 95; Laws 1995, LB 182, § 52; Laws 1996, LB 1218, § 19; Laws 2004, LB 983, § 45.

66-713 Retailer; license required; when; records.

(1) Any person operating as a retailer of motor vehicle fuel or diesel fuel in this state shall obtain a license from the department. A separate license shall be issued for each retail location operated by such person.

(2) Every retailer shall keep a complete and accurate record of all motor fuels, to be based on gross gallons, received, purchased, or obtained, which record shows the name and address of the person from whom each transfer or purchase of motor fuels was made, the point from which shipped or delivered, the point at which received, the method of delivery, the quantity of each

transfer or purchase, and the total amount of motor fuels sold at retail during the month.

(3) The records shall also include all exempt sales of motor fuels, the date of sale, the quantity sold, and the identity of the purchaser.

(4) The records required by this section shall be retained and be available for audit and examination by the department or its authorized agents during regular business hours for a period of three years.

Source: Laws 1991, LB 627, § 108; Laws 1994, LB 1160, § 96; Laws 1998, LB 1161, § 23; Laws 2004, LB 983, § 46.

66-714 Repealed. Laws 1996, LB 1121, § 18.

66-715 Repealed. Laws 1996, LB 1121, § 18.

66-716 Motor fuel distribution, sale, or delivery; license; when required; records.

(1) Any person owning or possessing motor fuel in this state, including motor fuel stored at a pipeline terminal or barge terminal, for distribution, sale, or delivery in this state shall obtain a license from the department unless such person is already licensed under other sections of the motor fuel laws and is reporting all transactions involving any motor fuel.

(2) Every person licensed under subsection (1) of this section shall keep a complete and accurate record of all motor vehicle fuel, to be based on gross gallons, (a) received, purchased, or obtained, which record shall show the name and address of the person from whom each transfer or purchase of motor vehicle fuel was made, the point from which shipped or delivered, the point at which received, the method of delivery, and the quantity of each transfer or purchase, and (b) delivered or sold, which record shall show the name of the person to whom each transfer or sale of motor vehicle fuel was made, the point from which shipped or delivered, the point at which received, the method of delivery, and the quantity of each transfer or sale.

(3) Every person licensed under subsection (1) of this section shall keep a complete and accurate record of all diesel fuel to include the same information required in subsection (2) of this section and the sales of exempt diesel fuel showing the identity of the purchaser and the quantity sold. The sales of exempt diesel fuel shall include the total exempt sales during the month to each retailer accepting exemption certificates from his or her customers.

Source: Laws 1991, LB 627, § 110; Laws 1994, LB 1160, § 98.

66-717 Invoice or billing documents; requirements; licensed producer, supplier, distributor, wholesaler, and importer; statement authorized.

(1) All producers, suppliers, distributors, wholesalers, and importers and other persons selling motor fuel for resale that have been taxed under the motor fuel laws shall include on all invoices or other billing documents for the motor fuel the amount of the fuel tax or a statement that the Nebraska fuel taxes have been paid on the motor fuel.

(2) If the invoice or other billing document does not contain the amount of the tax or the statement that the Nebraska fuel taxes have been paid, the motor fuel shall be presumed to be untaxed and the purchaser shall be liable for the tax on such fuel.

(3) Any licensed producer, supplier, distributor, wholesaler, or importer who has recorded his or her liability for the tax on the motor fuel with the intent to remit the tax on the next return that is due may make the statement required by this section.

Source: Laws 1991, LB 627, § 111; Laws 1994, LB 1160, § 99; Laws 2004, LB 983, § 47.

66-718 Report, return, or other statement; department; powers; electronic filing.

(1) The department may require such other information as it deems necessary on any report, return, or other statement under the motor fuel laws.

(2) The Tax Commissioner may require any of the reports, returns, or other filings due from any motor fuels licensees to be filed electronically.

(3) The department shall prescribe the formats or procedures for electronic filing. To the extent not inconsistent with requirements of the motor fuel laws, the department shall adopt formats and procedures that are consistent with other states requiring electronic reporting of motor fuel information.

(4) Any person who does not file electronically when required or who fails to use the prescribed formats and procedures shall be considered to have not filed the return, report, or other filing.

(5) For purposes of the electronic funds transfer requirements contained in section 77-1784, motor vehicle fuel tax, diesel fuel tax, compressed fuel tax, and all other tax programs administered by the Motor Fuel Tax Enforcement and Collection Division shall be considered as comprising one tax program.

Source: Laws 1991, LB 627, § 112; Laws 1997, LB 720, § 19; Laws 1998, LB 1161, § 24; Laws 2000, LB 1067, § 26; Laws 2004, LB 983, § 48.

66-719 Prohibited acts; financial penalties; department; powers; waiver of interest.

(1) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within the time prescribed for the filing of such report or return or for the payment of such tax under the motor fuel laws shall automatically accrue a penalty of fifty dollars.

(2) Any person who neglects or refuses to file the report or return due for any period or to pay the tax due for any period within ten days after the time prescribed for the filing of such report or return or the payment of such tax under the motor fuel laws shall, in addition to the penalty in subsection (1) of this section, be subject to the larger of:

(a) A penalty of one hundred dollars; or

(b) A penalty of ten percent of the tax not paid.

(3)(a) Notwithstanding anything in subsection (1) or (2) of this section to the contrary, no penalty shall be imposed upon any person who voluntarily reports an underpayment of tax by filing an amended return and paying such tax if such amended return is filed and payment is made within thirty days after the date such tax was due.

(b) Except as provided in subsection (8) of this section, interest shall not be waived on any additional tax due as reported on any amended return, and such interest shall be computed from the date such tax was due.

(4) Any person who neglects or refuses to report and pay motor fuel tax on methanol, naphtha, benzine, benzol, kerosene, or any other volatile, flammable, or combustible liquid that is blended with motor vehicle fuel or undyed diesel fuel shall be subject to a penalty equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger. Such penalty shall be in addition to the motor fuel tax due and all other penalties provided by law.

(5) If any person knowingly files a false report or return, the penalty shall be equal to one hundred percent of the tax not paid or one thousand dollars, whichever is larger, which penalty shall be in addition to all other penalties provided by law.

(6) Any person who knowingly conducts any activities requiring a license or permit under the motor fuel laws without a license or permit or after a license or permit has been surrendered, suspended, or canceled shall automatically accrue a penalty of one hundred dollars per day for each day such violation continues.

(7) The department may in its discretion waive all or any portion of the penalties incurred upon sufficient showing by the taxpayer that the failure to file or pay is not due to negligence, intentional disregard of the law, rules, or regulations, intentional evasion of the tax, or fraud committed with intent to evade the tax or that such penalties should otherwise be waived.

(8)(a) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(b) Interest may only be waived if:

(i) Interest is due to an error or unreasonable delay by the department;

(ii) Interest is due to erroneous written advice by the department when the advice was a direct response to a written request for advice from the taxpayer and the taxpayer reasonably relied upon the advice; or

(iii) Interest is due because of an amount erroneously refunded if the taxpayer did not request the refund and the refund was not caused by information provided by the taxpayer.

(9) All penalties collected by the department under this section shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 1991, LB 627, § 114; Laws 1993, LB 440, § 11; Laws 1996, LB 1121, § 6; Laws 2000, LB 1067, § 27.

66-719.01 Unlawful transportation; violations; reward for disclosure.

The department may pay to any person, other than a state officer or employee, who furnishes original information that any person has failed to file the reports required on motor vehicle fuel or diesel fuel imported into the State of Nebraska or has failed to pay the tax on the sale or use of motor vehicle fuel, diesel fuel, or compressed fuel as provided by the laws of this state, such a share of the tax and penalties recovered as the department may deem reason-

able and just, not exceeding thirty percent, if it appears that the recovery was had in consequence of the information furnished.

Source: Laws 1933, c. 47, § 3, p. 260; Laws 1935, c. 130, § 10, p. 468; C.S.Supp.,1941, § 66-424; R.S.1943, § 66-439; R.S.1943, (1990), § 66-439; Laws 1991, LB 627, § 35; R.S.Supp.,1992, § 66-4,113; Laws 1994, LB 1160, § 112; Laws 1995, LB 182, § 53.

66-720 License or permit; suspension; grounds; procedure; cancellation; reinstatement fee.

(1) Any license or permit issued by the department under the motor fuel laws may be suspended for the following reasons:

(a) Cancellation of security;

(b) Failure to provide additional security as required;

(c) Failure to file any report or return, filing an incomplete report or return, or not filing electronically, within the time provided;

(d) Failure to pay taxes due within the time provided;

(e) Filing of any false report, return, statement, or affidavit, knowing it to be false;

(f) Delivering motor fuel to a Nebraska destination if Nebraska is not listed as the destination state on the original bill of sale, bill of lading, or manifest except as authorized under section 66-503;

(g) Failure to remain in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(h) Failure to remain in compliance with requirements of the Department of Agriculture regarding weights and measures;

(i) Using or placing dyed diesel fuel in a motor vehicle except as authorized under section 66-495.01;

(j) No longer being eligible to obtain a license or permit; or

(k) Any other violation of the motor fuel laws or the rules and regulations.

(2) The department shall mail notice of suspension of any license or permit.

(3) The licensee or permitholder may, within sixty days after the mailing of the notice of such suspension, petition the Department of Revenue in writing for a hearing and reconsideration of such suspension. If a petition is filed, the department shall, within ten days of receipt of the petition, set a hearing date at which the licensee or permitholder may show cause why his or her suspended license or permit should not be canceled. The department shall give the licensee or permitholder reasonable notice of the time and place of such hearing. Within a reasonable time after the conclusion of the hearing, the department shall issue an order either reinstating or canceling such license or permit.

(4) If a petition is not filed within the sixty-day period, the suspended license or permit shall be canceled by the department at the expiration of the period.

(5) The department shall not issue a new permit or license to the same person for one year from the date of cancellation. Any reissuance of a permit or license to the same person within three years from the date of cancellation shall require a reinstatement fee of one hundred dollars to be submitted to the department. The department shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(6) Suspension or cancellation of a license or permit issued by the department shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

Source: Laws 1991, LB 627, § 115; Laws 1992, LB 1013, § 15; Laws 1993, LB 440, § 12; Laws 1994, LB 1160, § 100; Laws 1996, LB 1121, § 7; Laws 2004, LB 983, § 49; Laws 2008, LB914, § 2.

66-721 Notices; mailing requirements.

All notices by the department required by the motor fuel laws shall be mailed by registered or certified mail, return receipt requested, to the address of the licensee or permitholder as shown on the records of the department.

Source: Laws 1991, LB 627, § 116.

66-722 Returns; review by department; deficiency determination; procedure.

(1) As soon as practical after a return is filed, the department shall examine it to determine the correct amount of tax. If the department finds that the amount of tax shown on the return is less than the correct amount, it shall notify the taxpayer of the amount of the deficiency determined.

(2) If any person fails to file a return or has improperly purchased motor fuel without the payment of tax, the department shall estimate the person's liability from any available information and notify the person of the amount of the deficiency determined.

(3) The amount of the deficiency determined shall constitute a final assessment together with interest and penalties sixty days after the date on which notice was mailed to the taxpayer at his or her last-known address unless a written protest is filed with the department within such sixty-day period.

(4) The final assessment provisions of this section shall constitute a final decision of the agency for purposes of the Administrative Procedure Act.

(5) An assessment made by the department shall be presumed to be correct. In any case when the validity of the assessment is questioned, the burden shall be on the person who challenges the assessment to establish by a preponderance of the evidence that the assessment is erroneous or excessive.

(6)(a) Except in the case of a fraudulent return or of neglect or refusal to make a return, the notice of a proposed deficiency determination shall be mailed within three years after the twenty-fifth day of the month following the end of the period for which the amount proposed is to be determined or within three years after the return is filed, whichever period expires later.

(b) The taxpayer and the department may agree, prior to the expiration of the period in subdivision (a) of this subsection, to extend the period during which the notice of a deficiency determination can be mailed. The extension of the period for the mailing of a deficiency determination shall also extend the period during which a refund can be claimed.

Source: Laws 1991, LB 627, § 117; Laws 2000, LB 1067, § 28; Laws 2004, LB 983, § 50; Laws 2008, LB914, § 3.

Cross References

Administrative Procedure Act, see section 84-920.

66-723 Corporate officer or employee; personal liability; collection of taxes; procedures; hearing.

(1) Any corporate officer or employee with the authority to decide whether the corporation will pay the taxes imposed upon a corporation by the motor fuel laws, to file any reports or returns required by the motor fuel laws, or to perform any other act required of a corporation under the motor fuel laws shall be personally liable for the payment of the taxes, interest, penalties, or other administrative penalties in the event of willful failure on his or her part to have the corporation perform such act. Such taxes shall be collected in the same manner as provided under the Uniform State Tax Lien Registration and Enforcement Act.

(2) Within sixty days after the day on which the notice and demand are made for the payment of such taxes, any corporate officer or employee seeking to challenge the Tax Commissioner's determination as to his or her personal liability for the corporation's unpaid taxes may petition for a redetermination. The petition may include a request for the redetermination of the personal liability of the corporate officer or employee, the redetermination of the amount of the corporation's unpaid taxes, or both. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(3) If the requirements prescribed in subsection (2) of this section are satisfied, the Tax Commissioner shall abate collection proceedings and shall grant the corporate officer or employee an oral hearing and give him or her ten days' notice of the time and place of such hearing. The Tax Commissioner may continue the hearing from time to time as necessary.

(4) Any notice required under this section shall be served personally or by mail in the manner provided in section 66-721.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the corporate officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) For purposes of this section:

(a) Corporation shall mean any corporation and any other entity that is taxed as a corporation under the Internal Revenue Code;

(b) Taxes shall mean all taxes and additions to taxes including interest and penalties imposed under the motor fuel laws which are administered by the Tax Commissioner; and

(c) Willful failure shall mean that failure which was the result of an intentional, conscious, and voluntary action.

Source: Laws 1991, LB 627, § 118; Laws 1993, LB 440, § 13; Laws 1996, LB 1041, § 2; Laws 2000, LB 1067, § 29; Laws 2008, LB914, § 4.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-724 Deficiency; late payment; interest.

All deficiencies determined by the department and any tax paid after the time provided shall accrue interest at the rate specified in section 45-104.02, as such

rate may from time to time be adjusted, on such deficiency or late payment from the date such tax was due to the date of payment.

Source: Laws 1991, LB 627, § 119; Laws 1992, Fourth Spec. Sess., LB 1, § 9.

66-725 Department; examination of records; investigations.

The department may examine the records of any person holding a license or permit, required to hold a license or permit, or purchasing motor fuel without the payment of tax at any time during regular business hours and make such other investigations as it deems necessary for the proper and efficient administration and enforcement of the motor fuel laws.

Source: Laws 1991, LB 627, § 120.

66-726 Refund; when allowed; procedures.

(1) The department may adjust all errors in payment, refund tax paid on motor fuel destroyed, refund tax overpaid on motor fuel, and refund an amount equal to the per-gallon tax imposed by this state on sales of motor fuel on which tax was paid in this state but which was sold in a state other than Nebraska.

(2)(a) Motor fuels shall be exempt from the taxes imposed by sections 66-489, 66-489.02, 66-4,105, 66-4,140, 66-4,145, and 66-4,146 when the fuels are used for agricultural, quarrying, industrial, or other nonhighway use.

(b) The department shall refund tax paid on motor fuels used for an exempt purpose. The purchaser of tax-paid motor fuels used for an exempt purpose shall file a claim for refund with the department on forms prescribed by the department and shall provide such documentation and maintain such records as the department reasonably requires to substantiate that the fuels were used for exempt purposes.

(c) The refund claim shall include: (i) The name of claimant; (ii) the make, horsepower, and other mechanical description of machinery in which the motor fuels were used; (iii) a statement as to the source or place of business where such motor fuels, used solely for agricultural, quarrying, industrial, or other nonhighway uses, were acquired; that no part of such motor fuels were used in propelling licensed motor vehicles; and that the motor fuels for which refund of the tax thereon is claimed were used solely for agricultural, quarrying, industrial, or other nonhighway uses; and (iv) any other information deemed necessary by the department.

(d) The department shall deduct (i) from each claim for refund of tax paid on purchases of motor vehicle fuels under this subsection two and one-quarter cents per gallon through December 31, 2004, and commencing January 1, 2010, and three and one-half cents per gallon commencing January 1, 2005, through December 31, 2009, of the tax paid and (ii) from each claim for refund of tax paid on purchases of diesel fuel under this subsection one cent per gallon of the tax paid.

(e) The department shall transmit monthly to the State Treasurer a report of the number of gallons of motor vehicle fuel for which refunds have been approved under this subsection. Through December 31, 2004, and commencing January 1, 2010, the State Treasurer shall thereupon transfer from the Highway Trust Fund to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund, and commencing January 1, 2005,

through December 31, 2009, the State Treasurer shall thereupon transfer from the Highway Trust Fund (a) to the Ethanol Production Incentive Cash Fund one and one-quarter cents per gallon approved for refund and (b) to the Agricultural Alcohol Fuel Tax Fund one and one-quarter cents per gallon approved for refund.

(3) No refund shall be allowed unless a claim is filed setting forth the circumstances by reason of which refund should be allowed. Such claim shall be filed with the department within three years from the date of the payment of the tax.

(4) In each calendar year, no claim for refund related to motor vehicle fuel, diesel fuel, aircraft fuel, or compressed fuel can be for an amount less than twenty-five dollars.

(5) The department shall administer and enforce this section. The department may call to its aid when necessary any member of the Nebraska State Patrol, any police officer, any county attorney, or the Attorney General. The employees of the department are empowered to stop and inspect motor vehicles, to inspect premises, and temporarily to impound motor vehicles or motor fuels when necessary to administer this section.

(6) The department may adopt and promulgate such rules and regulations as are necessary for the prompt and effective enforcement of this section.

(7) Any claimant for refund of motor fuels tax under this section who is unable to produce the original copy of any invoice to substantiate the refund for the reason that the same has been lost, mutilated, or destroyed may make proof of his or her claim by affidavit and such other evidence as may be required by the department, and if such claim is verified by investigation, such claim may be allowed.

(8) The changes made to this section by Laws 2004, LB 983, apply to motor fuels purchased during any tax year ending or deemed to end on or after January 1, 2005, under the Internal Revenue Code.

Source: Laws 1991, LB 627, § 121; Laws 1992, LB 1013, § 16; Laws 1994, LB 1160, § 101; Laws 1995, LB 182, § 54; Laws 2004, LB 983, § 51; Laws 2004, LB 1065, § 4; Laws 2008, LB846, § 20.

66-727 Prohibited acts; criminal penalties.

(1) It shall be unlawful for any person to:

(a) Knowingly import, distribute, sell, produce, refine, compound, blend, or use any motor vehicle fuel, diesel fuel, or compressed fuel in the State of Nebraska without remitting the full amount of tax imposed by the provisions of the motor fuel laws;

(b) Refuse or knowingly and intentionally fail to make and file any return, report, or statement required by the motor fuel laws in the manner or within the time required;

(c) Knowingly and with intent to evade or to aid or abet any other person in the evasion of the tax imposed by the motor fuel laws (i) make any false or incomplete report, return, or statement, (ii) conceal any material fact in any record, report, return, or affidavit provided for in the motor fuel laws, (iii) improperly claim any exemption from tax imposed by the motor fuel laws, or (iv) create or submit any false documentation purporting to show that tax-free

fuel has been purchased or sold tax paid or that tax-paid fuel has been used for a tax-exempt purpose;

(d) Knowingly conduct any activities requiring a license under the provisions of the Petroleum Release Remedial Action Act, the Compressed Fuel Tax Act, and Chapter 66, articles 4, 5, and 7, without a license or after a license has been surrendered, suspended, or canceled;

(e) Knowingly conduct any activities requiring a permit under the provisions of the motor fuel laws without such permit or after such permit has been surrendered, suspended, or canceled;

(f) Knowingly assign or attempt to assign a license or permit;

(g) Knowingly fail to keep and maintain books and records required by the motor fuel laws;

(h) Knowingly fail or refuse to pay a fuel tax when due;

(i) Knowingly make any false statement in connection with an application for the refund of any money or tax;

(j) Fail or refuse to produce for inspection any license or permit issued under the motor fuel laws; or

(k) Knowingly violate any of the motor fuel laws or any rule or regulation under the motor fuel laws.

(2) Any person who violates subdivision (1)(b), (f), (h), or (k) of this section shall be guilty of a Class IV felony. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(3) Any person who violates subdivision (1)(a), (c), (d), (g), or (i) of this section shall be guilty of a Class IV felony if the amount of tax involved is less than five thousand dollars and a Class III felony if the amount of tax is five thousand dollars or more. Failing to report or pay taxes due shall constitute a separate offense for each reporting period.

(4) Any person who violates subdivision (1)(e) or (j) of this section shall be guilty of a separate Class IV misdemeanor for each day of operation.

Source: Laws 1991, LB 627, § 122; Laws 1993, LB 440, § 14; Laws 1994, LB 1160, § 102; Laws 1995, LB 182, § 55; Laws 1996, LB 1121, § 8; Laws 1996, LB 1218, § 20; Laws 2000, LB 1067, § 30; Laws 2004, LB 983, § 52.

Cross References

Compressed Fuel Tax Act, see section 66-697.
Petroleum Release Remedial Action Act, see section 66-1501.

66-728 Jurisdiction.

An offense committed in violation of section 66-727 shall be deemed an act committed in part in the principal office of the department. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of such offenses which may be conducted in any county in which the offender resides or has a place of business or in which the crime was committed.

Source: Laws 1991, LB 627, § 123.

66-729 Permit or license; issuance; when; department; powers and duties.

After reviewing an application received in proper form, the department may issue to the applicant a permit or license. The department may refuse to issue a permit or license to any person:

(1) Who previously had a permit or license issued under the motor fuel laws of any state which, prior to the time of filing the application, has been suspended or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license, prior to the time of filing the application, has been suspended or canceled for cause;

(3) Which has as a partner, limited liability company member, or shareholder, with a ten percent or larger ownership interest, any person who is unable to obtain a license or permit in his or her own name;

(4) Who is not in compliance with requirements of the State Fire Marshal regarding underground storage tanks;

(5) Who is not in compliance with the Department of Agriculture regarding weights and measures;

(6) Who has been convicted of a felony in the last ten years; or

(7) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant him or her at least ten days' written notice of the time and place.

Source: Laws 1991, LB 627, § 124; Laws 1993, LB 121, § 399; Laws 1994, LB 884, § 83; Laws 1996, LB 1121, § 9.

66-730 Repealed. Laws 2000, LB 1067, § 37.

66-731 Department; computer system; shared information.

(1) The department shall develop, implement, and maintain a computer system for the automated recording and analysis of the motor vehicle fuel tax, the diesel fuel tax, and related information. The system shall be capable of directly accepting and recording data filed by magnetic media.

(2) The department shall share information pertaining to motor fuel use, tax collection, and related information with the Department of Agriculture, the State Fire Marshal, and the Nebraska State Patrol. The information shall be made available to these agencies and to any other state, federal, or local agency with a valid need for the information as determined by the Department of Revenue.

(3) The department may forward to any agency in this state, to the officials to whom are entrusted the enforcement of the motor fuel tax laws of any other state, the District of Columbia, the United States, its territories and possessions, and the provinces or the Dominion of Canada, or to any other person any information which the department may have relative to the receipt, storage, delivery, sale, use, or other disposition of motor fuel.

(4) The department may forward to any person statistical information, lists of licensees or permitholders, or totals for any licensee or permitholder.

Source: Laws 1991, LB 627, § 126; Laws 1994, LB 1160, § 103; Laws 1996, LB 1121, § 10.

66-732 Department of Revenue, Attorney General, and Nebraska State Patrol; duties.

With funds appropriated for such purposes, the department, the Attorney General, and the Nebraska State Patrol shall each dedicate staff personnel and associated costs for the training of personnel and the review, development, enforcement, and prosecution of the motor fuel laws and the penalties associated with the failure to completely comply with the motor fuel laws, rules, and regulations.

It is the intent of this Legislature that the activities of the department, the Attorney General, and the Nebraska State Patrol be coordinated with activities of each other and all other local, state, and federal agencies involved with the development and enforcement of related laws, rules, and regulations.

Source: Laws 1991, LB 627, § 127; Laws 1992, LB 1013, § 18.

66-733 Producers, suppliers, distributors, wholesalers, and importers; cash bond required; funds created; investment.

(1) All motor fuel producers, suppliers, distributors, wholesalers, and importers licensed under section 3-149 or 66-484 and all retailers licensed under section 66-6,106 shall jointly furnish a cash bond to the state to secure the payment of all fuel taxes.

(2) The cash bond shall be held by the State Treasurer in a motor fuel trust fund, which fund is hereby created, for the benefit of producers, suppliers, distributors, wholesalers, importers, and retailers. No producer, supplier, distributor, wholesaler, importer, or retailer shall have any claim or rights against the fund as a separate person. Any money in the diesel fuel importers trust fund and the motor vehicle fuel importers trust fund on March 30, 1995, shall be transferred to the motor fuel trust fund on such date.

(3) All funds in the trust 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 and may be pooled with other funds for the purposes of section 72-1267.

Source: Laws 1985, LB 273, § 25; R.S.1943, (1990), § 66-610.01; Laws 1991, LB 627, § 128; Laws 1994, LB 1066, § 52; Laws 1994, LB 1160, § 104; Laws 1995, LB 182, § 56; Laws 2004, LB 983, § 53.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-734 Cash bond; contribution; how collected.

(1) The contribution for the cash bond required in section 66-733 shall be collected by the department each tax period with the tax return for all such periods beginning on and after September 30, 1985. The amount due shall be deemed to be tax for the purpose of collection or refund.

(2) The amount collected each tax period from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall be the portion of the commission allowed which equals one-fourth of one percent of the total tax due.

(3) The contributions from the motor fuel producers, suppliers, distributors, wholesalers, importers, and retailers shall continue to be collected until the amount in the trust fund, including interest earned, is equal to one percent of the total motor fuel tax collected during the preceding year. The contributions

shall resume whenever the amount is less than one-half of one percent of the motor fuel tax collected during the preceding year.

(4) The department shall notify the producers, suppliers, distributors, wholesalers, importers, and retailers whenever it is necessary for the contributions to resume. The contributions shall begin with the first tax return that is due at least thirty days after notice is provided by the department.

Source: Laws 1985, LB 273, § 26; R.S.1943, (1990), § 66-610.02; Laws 1991, LB 627, § 129; Laws 1994, LB 1160, § 105; Laws 1995, LB 182, § 57; Laws 2004, LB 983, § 54.

66-735 Trust fund; use; delinquency; certification; State Treasurer; duties.

(1) Money in the trust fund created pursuant to section 66-733 shall be used solely for the purpose of preventing a loss to the state for fuel taxes that are not paid.

(2) Whenever the department determines that fuel tax has been delinquent for ninety days, it shall certify the delinquent amount of tax and the interest due thereon to the State Treasurer. The certification shall include the specific fund into which the tax would have been deposited if received.

(3) Upon receipt of the certification, the State Treasurer shall transfer the amount to the fund identified.

(4) Such transfer shall not affect the liability of the producer, supplier, distributor, wholesaler, importer, or retailer to the state.

Source: Laws 1985, LB 273, § 27; Laws 1988, LB 1039, § 10; R.S.1943, (1990), § 66-610.03; Laws 1991, LB 627, § 130; Laws 1994, LB 1160, § 106; Laws 1995, LB 182, § 58; Laws 2004, LB 983, § 55.

66-736 Cash bond; contribution; refund; return of trust fund.

(1) A refund of the contributions made pursuant to section 66-734 shall be made only when there is a refund of the tax on which the contribution is calculated or when there was an error in the calculation.

(2) If the cash bond is abolished, the money in the trust fund shall be returned to the producers, suppliers, distributors, wholesalers, importers, and retailers who are then licensed by increasing the commission by the amount specified for the contributions. The reduction in collections because of the additional amount allowed to the producers, suppliers, distributors, wholesalers, importers, and retailers shall be replaced by a transfer from the cash bond to the appropriate highway fund.

Source: Laws 1985, LB 273, § 28; R.S.1943, (1990), § 66-610.04; Laws 1991, LB 627, § 131; Laws 1994, LB 1160, § 107; Laws 1995, LB 182, § 59; Laws 2004, LB 983, § 56.

66-737 Committee to oversee trust fund; members; terms; powers and duties.

(1) The department shall appoint a committee to oversee the operation of the trust fund created in section 66-733. The committee shall consist of seven members. Two members shall be diesel fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be motor vehicle fuel producers, suppliers, distributors, wholesalers, or importers, two members shall be compressed fuel retailers, and one member shall be selected at large. Members shall be appointed for terms of four years.

(2) The committee shall have access to information concerning any transfers occurring from the trust fund, the collection efforts of the department to collect from the person owing the tax, and the management of the trust fund.

(3) Members of the committee shall be considered employees of the department solely for the purpose of the disclosure of confidential information and the imposition of penalties for the unauthorized disclosure of such information.

(4) The committee may receive confidential information only for the purpose of determining the effectiveness of the department in collecting the amounts transferred from the cash bond collected pursuant to section 66-734.

Source: Laws 1985, LB 273, § 30; R.S.1943, (1990), § 66-610.06; Laws 1991, LB 627, § 132; Laws 1994, LB 1160, § 108; Laws 1995, LB 182, § 60; Laws 2004, LB 983, § 57.

66-738 Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.

The Motor Fuel Tax Enforcement and Collection Division is hereby created within the Department of Revenue. The division shall be funded by a separate appropriation program within the department. All provisions of Chapter 66, articles 4, 5, 6, and 12, and sections 66-712 to 66-737 and the provisions of Chapter 3, article 1, and Chapter 66, article 15, pertaining to the Department of Revenue, the Tax Commissioner, or the division shall be entirely and separately undertaken and enforced by the division, except that the division may utilize services provided by other programs of the Department of Revenue in functional areas known on July 1, 1991, as the budget subprograms designated revenue operations and administration. Appropriations for the division that are used to fund costs allocated for such functional operations shall be expended by the division in an appropriate pro rata share and shall be subject to biennial audit by the Auditor of Public Accounts, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of each even-numbered year. Audit information useful to other divisions of the Department of Revenue may be shared by the Motor Fuel Tax Enforcement and Collection Division with the other divisions of the department and the Division of Motor Carrier Services of the Department of Motor Vehicles, but audits shall not be considered as a functional operation for purposes of this section. Except for staff performing in functional areas, staff funded from the separate appropriation program shall only be utilized to carry out the provisions of such articles and sections. The auditors and field investigators in the Motor Fuel Tax Enforcement and Collection Division shall be adequately trained for the purposes of motor fuel tax enforcement and collection. The Tax Commissioner shall hire for or assign to the division sufficient staff to carry out the responsibility of the division for the enforcement of the motor fuel laws.

Funds appropriated to the division may also be used to contract with other public agencies or private entities to aid in the issuance of motor fuel delivery permit numbers as provided in subsection (2) of section 66-503, and such contracted funds shall only be used for such purpose. The amount of any contracts entered into pursuant to this section shall be appropriated and accounted for in a separate budget subprogram of the division.

Source: Laws 1991, LB 627, § 141; Laws 1994, LB 1160, § 109; Laws 1996, LB 1121, § 11; Laws 1996, LB 1218, § 21; Laws 1999, LB 143, § 4.

66-739 Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

There is hereby created the Motor Fuel Tax Enforcement and Collection Cash Fund. Such fund shall consist of appropriations to the fund and money transferred to it pursuant to section 39-2215. The fund shall be used exclusively for the costs of the Motor Fuel Tax Enforcement and Collection Division created by section 66-738 and other related costs for the Department of Agriculture, the Nebraska State Patrol, and functional areas of the Department of Revenue as provided by such section. 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.

Source: Laws 1991, LB 627, § 142; Laws 1994, LB 1066, § 53; Laws 1994, LB 1160, § 110.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-740 Repealed. Laws 1999, LB 143, § 8.

66-741 Federally recognized Indian tribe; agreement with state; authorized.

(1) The Governor or his or her designated representative may negotiate an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any motor fuel tax on sales of motor fuel made on a federally recognized Indian reservation or on land held in trust for a Nebraska-based federally recognized Indian tribe. The agreement shall specify:

(a) Its duration;

(b) Its purpose;

(c) Provisions for administering, collecting, and enforcing the agreement;

(d) Remittance of taxes collected;

(e) The division of the proceeds of the tax between the parties;

(f) The method to be employed in accomplishing the partial or complete termination of the agreement; and

(g) Any other necessary and proper matters.

(2) The agreement shall require that the state motor fuel tax and any tribal motor fuel tax be identical in rate and base of transactions.

(3) An Indian tribe accepting an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell motor fuel in violation of the terms of the agreement.

Source: Laws 2001, LB 172, § 11; Laws 2007, LB537, § 1.

ARTICLE 8

GASOHOL AND ENERGY DEVELOPMENT

Cross References

Ethanol Development Act, see section 66-1330.

(a) NEBRASKA GASOHOL AND ENERGY DEVELOPMENT ACT

Section
66-801. Repealed. Laws 1993, LB 364, § 26.

Section
66-802. Repealed. Laws 1993, LB 364, § 26.
66-803. Repealed. Laws 1993, LB 364, § 26.
66-804. Repealed. Laws 1993, LB 364, § 26.
66-805. Repealed. Laws 1993, LB 364, § 26.
66-806. Repealed. Laws 1993, LB 364, § 26.
66-807. Repealed. Laws 1993, LB 364, § 26.
66-808. Repealed. Laws 1993, LB 364, § 26.
66-809. Repealed. Laws 1993, LB 364, § 26.
66-810. Repealed. Laws 1993, LB 364, § 26.
66-811. Repealed. Laws 1993, LB 364, § 26.
66-812. Repealed. Laws 1993, LB 364, § 26.
66-813. Repealed. Laws 1993, LB 364, § 26.
66-814. Repealed. Laws 1993, LB 364, § 26.
66-815. Repealed. Laws 1993, LB 364, § 26.
66-816. Repealed. Laws 1993, LB 364, § 26.
66-817. Repealed. Laws 1986, LB 993, § 1.
66-818. Repealed. Laws 1986, LB 993, § 1.
66-819. Repealed. Laws 1993, LB 364, § 26.
66-820. Transferred to section 66-1338.

(b) DEPARTMENT OF ROADS, USE OF GASOHOL

66-821. Terms, defined.
66-822. Department of Roads; motor vehicles; use of gasohol.
66-823. Department of Roads; gasohol; storage and dispensing facilities.
66-824. Department of Roads; gasohol; use; conditions.

(c) ALCOHOL PLANT OR FACILITY DEVELOPMENT

66-825. Unconstitutional.
66-826. Unconstitutional.
66-827. Unconstitutional.
66-828. Unconstitutional.
66-829. Unconstitutional.
66-830. Unconstitutional.
66-831. Unconstitutional.
66-832. Unconstitutional.
66-833. Unconstitutional.
66-834. Unconstitutional.
66-835. Unconstitutional.
66-836. Unconstitutional.
66-837. Unconstitutional.
66-838. Unconstitutional.
66-839. Unconstitutional.
66-840. Unconstitutional.
66-841. Unconstitutional.

(a) NEBRASKA GASOHOL AND ENERGY DEVELOPMENT ACT

66-801 Repealed. Laws 1993, LB 364, § 26.

66-802 Repealed. Laws 1993, LB 364, § 26.

66-803 Repealed. Laws 1993, LB 364, § 26.

66-804 Repealed. Laws 1993, LB 364, § 26.

66-805 Repealed. Laws 1993, LB 364, § 26.

66-806 Repealed. Laws 1993, LB 364, § 26.

66-807 Repealed. Laws 1993, LB 364, § 26.

66-808 Repealed. Laws 1993, LB 364, § 26.

66-809 Repealed. Laws 1993, LB 364, § 26.

66-810 Repealed. Laws 1993, LB 364, § 26.

66-811 Repealed. Laws 1993, LB 364, § 26.

66-812 Repealed. Laws 1993, LB 364, § 26.

66-813 Repealed. Laws 1993, LB 364, § 26.

66-814 Repealed. Laws 1993, LB 364, § 26.

66-815 Repealed. Laws 1993, LB 364, § 26.

66-816 Repealed. Laws 1993, LB 364, § 26.

66-817 Repealed. Laws 1986, LB 993, § 1.

66-818 Repealed. Laws 1986, LB 993, § 1.

66-819 Repealed. Laws 1993, LB 364, § 26.

66-820 Transferred to section 66-1338.

(b) DEPARTMENT OF ROADS, USE OF GASOHOL

66-821 Terms, defined.

For purposes of sections 66-821 to 66-824, unless the context otherwise requires:

(1) Gasohol shall mean gasoline which contains a minimum of ten percent blend of an agricultural ethyl alcohol whose purity shall be at least ninety-nine percent alcohol, excluding denaturant, produced from cereal grains or domestic agricultural commodities; and

(2) Department shall mean the Department of Roads.

Source: Laws 1979, LB 74, § 1; Laws 1981, LB 104, § 3; Laws 1985, LB 346, § 5.

66-822 Department of Roads; motor vehicles; use of gasohol.

The Department of Roads shall, not later than July 1, 1980, implement a program of using gasohol as fuel in motor vehicles owned or operated by the department which are designed to operate on such fuel.

Source: Laws 1979, LB 74, § 2.

66-823 Department of Roads; gasohol; storage and dispensing facilities.

The department shall provide storage and dispensing facilities at various sites in the state which will make gasohol reasonably accessible to all department vehicles equipped for its use.

Source: Laws 1979, LB 74, § 3.

66-824 Department of Roads; gasohol; use; conditions.

The department shall be required to comply with sections 66-821 to 66-824 only to the extent that gasohol supplies are available. The department shall purchase gasohol for use in its motor vehicles only if, and to the extent that, the cost of the gasohol does not exceed the cost of the fuel otherwise used in such vehicle by more than ten percent.

Source: Laws 1979, LB 74, § 4.

(c) ALCOHOL PLANT OR FACILITY DEVELOPMENT

66-825 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-826 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-827 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-828 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-829 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-830 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-831 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-832 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-833 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-834 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-835 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-836 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-837 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-838 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-839 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-840 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

66-841 Unconstitutional.

Note: The Revisor of Statutes has pursuant to section 49-705 omitted sections 66-825 to 66-841 because the Supreme Court in State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979), held such sections from LB 571, Laws 1979, to be unconstitutional.

ARTICLE 9

SOLAR ENERGY AND WIND ENERGY

Section

66-901 Legislative findings.

The Legislature hereby finds and declares that the use of solar energy and wind energy in Nebraska: (1) Can help reduce the nation's reliance upon irreplaceable domestic and imported fossil fuels; (2) can reduce air and water pollution resulting from the use of conventional energy sources; (3) requires effective legislation and efficient administration of state and local programs to be of greatest value to its citizens; and (4) is of such importance to the public health, safety, and welfare that the state should take appropriate action to encourage its use.

As the use of solar energy and wind energy devices increases, the possibility of future shading and obstruction of such devices by structures or vegetation will also increase. The Legislature therefor declares that the purpose of sections 66-901 to 66-914 is to promote the public health, safety, and welfare by protecting access to solar skyspace and wind energy as provided in sections 66-901 to 66-914.

Source: Laws 1979, LB 353, § 1; Laws 1997, LB 140, § 1.

66-902 Definitions; where found.

For purposes of sections 66-901 to 66-914, unless the context otherwise requires, the definitions found in sections 66-903 to 66-909.03 apply.

Source: Laws 1979, LB 353, § 2; Laws 1997, LB 140, § 2.

66-903 Solar energy, defined.

Solar energy shall mean radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

Source: Laws 1979, LB 353, § 3.

66-904 Solar energy collector, defined.

Solar energy collector shall mean a device, structure, or part of a device or structure which is used primarily to transform solar energy into thermal, chemical, or electrical energy. It includes any space or structural components specifically designed to retain heat derived from solar energy, any mechanism that converts wind energy into electrical energy, and any photosynthetic process specifically maintained to produce photosynthetic products.

Source: Laws 1979, LB 353, § 4.

66-905 Solar energy system, defined.

Solar energy system shall mean a complete design or assembly consisting of a solar energy collector, an energy storage facility when used, and components for the distribution of transformed energy to the extent that they cannot be used jointly with a conventional energy system. Passive solar energy systems are

included in this definition but not to the extent that they fulfill other functions, such as structural or recreational.

Source: Laws 1979, LB 353, § 5.

66-906 Passive solar energy system, defined.

Passive solar energy system shall mean any space or structural components that are specifically designed to retain heat derived from solar energy, including ponds for evaporative cooling, and any moving parts that increase heat retention by the system.

Source: Laws 1979, LB 353, § 6.

66-907 Solar skyspace, defined.

Solar skyspace shall mean the space between a solar energy collector and the sun which must remain unobstructed in order to assure reasonable operation of the solar energy system.

Source: Laws 1979, LB 353, § 7.

66-908 Structure, defined.

Structure shall mean anything constructed, installed, or portable that requires for normal use a location on a parcel of land. This includes any movable structure located on land which can be used either temporarily or permanently for housing, business, commercial, agricultural, or office purposes. It also includes fences, billboards, poles, pipelines, transmission lines, and advertising signs.

Source: Laws 1979, LB 353, § 8.

66-909 Solar skyspace easement, defined.

Solar skyspace easement shall mean a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by any person for the purpose of insuring adequate access of a solar energy system to solar energy.

Source: Laws 1979, LB 353, § 9.

66-909.01 Wind energy, defined.

Wind energy shall mean the use of wind to produce electricity through the use of a wind energy conversion system.

Source: Laws 1997, LB 140, § 3.

66-909.02 Wind energy conversion system, defined.

Wind energy conversion system shall mean any device, supporting structure, mechanism, or series of mechanisms that uses wind for the production of electricity or a mechanical application.

Source: Laws 1997, LB 140, § 4.

66-909.03 Wind energy easement, defined.

Wind energy easement shall mean any easement, covenant, or condition designed to insure the undisturbed flow of wind across the real property of another.

Source: Laws 1997, LB 140, § 5.

66-910 Solar skyspace easement; wind energy easement; how executed; effect.

Any property owner may grant a solar skyspace easement or wind energy easement in the same manner and with the same effect as a conveyance of any other interest in real property. The easement shall be created in writing and shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the easement is located. No duly recorded easement shall be unenforceable on account of lack of privity of estate or privity of contract. Such easements shall run with the land or lands benefited and burdened and shall constitute a perpetual easement, except that a solar skyspace easement or wind energy easement may terminate upon the conditions stated therein or by agreement of the owners of the lands benefited and burdened.

Source: Laws 1979, LB 353, § 10; Laws 1997, LB 140, § 6.

66-911 Easement; document that creates; contents.

Any deed, will, or other instrument that creates a solar skyspace easement or wind energy easement shall include, but the contents are not limited to:

(1) A description of the real property subject to the solar skyspace easement or wind energy easement and a description of the real property benefiting from the easement;

(2) A description of (a) the vertical and horizontal angles, expressed in degrees and measured from the site of the solar energy system, at which the solar skyspace easement extends over the real property subject to the solar skyspace easement, (b) the dimensions of the wind energy easement sufficient to determine the horizontal space across and the vertical space above the burdened property that must remain unobstructed, or (c) any other description which defines the three-dimensional space or the place and times of day in which an obstruction to solar energy or wind energy is prohibited or limited;

(3) Any terms or conditions under which the easement is granted or may be terminated;

(4) Any provisions for compensation of the owner of the real property benefiting from the easement in the event of interference with the enjoyment of the easement or compensation of the owner of the real property subject to the easement for maintaining the easement; and

(5) Any other provisions necessary or desirable to effect the purpose of the instrument.

Source: Laws 1979, LB 353, § 11; Laws 1997, LB 140, § 7.

66-911.01 Solar energy system; wind energy conversion system; wind measurement equipment; land right or option to secure a land right; requirements.

An instrument creating a land right or an option to secure a land right in real property or the vertical space above real property for a solar energy system, for a wind energy conversion system, or for wind measurement equipment shall be

created in writing, and the instrument, or an abstract, shall be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the real property subject to the instrument is located. The instrument shall include, but the contents are not limited to:

(1) The names of the parties;

(2) A legal description of the real property involved;

(3) The nature of the interest created;

(4) The consideration paid for the transfer;

(5) A description of the improvements the developer intends to make on the real property, including, but not limited to: Roads; transmission lines; substations; wind turbines; and meteorological towers;

(6) A description of any decommissioning security as defined in section 76-3001 or local requirements related to decommissioning; and

(7) The terms or conditions, if any, under which the interest may be revised or terminated.

Source: Laws 1997, LB 140, § 8; Laws 2009, LB568, § 5.

66-912 Easement; how enforced.

A solar skyspace easement or wind energy easement may be enforced by injunction or proceedings in equity or other civil action.

Source: Laws 1979, LB 353, § 12; Laws 1997, LB 140, § 9.

66-913 Counties or municipalities; zoning regulations, ordinances, and plans; considerations.

All counties or municipalities having zoning or subdivision jurisdiction are hereby authorized to include considerations for the encouragement of solar energy and wind energy use and the protection of access to solar energy and wind energy in all applicable zoning regulations or ordinances and comprehensive development plans. Such considerations may include, but not be limited to, regulation of height, location, setback, and use of structures, the height and location of vegetation with respect to property boundary lines, the type and location of energy systems or their components, and the use of districts to encourage the use of solar energy systems and wind energy conversion systems and protect access to solar energy and wind energy. Comprehensive development plans may contain an element for protection and development of solar energy and wind energy access which will promote energy conservation and ensure coordination of solar energy and wind energy use with conventional energy use.

Source: Laws 1979, LB 353, § 13; Laws 1997, LB 140, § 10.

66-914 Solar energy systems; wind energy conversion systems; restricted by regulation or ordinance; variance or exception; when granted.

When the application of any zoning or subdivision regulation or ordinance would prevent or unduly restrict the use of solar energy systems or wind energy conversion systems, the governing body of the county or municipality having zoning or subdivision jurisdiction is authorized to grant a variance or exception from the strict application thereof so as to relieve such restriction and protect access to solar energy or wind energy if such relief may be granted without

substantial detriment to the public good and without substantially impairing the intent and purpose of such regulation or ordinance.

Source: Laws 1979, LB 353, § 14; Laws 1997, LB 140, § 11.

ARTICLE 10

ENERGY CONSERVATION

(a) UTILITY LOANS

Section
66-1001. Energy conservation and efficiency; legislative findings.
66-1002. Definitions, sections found.
66-1003. Customer, defined.
66-1004. Energy conservation measure, defined.
66-1005. Loan, defined.
66-1006. Utility, defined.
66-1007. Utility; initiate and administer loans.
66-1008. Utility; loans; restrictions.
66-1009. Loan; repayment plan; default; use; lien; limitation; State Energy Office; duties.
66-1010. Utilities; supplemental powers.
66-1011. Loan; use; limitation.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

66-1012. Act, how cited.
66-1013. Legislative findings.
66-1014. Terms, defined.
66-1015. Energy Conservation Improvement Fund; created; investment; department; duties.
66-1016. Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.
66-1017. Contracts authorized.
66-1018. Report.
66-1019. Rules and regulations.

(c) ENERGY CONSERVATION IMPROVEMENT, TAX EXEMPTION

66-1020. Repealed. Laws 1991, LB 11, § 2.
66-1021. Repealed. Laws 1991, LB 11, § 2.
66-1022. Repealed. Laws 1991, LB 11, § 2.
66-1023. Repealed. Laws 1991, LB 11, § 2.
66-1024. Repealed. Laws 1991, LB 11, § 2.
66-1025. Repealed. Laws 1991, LB 11, § 2.
66-1026. Repealed. Laws 1991, LB 11, § 2.
66-1027. Repealed. Laws 1991, LB 11, § 2.
66-1028. Repealed. Laws 1991, LB 11, § 2.

(d) RENEWABLE ENERGY DEVELOPMENT, TAX CREDITS

66-1029. Repealed. Laws 1993, LB 5, § 6.
66-1030. Repealed. Laws 1993, LB 5, § 6.
66-1031. Repealed. Laws 1993, LB 5, § 6.
66-1032. Repealed. Laws 1993, LB 5, § 6.
66-1033. Repealed. Laws 1993, LB 5, § 6.
66-1034. Repealed. Laws 1993, LB 5, § 6.
66-1035. Repealed. Laws 1993, LB 5, § 6.
66-1036. Repealed. Laws 1993, LB 5, § 6.
66-1037. Repealed. Laws 1993, LB 5, § 6.
66-1038. Repealed. Laws 1993, LB 5, § 6.
66-1039. Repealed. Laws 1993, LB 5, § 6.
66-1040. Repealed. Laws 1993, LB 5, § 6.
66-1041. Repealed. Laws 1993, LB 5, § 6.
66-1042. Repealed. Laws 1993, LB 5, § 6.
66-1043. Repealed. Laws 1993, LB 5, § 6.

(a) UTILITY LOANS

66-1001 Energy conservation and efficiency; legislative findings.

The Legislature finds, for purposes of sections 66-1001 to 66-1011, that:

(1) Our present dependence on foreign oil has created a danger to the public health and welfare and a need for a dependable source of energy;

(2) Conservation is one of the most prudent means of meeting our need for a dependable source of energy;

(3) There is an urgent and continuing need for every person and business in the state to conserve energy;

(4) There is an urgent and continuing need for capital to provide the initial investment necessary to make homes and other buildings more energy efficient;

(5) It would be prudent for our publicly owned electric utilities to supply this needed capital in order to avoid the greater costs of constructing new generation facilities; and

(6) Involvement by our publicly owned electric utilities in energy conservation programs serves a public purpose.

Source: Laws 1980, LB 954, § 14.

66-1002 Definitions, sections found.

For purposes of sections 66-1001 to 66-1011, unless the context otherwise requires, the definitions found in sections 66-1003 to 66-1006 shall be used.

Source: Laws 1980, LB 954, § 15.

66-1003 Customer, defined.

Customer shall mean the owner or renter of any residential, agricultural, or commercial building in the state for which there is purchased, from a utility, electricity to be used for either space heating or cooling or the heating of water for domestic purposes. Owners of mobile homes may be included in this definition at the option of the utility involved.

Source: Laws 1980, LB 954, § 16.

66-1004 Energy conservation measure, defined.

Energy conservation measure shall mean installing or using any:

(1) Caulking or weatherstripping of doors or windows;

(2) Furnace efficiency modifications involving electric service;

(3) Clock thermostats;

(4) Water heater insulation or modification;

(5) Ceiling, attic, wall, or floor insulation;

(6) Storm windows or doors, multiglazed windows or doors, or heat absorbing or reflective glazed window and door material;

(7) Devices which control demand of appliances and aid load management;

(8) Devices to utilize solar energy, biomass, or wind power for any energy conservation purpose, including heating of water and space heating or cooling, which have been identified by the State Energy Office as an energy conservation measure for the purposes of sections 66-1001 to 66-1011;

(9) High-efficiency lighting and motors;

(10) Devices which are designed to increase energy efficiency, the utilization of renewable resources, or both; and

(11) Such other conservation measures as the State Energy Office shall identify.

Source: Laws 1980, LB 954, § 17; Laws 1982, LB 799, § 2; Laws 1994, LB 941, § 1.

66-1005 Loan, defined.

Loan shall mean an extension of credit by a utility from its own capital or from capital raised by the Nebraska Investment Finance Authority pursuant to sections 58-201 to 58-272 to or for the benefit of a customer solely for the purchase or installation of energy conservation measures with repayment to be made through the utility's periodic billing system.

Source: Laws 1980, LB 954, § 18; Laws 1982, LB 799, § 3; Laws 1983, LB 626, § 76.

66-1006 Utility, defined.

Utility shall mean a publicly owned electrical utility providing either wholesale or retail service within the state.

Source: Laws 1980, LB 954, § 19.

66-1007 Utility; initiate and administer loans.

A utility may make loans pursuant to sections 66-1001 to 66-1011 and may contract with banks, financial experts, and such other advisors as may be necessary in its judgment to initiate and administer the loans.

Source: Laws 1980, LB 954, § 20.

66-1008 Utility; loans; restrictions.

A utility making a loan pursuant to section 66-1007 shall not:

(1) Operate an energy conservation plan for profit; or

(2) Supply or install energy conservation measures under its plan or own, either wholly or partially, any subsidiary involved in supplying or installing energy conservation measures under its plan.

Source: Laws 1980, LB 954, § 21; Laws 1994, LB 941, § 2.

66-1009 Loan; repayment plan; default; use; lien; limitation; State Energy Office; duties.

(1) A customer borrowing from a utility under a plan adopted pursuant to sections 66-1001 to 66-1011 shall be allowed to contract with the utility for a repayment plan and shall be offered a repayment period of not less than three years and not more than twenty years.

(2) Upon default on a loan by a customer, after expending reasonable efforts to collect, a utility may treat the entire unpaid contract amount as due, but services to a residential, agricultural, or commercial customer may not be terminated as a result of such default. Default occurs when any amount due a utility under a plan adopted pursuant to sections 66-1001 to 66-1011, 70-625, 70-704, 81-161, 81-1602, 81-1606 to 81-1626, and 84-162 to 84-167 is not paid within sixty days of the due date.

(3) Any customer obtaining a loan pursuant to section 66-1007 shall only use the funds to accomplish the purposes agreed upon at the time of the loan. If the borrower of any funds obtained pursuant to sections 66-1001 to 66-1011 uses such funds in a manner or for a purpose not authorized by this section, the total amount of the loan shall immediately become due and payable.

(4) Any amount due a utility on a loan pursuant to sections 66-1001 to 66-1011 which is not paid in full within sixty days of the due date shall become a lien as provided in this section on the real property concerned as to the full unpaid balance. No lien under this section shall be valid unless (a) the loan was signed by the party or parties shown on the indexes of the register of deeds to be the owners of record of such real property on the date of the loan and (b) the lien is filed not more than four months after the date of default, in the same office and in the same manner as mortgages in the county in which the real property is located. Such lien shall take effect and be in force from and after the time of delivering the same to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice, and such lien shall be adjudged void as to all such creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments shall be first recorded, except that such lien shall be valid between the parties. A publicly owned utility shall not maintain possession of any property which it may acquire pursuant to a lien authorized by this section for a period of time longer than is reasonably necessary to dispose of such property.

(5) Any loan made under a plan adopted pursuant to sections 66-1001 to 66-1011 shall not exceed fifteen thousand dollars, subject to any existing limitations under federal law. Any loan to be made by a utility which exceeds ten thousand dollars shall only be made in participation with a bank pursuant to a contract. The utility and the participating bank shall determine the terms and conditions of the contract.

(6) The State Energy Office may adopt and promulgate rules and regulations to carry out sections 66-1001 to 66-1011.

Source: Laws 1980, LB 954, § 22; Laws 1982, LB 799, § 4; Laws 1983, LB 626, § 77; Laws 1993, LB 479, § 1; Laws 1994, LB 941, § 3.

66-1010 Utilities; supplemental powers.

The powers granted under sections 66-1001 to 66-1011 to public power districts, municipal electric utilities, rural power districts, and electric cooperative corporations shall be supplemental to those powers granted in Chapter 18 or 70.

Source: Laws 1980, LB 954, § 23.

66-1011 Loan; use; limitation.

Any customer obtaining a loan pursuant to sections 66-1001 to 66-1011 shall only use the funds to accomplish the purposes agreed upon at the time of the loan. This section shall not be construed to prohibit an owner or renter from providing services himself or herself to accomplish the agreed-upon purposes. If the borrower of any funds obtained pursuant to sections 66-1001 to 66-1011 uses such funds in a manner or for a purpose not authorized by this section, the total amount of the loan shall immediately become due and payable.

Source: Laws 1980, LB 954, § 24.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

66-1012 Act, how cited.

Sections 66-1012 to 66-1019 shall be known and may be cited as the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 1.

66-1013 Legislative findings.

The Legislature finds and declares that:

(1) Many residents of this state find it difficult to pay for the cost of heating, cooling, and lighting their homes;

(2) Energy conservation helps to maintain affordable energy bills, reduces the amount of money spent on imported energy sources, lessens the need for new power plants and other energy infrastructure, and helps mitigate the impact of energy generation on the environment; and

(3) It serves a public purpose to provide funding to eligible persons for eligible energy conservation improvements in accordance with the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 2.

66-1014 Terms, defined.

For purposes of the Low-Income Home Energy Conservation Act:

(1) Department means the Department of Revenue;

(2) Eligible energy conservation grant means a grant paid to an eligible person for an eligible energy conservation improvement;

(3) Eligible energy conservation improvement means a device, a method, equipment, or material that reduces consumption of or increases efficiency in the use of electricity or natural gas for a residence owned by an eligible person, including, but not limited to, insulation and ventilation, storm or thermal doors or windows, awnings, caulking and weatherstripping, furnace efficiency modifications, thermostat or lighting controls, replacement or modification of lighting fixtures or bulbs to increase the energy efficiency of the home's lighting system, and systems to turn off or vary the delivery of energy;

(4) Eligible entity means an entity providing matching funds pursuant to section 66-1015 and which is a public power district organized under Chapter 70, article 6, a rural public power district organized under Chapter 70, article 8, an electric cooperative corporation organized under the Electric Cooperative Corporation Act, a nonprofit corporation organized for the purpose of furnishing electric service, a joint entity organized under the Interlocal Cooperation Act, or a municipality; and

(5) Eligible person means any resident of Nebraska who owns his or her residence and whose household income is at or below one hundred fifty percent of the federal poverty level, as determined in accordance with the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 3.

Cross References

Electric Cooperative Corporation Act, see section 70-701.
Interlocal Cooperation Act, see section 13-801.

66-1015 Energy Conservation Improvement Fund; created; investment; department; duties.

(1) The Energy Conservation Improvement Fund is created. There shall be a separate subaccount within the fund for each eligible entity remitting matching funds and administering a program of eligible energy conservation improvements. The fund shall be administered by the department. Funds shall be remitted by the department to the State Treasurer for deposit in the proper subaccount of the fund from state sales taxes and matching funds remitted by the eligible entity as provided in subsection (2) of this section.

(2) Commencing July 1, 2009, any eligible entity may designate state sales taxes collected from customers for deposit in the subaccount of the fund for that eligible entity. Any such designation shall be accompanied by an equal amount of matching funds from the eligible entity. The total amount designated in any calendar year shall not exceed five percent of the total state sales tax collected in the prior calendar year.

(3) The department shall adopt a form to (a) designate part of the state sales tax to be remitted for administering a program of eligible energy conservation improvements and (b) remit the matching funds.

(4) 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.

Source: Laws 2008, LB1001, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1016 Program of eligible energy conservation grants; establishment and administration; certification of improvement; cost share.

(1) An eligible entity that has remitted matching funds to the department as provided in section 66-1015 may establish and administer a program of eligible energy conservation grants.

(2) The program shall provide for an eligible energy conservation grant from the Energy Conservation Improvement Fund to an eligible person for installing an eligible energy conservation improvement upon certification by the eligible entity that it has approved an eligible energy conservation improvement for the residence of the eligible person. The eligible entity shall verify the purchase and installation of the eligible energy conservation improvement at the eligible person's residence.

(3) The eligible entity may require the eligible person to pay for a share of the cost of the eligible energy conservation improvement, not to exceed twenty percent of the total cost. The share of the cost to be paid by the eligible person may be recovered by the eligible entity in monthly installments after completion of the eligible energy conservation improvement by adding an amount to the eligible person's electrical bill.

(4) The eligible entity shall certify to the department the amount of money to be distributed from the applicable subaccount of the Energy Conservation Improvement Fund for payments of the energy conservation grants approved in subsection (2) of this section. Requests for distribution may be filed no more frequently than monthly. The department shall distribute money only to the eligible entity.

Source: Laws 2008, LB1001, § 5.

66-1017 Contracts authorized.

An eligible entity may contract with any qualified person, agency, or business entity to administer a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act or to make eligibility determinations for eligible energy conservation grants.

Source: Laws 2008, LB1001, § 6.

66-1018 Report.

Beginning April 1, 2009, and annually on or before April 1 thereafter, each eligible entity administering a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act shall submit to the department a report describing each eligible energy conservation grant made by the eligible entity during the preceding calendar year and the eligible energy conservation improvement for which each such grant was made.

Source: Laws 2008, LB1001, § 7.

66-1019 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out its duties under the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 8.

(c) ENERGY CONSERVATION IMPROVEMENT, TAX EXEMPTION

66-1020 Repealed. Laws 1991, LB 11, § 2.

66-1021 Repealed. Laws 1991, LB 11, § 2.

66-1022 Repealed. Laws 1991, LB 11, § 2.

66-1023 Repealed. Laws 1991, LB 11, § 2.

66-1024 Repealed. Laws 1991, LB 11, § 2.

66-1025 Repealed. Laws 1991, LB 11, § 2.

66-1026 Repealed. Laws 1991, LB 11, § 2.

66-1027 Repealed. Laws 1991, LB 11, § 2.

66-1028 Repealed. Laws 1991, LB 11, § 2.

(d) RENEWABLE ENERGY DEVELOPMENT, TAX CREDITS

66-1029 Repealed. Laws 1993, LB 5, § 6.

66-1030 Repealed. Laws 1993, LB 5, § 6.

66-1031 Repealed. Laws 1993, LB 5, § 6.

66-1032 Repealed. Laws 1993, LB 5, § 6.

66-1033 Repealed. Laws 1993, LB 5, § 6.

66-1034 Repealed. Laws 1993, LB 5, § 6.

66-1035 Repealed. Laws 1993, LB 5, § 6.

66-1036 Repealed. Laws 1993, LB 5, § 6.

66-1037 Repealed. Laws 1993, LB 5, § 6.

66-1038 Repealed. Laws 1993, LB 5, § 6.

66-1039 Repealed. Laws 1993, LB 5, § 6.

66-1040 Repealed. Laws 1993, LB 5, § 6.

66-1041 Repealed. Laws 1993, LB 5, § 6.

66-1042 Repealed. Laws 1993, LB 5, § 6.

66-1043 Repealed. Laws 1993, LB 5, § 6.

66-1044 Repealed. Laws 1993, LB 5, § 6.

66-1045 Repealed. Laws 1993, LB 5, § 6.

66-1046 Repealed. Laws 1993, LB 5, § 6.

66-1046.01 Repealed. Laws 1993, LB 5, § 6.

66-1047 Repealed. Laws 1993, LB 5, § 6.

66-1048 Repealed. Laws 1993, LB 5, § 6.

66-1049 Repealed. Laws 1993, LB 5, § 6.

66-1050 Repealed. Laws 1993, LB 5, § 6.

66-1051 Repealed. Laws 1993, LB 5, § 6.

66-1052 Repealed. Laws 1993, LB 5, § 6.

66-1053 Repealed. Laws 1993, LB 5, § 6.

66-1054 Repealed. Laws 1993, LB 5, § 6.

66-1055 Repealed. Laws 1993, LB 5, § 6.

(e) GEOTHERMAL ENERGY UTILIZATION GRANT

66-1056 Repealed. Laws 1991, LB 11, § 2.

66-1057 Repealed. Laws 1991, LB 11, § 2.

66-1058 Repealed. Laws 1991, LB 11, § 2.

66-1059 Repealed. Laws 1991, LB 11, § 2.

(f) INTEGRATED RESOURCE PLANNING

66-1060 Legislative findings.

(1) The Legislature finds that it is in the public interest to support the development of least cost energy sources, including support for research, development, and the prudent use of renewable and nonrenewable supply-side technologies. The Legislature further finds that it is in the public interest to encourage energy efficiency and the use of indigenous energy sources. Consistent with this policy, the public utilities in Nebraska shall practice integrated resource planning and include least cost options when evaluating alternatives for providing energy supply and managing energy demand in Nebraska.

(2) For purposes of this section:

(a) Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk, shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such

savings measured over time, and shall treat demand and supply resources on a consistent and integrated basis; and

(b) Least cost or least cost option means providing reliable electric services to electric customers which will, to the extent practicable, minimize life-cycle system costs, including adverse environmental effects, of providing the services. To the extent practicable, energy efficiency and renewable resources may be given priority in any least cost planning.

Source: Laws 1995, LB 120, § 1.

66-1061 Section and repeal of section, how construed.

Section 66-1060 and the repeal of section 70-627.01 shall not be construed to affect the operating authority of any electric generation facility owned or operated by any Nebraska electric utility on September 9, 1995.

Source: Laws 1995, LB 120, § 2.

(g) ENERGY FINANCING CONTRACTS

66-1062 Terms, defined.

For purposes of sections 66-1062 to 66-1066:

(1) Energy conservation measure means a training, service, or operations program or facility alteration designed to reduce energy consumption. Energy conservation measure includes:

(a) Repair or renovation of heating, ventilation, and air conditioning systems;

(b) Installation or repair of automated or computerized energy control systems;

(c) Replacement or modification of lighting fixtures;

(d) Insulation of a building structure or systems within that structure;

(e) Installation of energy recovery systems;

(f) Installation of cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(g) Replacement, weatherstripping, caulking, or other insulation of windows or doors; or

(h) Any other measure designed to reduce energy consumption;

(2) Energy financing contract means an agreement between an energy service company and a governmental unit for the implementation of one or more energy conservation measures in an existing facility in exchange for a portion of the energy cost savings produced. Energy financing contract includes, but is not limited to, a performance contract, shared-savings contract, guaranteed contract, and lease-purchase contract;

(3) Energy service company means a person or business experienced in the implementation and installation of energy conservation measures; and

(4) Governmental unit means a school district, community college area, village, city, county, or department or agency of the State of Nebraska.

Source: Laws 1998, LB 1129, § 9; Laws 1999, LB 236, § 1.

66-1063 Governmental unit; energy financing contracts; authorized.

Notwithstanding the procedures for public lettings in sections 73-101 to 73-106 or any other statute of the State of Nebraska relating to the letting of bids by a governmental unit, a governmental unit may enter into an energy financing contract with an energy service company pursuant to sections 66-1062 to 66-1066.

Source: Laws 1998, LB 1129, § 10.

66-1064 Governmental unit; powers and duties.

(1) Prior to entering into an energy financing contract, a governmental unit shall obtain a written opinion from a professional engineer licensed in the State of Nebraska whose interests are independent from the financial savings outcome of the contract. The opinion shall contain a review of recommendations proposed by an energy service company pertaining to energy conservation measures designed to reduce energy consumption to the governmental unit.

(2) At least fourteen days prior to entering into an energy financing contract, a governmental unit shall furnish public notice of its intention to enter into such contract, the general nature of the proposed work being considered under the contract, and the name and telephone number of a person to be contacted by any energy service company interested in submitting a proposal to contract for such work. The governmental unit shall also directly solicit requests for qualifications from at least three energy service companies relating to the proposed contract.

(3) Upon receiving responses to its request for qualifications pursuant to subsection (2) of this section, the governmental unit may select the most qualified energy service company based on the company's experience, technical expertise, and financial arrangements, the overall benefits to the governmental unit, and other factors determined by the governmental unit to be relevant and appropriate. The governmental unit may thereafter negotiate and enter into an energy financing contract pursuant to section 66-1065 with the company selected based on the criteria established by the governmental unit.

Source: Laws 1998, LB 1129, § 11.

66-1065 Energy financing contract; contents; energy service company; bond requirements.

(1) Any energy financing contract entered into by a governmental unit shall:

(a) Detail the responsibilities of a Nebraska-licensed professional engineer in the design, installation, and commissioning of the energy conservation measures selected by the governmental unit. Any design shall conform to all statutes of the State of Nebraska pertaining to engineering design and public health, safety, and welfare;

(b) Set forth the calculated energy cost savings during the contract period attributable to the energy conservation measures to be installed by the energy service company. Operational savings may be included in the total savings amount, not guaranteed, but approved by the governmental unit;

(c) Estimate the useful life of each of the selected energy conservation measures;

(d) Provide that, except for obligations on termination of the contract prior to its expiration, payments on the contract are to be made over time, within a

period not to exceed thirty years after the date of the installation of the energy conservation measures provided for under the contract;

(e) Provide that the calculated savings for each year of the contract period will meet or exceed all payments to be made during each year of the contract;

(f) Disclose the effective interest rate being charged by the energy service company; and

(g) In the case of a guaranteed savings contract, set forth the method by which savings will be calculated and a method of resolving any dispute in the amount of the savings. The energy service company shall have total responsibility for the savings guarantee for each guaranteed savings contract.

(2) An energy service company entering into an energy financing contract shall provide a performance bond to the governmental unit in an amount equal to one hundred percent of the total cost of the contract to assure the company's faithful performance. The energy service company shall also supply a guarantee bond equal to one hundred percent of the guaranteed energy savings for the entire term of the contract. For purposes of this section, total cost means all costs associated with the design, installation, modification, commissioning, maintenance, and financing of all energy conservation measures contemplated under the contract.

Source: Laws 1998, LB 1129, § 12; Laws 2008, LB747, § 1.

66-1066 Energy financing contract; terms.

An energy financing contract may extend beyond the fiscal year in which it becomes effective and shall allow the governmental unit to cancel the contract for the nonappropriation of funds. An obligation created by an energy financing contract entered into or indebtedness incurred pursuant to this section shall not constitute or give rise to an indebtedness within the meaning of any constitutional, statutory, or board debt limitation.

Source: Laws 1998, LB 1129, § 13.

ARTICLE 11

GEOTHERMAL RESOURCES

Section
66-1101. Legislative findings.
66-1102. Terms, defined.
66-1103. Severance of mineral estate; right to develop geothermal resource; attaches; exception.
66-1104. Owner of mineral estate; right of entry; lease of state-owned geothermal resources.
66-1105. Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.
66-1106. Development and production of geothermal resources; provisions applicable.

66-1101 Legislative findings.

The Legislature finds it to be in the public interest of the state and its citizens to promote the efficient development and prevent the waste of geothermal resources. Geothermal energy is an indigenous, renewable resource the development of which will benefit local economies. The Legislature further finds and declares that a permit system is necessary to protect Nebraska's ground and surface water resources and existing water users, particularly where the devel-

opment of geothermal energy requires the utilization of geothermal resources at a location other than the well site.

Source: Laws 1982, LB 708, § 1.

66-1102 Terms, defined.

As used in sections 66-1101 to 66-1106, unless the context otherwise requires:

(1) Geothermal resources shall mean (a) the natural heat of the earth and the energy produced by that heat, including pressure, and (b) the material medium containing that energy;

(2) Geothermal fluids shall mean the naturally present ground water in geothermal occurrences;

(3) Geothermal occurrence shall mean an underground geologic formation at temperatures higher than the normal gradient; and

(4) Material medium shall mean geothermal fluids or other substances injected into a geothermal occurrence by which geothermal energy is transported to the surface.

Source: Laws 1982, LB 708, § 2.

66-1103 Severance of mineral estate; right to develop geothermal resource; attaches; exception.

When the subsurface or mineral estate has been severed from the overlying surface estate, ownership of the right to develop and produce geothermal resources shall derive from the subsurface or mineral estate, except that no such right shall attach to subsurface or mineral estates granted prior to July 17, 1982, unless the document conveying the subsurface or mineral estate specifically granted the right to develop and produce geothermal resources.

Source: Laws 1982, LB 708, § 3.

66-1104 Owner of mineral estate; right of entry; lease of state-owned geothermal resources.

(1) When the subsurface or mineral estate in land has been severed from the overlying surface estate, the owner of the subsurface or mineral estate shall have the right to enter upon the overlying surface estate at reasonable times and in a reasonable manner to prospect for, produce, and transport geothermal resources. Fair and equitable compensation shall be paid to the owner of the overlying surface estate for the exercise of such right of entry. The right of entry granted in this section shall not include the right to construct surface facilities for onsite utilization of geothermal energy.

(2) The Board of Educational Lands and Funds shall have the authority to lease state-owned geothermal resources under the procedures contained in Chapter 72, article 3.

Source: Laws 1982, LB 708, § 4.

66-1105 Geothermal resource development; conditions; permit; Department of Natural Resources; adopt rules and regulations.

Any person who desires to withdraw ground water within the State of Nebraska for geothermal resource development shall, prior to commencing construction of any wells, obtain from the Director of Natural Resources a

permit to authorize the withdrawal, transfer, and further use or reinjection of such ground water. The Department of Natural Resources shall adopt and promulgate rules and regulations governing the issuance of such permits, consistent with sections 66-1101 to 66-1106 and with Chapter 46, article 6. Such rules and regulations shall provide for consultation with the Department of Environmental Quality pursuant to the issuance of such permits and shall be compatible with rules and regulations adopted and promulgated by the Department of Environmental Quality under the Environmental Protection Act. Any geothermal fluids produced incident to the development and production of geothermal resources shall be reinjected into the same geologic formation from which they were extracted in substantially the same volume and substantially the same or higher quality as when extracted unless the permit issued in accordance with this section authorizes further uses or processing other than those incident to reinjection.

Source: Laws 1982, LB 708, § 5; Laws 1993, LB 3, § 37; Laws 2000, LB 900, § 245.

Cross References

Environmental Protection Act, see section 81-1532.

66-1106 Development and production of geothermal resources; provisions applicable.

The development and production of geothermal resources shall be subject to Chapter 46, article 6, and the Environmental Protection Act and any rules and regulations adopted thereunder.

Source: Laws 1982, LB 708, § 6.

Cross References

Environmental Protection Act, see section 81-1532.

ARTICLE 12
PETROLEUM PRODUCTS

(a) LABELING OF DISPENSERS

Section
66-1201. Repealed. Laws 1986, LB 736, § 1.
66-1202. Repealed. Laws 1986, LB 736, § 1.
66-1203. Repealed. Laws 1986, LB 736, § 1.
66-1204. Repealed. Laws 1986, LB 736, § 1.
66-1205. Repealed. Laws 1986, LB 736, § 1.
66-1206. Repealed. Laws 1986, LB 736, § 1.
66-1207. Repealed. Laws 1986, LB 736, § 1.
66-1208. Repealed. Laws 1986, LB 736, § 1.
66-1209. Repealed. Laws 1986, LB 736, § 1.
66-1210. Repealed. Laws 1986, LB 736, § 1.
66-1211. Repealed. Laws 1986, LB 736, § 1.
66-1212. Repealed. Laws 1986, LB 736, § 1.
66-1213. Repealed. Laws 1986, LB 736, § 1.
66-1214. Motor fuel dispensers; label requirements; penalty.

(b) FUEL SAMPLING

66-1215. Repealed. Laws 1995, LB 182, § 73.
66-1216. Repealed. Laws 1995, LB 182, § 73.
66-1217. Repealed. Laws 1995, LB 182, § 73.
66-1218. Repealed. Laws 1995, LB 182, § 73.

Section
66-1219. Repealed. Laws 1995, LB 182, § 73.
66-1220. Repealed. Laws 1995, LB 182, § 73.
66-1221. Repealed. Laws 1995, LB 182, § 73.
66-1222. Repealed. Laws 1995, LB 182, § 73.
66-1223. Repealed. Laws 1995, LB 182, § 73.
66-1224. Repealed. Laws 1995, LB 182, § 73.

(c) REFORMULATED GASOLINE

66-1225. Reformulated gasoline; requirements for sale.

(d) AUTOMOTIVE SPARK IGNITION ENGINE FUELS

66-1226. Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties.

(e) METHYL TERTIARY BUTYL ETHER (MTBE)

66-1227. Methyl tertiary butyl ether; restriction.

(a) LABELING OF DISPENSERS

66-1201 Repealed. Laws 1986, LB 736, § 1.

66-1202 Repealed. Laws 1986, LB 736, § 1.

66-1203 Repealed. Laws 1986, LB 736, § 1.

66-1204 Repealed. Laws 1986, LB 736, § 1.

66-1205 Repealed. Laws 1986, LB 736, § 1.

66-1206 Repealed. Laws 1986, LB 736, § 1.

66-1207 Repealed. Laws 1986, LB 736, § 1.

66-1208 Repealed. Laws 1986, LB 736, § 1.

66-1209 Repealed. Laws 1986, LB 736, § 1.

66-1210 Repealed. Laws 1986, LB 736, § 1.

66-1211 Repealed. Laws 1986, LB 736, § 1.

66-1212 Repealed. Laws 1986, LB 736, § 1.

66-1213 Repealed. Laws 1986, LB 736, § 1.

66-1214 Motor fuel dispensers; label requirements; penalty.

Commencing January 1, 1986, motor fuel dispensers shall be labeled on both faces with the product identity using the most descriptive terms commercially practicable. In addition, all alcohol-blended fuel dispensers shall have a label stating: With or containing ethanol, methanol, or ethanol and methanol or with similar wording if the motor fuel being dispensed contains one percent or more by volume of alcohol. Any person who owns or controls such a motor fuel dispenser and does not attach the notice required by this section shall be guilty of an infraction.

Source: Laws 1985, LB 346, § 6.

(b) FUEL SAMPLING

66-1215 Repealed. Laws 1995, LB 182, § 73.

66-1216 Repealed. Laws 1995, LB 182, § 73.

66-1217 Repealed. Laws 1995, LB 182, § 73.

66-1218 Repealed. Laws 1995, LB 182, § 73.

66-1219 Repealed. Laws 1995, LB 182, § 73.

66-1220 Repealed. Laws 1995, LB 182, § 73.

66-1221 Repealed. Laws 1995, LB 182, § 73.

66-1222 Repealed. Laws 1995, LB 182, § 73.

66-1223 Repealed. Laws 1995, LB 182, § 73.

66-1224 Repealed. Laws 1995, LB 182, § 73.

(c) REFORMULATED GASOLINE

66-1225 Reformulated gasoline; requirements for sale.

Reformulated gasoline which is sold after January 1, 1992, in ozone nonattainment areas of Nebraska as designated by the federal Environmental Protection Agency shall contain an oxygen content equal to or greater than three and one-tenth percent weight oxygen.

Source: Laws 1990, LB 1124, § 8; Laws 1991, LB 627, § 134.

(d) AUTOMOTIVE SPARK IGNITION ENGINE FUELS

66-1226 Standard Specifications for Automotive Spark Ignition Engine Fuels; adoption by reference; sale of fuels; requirements; violations; penalties.

(1) The Legislature hereby adopts by reference the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. The Department of Agriculture shall file copies of such publication with the Secretary of State and Clerk of the Legislature.

(2) Commencing on January 1, 1992, all automotive spark ignition engine fuels sold in Nebraska shall meet the specification as found in the American Society For Testing and Materials publication D4814-89 entitled Standard Specifications for Automotive Spark Ignition Engine Fuels. Any person who violates this subsection shall be guilty of a Class I misdemeanor for the first such violation and a Class IV felony for all subsequent violations.

(3) For purposes of this section, automotive spark ignition engine fuels shall mean gasoline and its blends with oxygenates such as alcohol and ethers.

Source: Laws 1991, LB 627, § 145; Laws 1993, LB 440, § 16.

(e) METHYL TERTIARY BUTYL ETHER (MTBE)

66-1227 Methyl tertiary butyl ether; restriction.

On or after July 13, 2000, a retailer shall not offer for sale in this state any petroleum product that contains more than one percent of methyl tertiary butyl

ether (MTBE) by volume. For purposes of this section, retailer has the same definition as in section 66-482.

Source: Laws 2000, LB 1234, § 17.

ARTICLE 13
ETHANOL

Section
66-1301. Transferred to section 66-1330.
66-1302. Repealed. Laws 1993, LB 364, § 26.
66-1303. Transferred to section 66-1333.
66-1304. Repealed. Laws 1993, LB 364, § 26.
66-1305. Repealed. Laws 1993, LB 364, § 26.
66-1306. Repealed. Laws 1993, LB 364, § 26.
66-1307. Repealed. Laws 1993, LB 364, § 26.
66-1307.01. Repealed. Laws 1993, LB 364, § 26.
66-1307.02. Repealed. Laws 1993, LB 364, § 26.
66-1308. Repealed. Laws 1993, LB 364, § 26.
66-1309. Repealed. Laws 1993, LB 364, § 26.
66-1310. Repealed. Laws 1993, LB 364, § 26.
66-1311. Repealed. Laws 1993, LB 364, § 26.
66-1312. Repealed. Laws 1993, LB 364, § 26.
66-1313. Repealed. Laws 1993, LB 364, § 26.
66-1314. Repealed. Laws 1993, LB 364, § 26.
66-1315. Transferred to section 66-1339.
66-1316. Transferred to section 66-1340.
66-1317. Repealed. Laws 1993, LB 364, § 26.
66-1318. Repealed. Laws 1987, LB 279, § 15.
66-1319. Repealed. Laws 1993, LB 364, § 26.
66-1320. Repealed. Laws 1993, LB 364, § 26.
66-1321. Repealed. Laws 1993, LB 364, § 26.
66-1321.01. Transferred to section 66-1341.
66-1322. Repealed. Laws 1993, LB 364, § 26.
66-1323. Repealed. Laws 1993, LB 364, § 26.
66-1324. Transferred to section 66-1342.
66-1325. Transferred to section 66-1343.
66-1326. Transferred to section 66-1344.
66-1327. Transferred to section 66-1345.
66-1328. Transferred to section 66-1346.
66-1329. Transferred to section 66-1347.
66-1330. Act, how cited.
66-1331. Legislative findings.
66-1332. Public policy.
66-1333. Terms, defined.
66-1334. Agricultural Alcohol Fuel Tax Fund; created; use; investment.
66-1335. Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses.
66-1336. Administrator; appointed; duties.
66-1337. Board; administrative powers.
66-1338. National ethanol promotion group; board; powers.
66-1339. Federal funds; solicitation; use.
66-1340. Board; accept property; powers.
66-1341. Application; information confidential.
66-1342. Repayment of loan; other funds; remittance.
66-1343. Repealed. Laws 1999, LB 605, § 8.
66-1344. Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.
66-1344.01. Ethanol tax credits; agreement required; contents.
66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.
66-1345.01. Corn and grain sorghum; excise tax; procedure.

Section

66-1301 Transferred to section 66-1330.

66-1302 Repealed. Laws 1993, LB 364, § 26.

66-1303 Transferred to section 66-1333.

66-1304 Repealed. Laws 1993, LB 364, § 26.

66-1305 Repealed. Laws 1993, LB 364, § 26.

66-1306 Repealed. Laws 1993, LB 364, § 26.

66-1307 Repealed. Laws 1993, LB 364, § 26.

66-1307.01 Repealed. Laws 1993, LB 364, § 26.

66-1307.02 Repealed. Laws 1993, LB 364, § 26.

66-1308 Repealed. Laws 1993, LB 364, § 26.

66-1309 Repealed. Laws 1993, LB 364, § 26.

66-1310 Repealed. Laws 1993, LB 364, § 26.

66-1311 Repealed. Laws 1993, LB 364, § 26.

66-1312 Repealed. Laws 1993, LB 364, § 26.

66-1313 Repealed. Laws 1993, LB 364, § 26.

66-1314 Repealed. Laws 1993, LB 364, § 26.

66-1315 Transferred to section 66-1339.

66-1316 Transferred to section 66-1340.

66-1317 Repealed. Laws 1993, LB 364, § 26.

66-1318 Repealed. Laws 1987, LB 279, § 15.

66-1319 Repealed. Laws 1993, LB 364, § 26.

66-1320 Repealed. Laws 1993, LB 364, § 26.

66-1321 Repealed. Laws 1993, LB 364, § 26.

66-1321.01 Transferred to section 66-1341.

66-1322 Repealed. Laws 1993, LB 364, § 26.

66-1323 Repealed. Laws 1993, LB 364, § 26.

66-1324 Transferred to section 66-1342.

66-1325 Transferred to section 66-1343.

66-1326 Transferred to section 66-1344.

66-1327 Transferred to section 66-1345.

66-1328 Transferred to section 66-1346.

66-1329 Transferred to section 66-1347.

66-1330 Act, how cited.

Sections 66-1330 to 66-1348 shall be known and may be cited as the Ethanol Development Act.

Source: Laws 1986, LB 1230, § 1; Laws 1987, LB 279, § 1; Laws 1989, LB 587, § 1; Laws 1992, LB 754, § 1; R.S.Supp.,1992, § 66-1301; Laws 1993, LB 364, § 1; Laws 1995, LB 377, § 1; Laws 2001, LB 536, § 1; Laws 2004, LB 479, § 2.

66-1331 Legislative findings.

The Legislature finds that Nebraska should continue its existing programs to encourage processing, market development, promotion, distribution, and research on products derived from grain, ethanol, or ethanol components, coproducts, or byproducts to provide for:

(1) Expanded use of Nebraska agricultural products;

(2) Efficient and less-polluting energy sources and reserves which will make Nebraska less energy dependent, reduce atmospheric carbon monoxide levels, and retain Nebraska dollars in the Nebraska economy to achieve a multiplier effect thereby generating additional jobs and tax income to the state rather than the export of Nebraska dollars;

(3) Development of protein which will be more efficiently stored and marketed to foreign nations rather than the present method of simple export of unprocessed grain products;

(4) Alternative local outlets for Nebraska agricultural products which can be particularly utilized in times of depressed grain prices so as to give Nebraskans greater control of their crop marketing procedures rather than have crop marketing procedures too dependent upon federal agencies, major grain exporters, and foreign purchasers. Local outlets may include ethanol plants, agricultural production facilities, or facilities related to the processing, marketing, or distribution of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts;

(5) Cooperation with private industry to establish ethanol-related production facilities in Nebraska to create demand for agricultural products;

(6) Promotion and market development, in cooperation with private industry, of ethanol or products derived from ethanol or ethanol components, coproducts, or byproducts; and

(7) Sponsorship of research and development of industrial and commercial uses for agricultural ethanol and for byproducts resulting from the manufactur-

ing of agricultural ethanol in order to enhance economic feasibility and marketing potential of such products and processes.

Source: Laws 1993, LB 364, § 2.

66-1332 Public policy.

It is hereby declared to be the public policy of the state that, in order to safeguard life, health, property, and public welfare of its citizens, the production, sale, and use of motor fuel and the pollution caused by certain components of motor fuel are matters affecting the public interest and that a statewide emphasis on the production and use of motor fuel containing agricultural ethyl alcohol as a substitute for polluting components is necessary for the reduction of pollution and will further serve as an incentive for the agricultural economy in this state. The Legislature further recognizes that a fuel crisis is pending in the nation and that the development of an additional source of fuel will provide an energy and environmental benefit to the citizens of this state and to the future economic growth of Nebraska.

Source: Laws 1993, LB 364, § 3.

66-1333 Terms, defined.

For purposes of the Ethanol Development Act, unless the context otherwise requires:

(1) Agricultural production facility or ethanol facility means a plant or facility related to the processing, marketing, or distribution of any products derived from grain components, coproducts, or byproducts;

(2) Board means the Nebraska Ethanol Board;

(3) Commercial channels means the sale of corn or grain sorghum for any use, to any commercial buyer, dealer, processor, cooperative, or person, public or private, who resells any corn or grain sorghum or product produced from corn or grain sorghum;

(4) Corn means corn as defined in section 2-3610;

(5) Delivered or delivery means receiving corn or grain sorghum for any use other than storage;

(6) First purchaser means any person, public or private corporation, association, partnership, or limited liability company buying, accepting for shipment, or otherwise acquiring corn or grain sorghum in Nebraska, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, when the actual or constructive possession of the corn or grain sorghum is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

(7) Grain means wheat, corn, and grain sorghum;

(8) Grower means any landowner personally engaged in growing corn or grain sorghum, a tenant of the landowner personally engaged in growing corn or grain sorghum, and both the owner and tenant jointly and includes a person, partnership, limited liability company, association, corporation, cooperative, trust, sharecropper, and other business unit, device, and arrangement;

(9) Name plate design capacity means the original designed capacity of an agricultural production facility. Capacity may be specified as bushels of grain ground or gallons of ethanol produced per year;

(10) Related parties means any two or more individuals, firms, partnerships, limited liability companies, companies, agencies, associations, or corporations which are members of the same unitary group or are any persons who are considered to be related persons under the Internal Revenue Code; and

(11) Sale includes any pledge or mortgage of corn or grain sorghum after harvest to any person, public or private.

Source: Laws 1986, LB 1230, § 3; Laws 1989, LB 587, § 3; Laws 1992, LB 754, § 2; R.S.Supp.,1992, § 66-1303; Laws 1993, LB 364, § 4; Laws 1995, LB 377, § 6; Laws 2004, LB 479, § 4.

66-1334 Agricultural Alcohol Fuel Tax Fund; created; use; investment.

(1) The Agricultural Alcohol Fuel Tax Fund is hereby created. No part of the funds deposited in the fund or of federal funds or other funds solicited in conjunction with research or demonstration programs shall lapse to the General Fund. Transfers from the Agricultural Alcohol Fuel Tax Fund to the Ethanol Production Incentive Cash Fund may be made at the direction of the Legislature. In addition to such unexpended balance appropriation, there is hereby appropriated such amounts as are deposited in the Agricultural Alcohol Fuel Tax Fund in each year. The fund shall be administered by the board. 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.

(2) The fund shall be used for the following purposes:

(a) Establishment, with cooperation of private industry, of procedures and processes necessary to the manufacture and marketing of fuel containing agricultural ethyl alcohol;

(b) Establishment of procedures for entering blended fuel into the marketplace by private enterprise;

(c) Analysis of the marketing process and testing of marketing procedures to assure acceptance in the private marketplace of blended fuel and byproducts resulting from the manufacturing process;

(d) Cooperation with private industry to establish privately owned agricultural ethyl alcohol manufacturing plants in Nebraska to supply demand for blended fuel;

(e) Sponsoring research and development of industrial and commercial uses for agricultural ethyl alcohol and for byproducts resulting from the manufacturing process;

(f) Promotion of state and national air quality improvement programs and influencing federal legislation that requires or encourages the use of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives;

(g) Promotion of the use of renewable agricultural ethyl alcohol as a partial replacement for imported oil and for the energy and economic security of the nation;

(h) Participation in development and passage of national legislation dealing with research, development, and promotion of United States production of fuels oxygenated by the inclusion of agricultural ethyl alcohol or its derivatives, access to potential markets, tax incentives, imports of foreign-produced fuel, and related concerns that may develop in the future; and

(i) As the board may otherwise direct to fulfill the goals set forth under the Ethanol Development Act, including monitoring contracts for existing ethanol program commitments consummated pursuant to the law in existence prior to September 1, 1993, and solicitation of federal funds.

Source: Laws 1993, LB 364, § 5; Laws 1994, LB 1066, § 54; Laws 2004, LB 983, § 58; Laws 2009, LB316, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1335 Nebraska Ethanol Board; established; terms; vacancy; meetings; expenses.

(1) The Nebraska Ethanol Board is hereby established. The board shall consist of seven members to be appointed by the Governor with the approval of a majority of the Legislature. The Governor shall make the initial appointments within thirty days after September 1, 1993. Four members shall be actually engaged in farming in this state, one in general farming and one each in the production of corn, wheat, and sorghum. One member shall be actively engaged in business in this state. One member shall represent labor interests in this state. One member shall represent Nebraska petroleum marketers in this state.

(2) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the member representing labor interests and the member engaged in general farming shall expire on August 31, 1994, the terms of the member engaged in sorghum production and the member engaged in wheat production shall expire on August 31, 1995, the term of the member representing petroleum marketers shall expire on August 31, 1996, and the terms of the member engaged in business and the member engaged in corn production shall expire on August 31, 1997. A member shall serve until a successor is appointed and qualified. Not more than four members shall be members of the same political party.

(3) A vacancy on the board shall exist in the event of death, disability, resignation, or removal for cause of a member. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term. An appointment to fill a vacancy shall be made by the Governor with the approval of a majority of the Legislature, and any person so appointed shall have the same qualifications as the person whom he or she succeeds.

(4) The board shall meet at least once annually.

(5) The members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The members shall receive twenty-five dollars for each day while engaged in the performance of board duties.

Source: Laws 1993, LB 364, § 6.

66-1336 Administrator; appointed; duties.

The board shall retain the services of a full-time administrator to be appointed by the board. The administrator shall hold office at the pleasure of the board. The administrator shall compile a biennial report to be submitted to the board and the Clerk of the Legislature. The report shall set forth the activities,

contracts, and projects of the board for the previous biennium and the amount of funds expended. Each member of the Legislature shall receive a copy of such report by making a request for it to the board.

Source: Laws 1993, LB 364, § 7.

66-1337 Board; administrative powers.

The board may rent office space and employ such personnel as may be necessary for the performance of its duties. The board may employ the services of experts and consultants and expend funds necessary to acquire title to commodities pursuant to section 66-1340, to promote air quality improvement programs, or to otherwise carry out the board's duties under the Ethanol Development Act.

Source: Laws 1993, LB 364, § 8; Laws 2009, LB154, § 13.

66-1338 National ethanol promotion group; board; powers.

The board may appropriate funds and become a member of any national ethanol promotion group.

Source: Laws 1978, LB 424, § 20; Laws 1981, LB 80, § 6; R.S.1943, (1990), § 66-820; Laws 1993, LB 364, § 9.

66-1339 Federal funds; solicitation; use.

The board is encouraged to solicit and authorized to expend any federally distributed funds from the Energy Settlement Fund, account number 6071, or any other federal funds which may become available to the board for ethanol development. Funds collected pursuant to this section shall be remitted to the State Treasurer for credit to the Agricultural Alcohol Fuel Tax Fund.

Source: Laws 1986, LB 1230, § 15; Laws 1989, LB 587, § 9; R.S.1943, (1990), § 66-1315; Laws 1993, LB 364, § 10.

66-1340 Board; accept property; powers.

The board may accept gifts, donations, money, and services, including in-kind resources such as grain owned by the Commodity Credit Corporation and the United States Department of Agriculture. The board may take title to the Commodity Credit Corporation's inventories and use such commodities to carry out the Ethanol Development Act. The board may accept commodities in connection with section 1024 of the Food Security Act of 1985 or in connection with any other section of state or federal law.

Source: Laws 1986, LB 1230, § 16; R.S.1943, (1990), § 66-1316; Laws 1993, LB 364, § 11.

66-1341 Application; information confidential.

Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with an application for a grant or loan or other financial assistance shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or

information as a public record shall demonstrate to the satisfaction of the board that the release would not violate this section.

Source: Laws 1989, LB 587, § 14; R.S.1943, (1990), § 66-1321.01; Laws 1993, LB 364, § 12.

66-1342 Repayment of loan; other funds; remittance.

Any repayment of a loan made pursuant to the Ethanol Authority and Development Act as it existed prior to September 1, 1993, shall be remitted to the State Treasurer and shall be credited to the Ethanol Production Incentive Cash Fund. Any return on investment and any money available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, pursuant to prior law, shall be remitted to the State Treasurer and shall be credited to the fund.

Source: Laws 1986, LB 1230, § 27; Laws 1987, LB 279, § 10; Laws 1992, LB 754, § 7; R.S.Supp.,1992, § 66-1324; Laws 1993, LB 364, § 13.

66-1343 Repealed. Laws 1999, LB 605, § 8.

66-1344 Ethanol tax credits; conditions; limitations; Department of Revenue; powers and duties.

(1) Beginning June 1, 2000, during such period as funds remain in the Ethanol Production Incentive Cash Fund, any ethanol facility shall receive a credit of seven and one-half cents per gallon of ethanol, before denaturing, for new production for a period not to exceed thirty-six consecutive months. For purposes of this subsection, new production means production which results from the expansion of an existing facility's capacity by at least two million gallons first placed into service after June 1, 1999, as certified by the facility's design engineer to the Department of Revenue. For expansion of an existing facility's capacity, new production means production in excess of the average of the highest three months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits shall be allowed under this subsection for expansion of an existing facility's capacity until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than June 1, 2000. New production shall be approved by the Department of Revenue based on such ethanol production records as may be necessary to reasonably determine new production. This credit must be earned on or before December 31, 2003.

(2)(a) Beginning January 1, 2002, any new ethanol facility which is in production at the minimum rate of one hundred thousand gallons annually for the production of ethanol, before denaturing, and which has provided to the Department of Revenue written evidence substantiating that the ethanol facility has received the requisite authority from the Department of Environmental Quality and from the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, on or before June 30, 2004, shall receive a credit of eighteen cents per gallon of ethanol produced for ninety-six consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2012, if the facility is

defined by subdivision (b)(i) of this subsection, and for forty-eight consecutive months beginning with the first calendar month for which it is eligible to receive such credit and ending not later than June 30, 2008, if the facility is defined by subdivision (b)(ii) of this subsection. The new ethanol facility shall provide an analysis to the Department of Revenue of samples of the product collected according to procedures specified by the department no later than July 30, 2004, and at least annually thereafter. The analysis shall be prepared by an independent laboratory meeting the International Organization for Standardization standard ISO/IEC 17025:1999. Prior to collecting the samples, the new ethanol facility shall notify the department which may observe the sampling procedures utilized by the new ethanol facility to obtain the samples to be submitted for independent analysis. The minimum rate shall be established for a period of at least thirty days. In this regard, the new ethanol facility must produce at least eight thousand two hundred nineteen gallons of ethanol within a thirty-day period. The ethanol must be finished product which is ready for sale to customers.

(b) For purposes of this subsection, new ethanol facility means a facility for the conversion of grain or other raw feedstock into ethanol and other byproducts of ethanol production which (i) is not in production on or before September 1, 2001, or (ii) has not received credits prior to June 1, 1999. A new ethanol facility does not mean an expansion of an existing ethanol plant that does not result in the physical construction of an entire ethanol processing facility or which shares or uses in a significant manner any existing plant's systems or processes and does not include the expansion of production capacity constructed after June 30, 2004, of a plant qualifying for credits under this subsection. This definition applies to contracts entered into after April 16, 2004.

(c) Not more than fifteen million six hundred twenty-five thousand gallons of ethanol produced annually at an ethanol facility shall be eligible for credits under this subsection. Not more than one hundred twenty-five million gallons of ethanol produced at an ethanol facility by the end of the ninety-six-consecutive-month period or forty-eight-consecutive-month period set forth in this subsection shall be eligible for credits under this subsection.

(3) The credits described in this section shall be given only for ethanol produced at a plant in Nebraska at which all fermentation, distillation, and dehydration takes place. No credit shall be given on ethanol produced for or sold for use in the production of beverage alcohol. Not more than ten million gallons of ethanol produced during any twelve-consecutive-month period at an ethanol facility shall be eligible for the credit described in subsection (1) of this section. The credits described in this section shall be in the form of a nonrefundable, transferable motor vehicle fuel tax credit certificate. No transfer of credits will be allowed between the ethanol producer and motor vehicle fuel licensees who are related parties.

(4) Ethanol production eligible for credits under this section shall be measured by a device approved by the Division of Weights and Measures of the Department of Agriculture. Confirmation of approval by the division shall be provided by the ethanol facility at the time the initial claim for credits provided under this section is submitted to the Department of Revenue and annually thereafter. Claims submitted by the ethanol producer shall be based on the total number of gallons of ethanol produced, before denaturing, during the reporting period measured in gross gallons.

(5) The Department of Revenue shall prescribe an application form and procedures for claiming credits under this section. In order for a claim for credits to be accepted, it must be filed by the ethanol producer within three years of the date the ethanol was produced or by September 30, 2012, whichever occurs first.

(6) Every producer of ethanol shall maintain records similar to those required by section 66-487. The ethanol producer must maintain invoices, meter readings, load-out sheets or documents, inventory records, including work-in-progress, finished goods, and denaturant, and other memoranda requested by the Department of Revenue relevant to the production of ethanol. On an annual basis, the ethanol producer shall also be required to furnish the department with copies of the reports filed with the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives. The maintenance of all of this information in a provable computer format or on microfilm is acceptable in lieu of retention of the original documents. The records must be retained for a period of not less than three years after the claim for ethanol credits is filed.

(7) For purposes of ascertaining the correctness of any application for claiming a credit provided in this section, the Tax Commissioner (a) may examine or cause to have examined, by any agent or representative designated by him or her for that purpose, any books, papers, records, or memoranda bearing upon such matters, (b) may by summons require the attendance of the person responsible for rendering the application or other document or any officer or employee of such person or the attendance of any other person having knowledge in the premises, and (c) may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons. The time and place of examination pursuant to this subsection shall be such time and place as may be fixed by the Tax Commissioner and as are reasonable under the circumstances. In the case of a summons, the date fixed for appearance before the Tax Commissioner shall not be less than twenty days from the time of service of the summons. No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations. All records obtained pursuant to this subsection shall be subject to the confidentiality requirements and exceptions thereto as provided in section 77-27,119.

(8) To qualify for credits under this section, an ethanol producer shall provide public notice for bids before entering into any contract for the construction of a new ethanol facility. Preference shall be given to a bidder residing in Nebraska when awarding any contract for construction of a new ethanol facility if comparable bids are submitted. For purposes of this subsection, bidder residing in Nebraska means any person, partnership, foreign or domestic limited liability company, association, or corporation authorized to engage in business in the state with employees permanently located in Nebraska. If an ethanol producer enters into a contract for the construction of a new ethanol facility with a bidder who is not a bidder residing in Nebraska, such producer shall demonstrate to the satisfaction of the Department of Revenue in its application for credits that no comparable bid was submitted by a responsible bidder residing in Nebraska. The department shall deny an application for credits if it is determined that the contract was denied to a responsible bidder residing in Nebraska without cause.

(9) The pertinent provisions of Chapter 66, article 7, relating to the administration and imposition of motor fuel taxes shall apply to the administration and

imposition of assessments made by the Department of Revenue relating to excess credits claimed by ethanol producers under the Ethanol Development Act. These provisions include, but are not limited to, issuance of a deficiency following an examination of records, an assessment becoming final after sixty days absent a written protest, presumptions regarding the burden of proof, issuance of deficiency within three years of original filing, issuance of notice by registered or certified mail, issuance of penalties and waiver thereof, issuance of interest and waiver thereof, and issuance of corporate officer or employee or limited liability company manager or member assessments. For purposes of determining interest and penalties, the due date will be considered to be the date on which the credits were used by the licensees to whom the credits were transferred.

(10) If a written protest is filed by the ethanol producer with the department within the sixty-day period in subsection (9) of this section, the protest shall: (a) Identify the ethanol producer; (b) identify the proposed assessment which is being protested; (c) set forth each ground under which a redetermination of the department's position is requested together with facts sufficient to acquaint the department with the exact basis thereof; (d) demand the relief to which the ethanol producer considers itself entitled; and (e) request that an evidentiary hearing be held to determine any issues raised by the protest if the ethanol producer desires such a hearing.

(11) For applications received after April 16, 2004, an ethanol facility receiving benefits under the Ethanol Development Act shall not be eligible for benefits under the Employment and Investment Growth Act, the Invest Nebraska Act, or the Nebraska Advantage Act.

Source: Laws 1990, LB 1124, § 1; Laws 1992, LB 754, § 8; R.S.Supp.,1992, § 66-1326; Laws 1993, LB 364, § 15; Laws 1994, LB 961, § 1; Laws 1995, LB 377, § 7; Laws 1996, LB 1121, § 13; Laws 1999, LB 605, § 1; Laws 2001, LB 536, § 2; Laws 2004, LB 479, § 5; Laws 2004, LB 1065, § 5; Laws 2005, LB 312, § 2; Laws 2008, LB914, § 5.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Act, see section 77-5701.

The state is not a debtor, surety, or guarantor of the debt of another with respect to the tax credits authorized by this section. Callan v. Balka, 248 Neb. 469, 536 N.W.2d 47 (1995).

66-1344.01 Ethanol tax credits; agreement required; contents.

The Tax Commissioner and the producer eligible to receive credits under subsection (2) of section 66-1344 shall enter into a written agreement. The producer shall agree to produce ethanol at the designated facility and any expansion thereof. The Tax Commissioner, on behalf of the State of Nebraska, shall agree to furnish the producer the tax credits as provided by and limited in section 66-1344 in effect on the date of the agreement. The agreement to produce ethanol in return for the credits shall be sufficient consideration, and the agreement shall be binding upon the state. No credit shall be given to any producer of ethanol which fails to produce ethanol in Nebraska in compliance with the agreement. The agreement shall include:

(1) The name of the producer;

(2) The address of the ethanol facility;

(3) The date of the initial eligibility of the ethanol facility to receive such credits;

(4) The name plate design capacity of the ethanol facility as of the date of its initial eligibility to receive such credits; and

(5) The name plate design capacity which the facility is intended to have after the completion of any proposed expansion. If no expansion is contemplated at the time of the initial agreement, the agreement may be amended to include any proposed expansion.

The Tax Commissioner shall not accept any applications for new agreements on or after April 16, 2004.

Source: Laws 2001, LB 536, § 7; Laws 2004, LB 479, § 6; Laws 2004, LB 1065, § 6.

66-1345 Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.

(1) There is hereby created the Ethanol Production Incentive Cash Fund which shall be used by the board to pay the credits created in section 66-1344 to the extent provided in this section. 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. The State Treasurer shall transfer to the Ethanol Production Incentive Cash Fund such money as shall be (a) appropriated to the Ethanol Production Incentive Cash Fund by the Legislature, (b) given as gifts, bequests, grants, or other contributions to the Ethanol Production Incentive Cash Fund from public or private sources, (c) made available due to failure to fulfill conditional requirements pursuant to investment agreements entered into prior to April 30, 1992, (d) received as return on investment of the Ethanol Authority and Development Cash Fund, (e) credited to the Ethanol Production Incentive Cash Fund from the excise taxes imposed by section 66-1345.01 through December 31, 2012, and (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519.

(2) The Department of Revenue shall, at the end of each calendar month, notify the State Treasurer of the amount of motor fuel tax that was not collected in the preceding calendar month due to the credits provided in section 66-1344. The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Highway Trust Fund an amount equal to such credits less the following amounts:

(a) For 1993, 1994, and 1995, the amount generated during the calendar quarter by a one-cent tax on motor fuel pursuant to sections 66-489 and 66-6,107;

(b) For 1996, the amount generated during the calendar quarter by a three-quarters-cent tax on motor fuel pursuant to such sections;

(c) For 1997, the amount generated during the calendar quarter by a one-half-cent tax on motor fuel pursuant to such sections; and

(d) For 1998 and each year thereafter, no reduction.

For 1993 through 1997, if the amount generated pursuant to subdivisions (a), (b), and (c) of this subsection and the amount transferred pursuant to subsec-

tion (1) of this section are not sufficient to fund the credits provided in section 66-1344, then the credits shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund. For 1998 and each year thereafter, the credits provided in such section shall be funded through the Ethanol Production Incentive Cash Fund but shall not be funded through either the Highway Cash Fund or the Highway Trust Fund.

If, during any month, the amount of money in the Ethanol Production Incentive Cash Fund is not sufficient to reimburse the Highway Trust Fund for credits earned pursuant to section 66-1344, the Department of Revenue shall suspend the transfer of credits by ethanol producers until such time as additional funds are available in the Ethanol Production Incentive Cash Fund for transfer to the Highway Trust Fund. Thereafter, the Department of Revenue shall, at the end of each month, allow transfer of accumulated credits earned by each ethanol producer on a prorated basis derived by dividing the amount in the fund by the aggregate amount of accumulated credits earned by all ethanol producers.

(3) The State Treasurer shall transfer from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund the amount reported under subsection (4) of section 66-1345.02 for each calendar month of the fiscal year as provided in such subsection.

(4) On December 31, 2012, the State Treasurer shall transfer the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Water Resources Cash Fund.

(5) Whenever the unobligated balance in the Ethanol Production Incentive Cash Fund exceeds twenty million dollars, the Department of Revenue shall notify the Department of Agriculture at which time the Department of Agriculture shall suspend collection of the excise tax levied pursuant to section 66-1345.01. If, after suspension of the collection of such excise tax, the balance of the fund falls below ten million dollars, the Department of Revenue shall notify the Department of Agriculture which shall resume collection of the excise tax.

(6) On or before December 1, 2003, and each December 1 thereafter, the Department of Revenue and the Nebraska Ethanol Board shall jointly submit a report to the Legislature which shall project the anticipated revenue and expenditures from the Ethanol Production Incentive Cash Fund through the termination of the ethanol production incentive programs pursuant to section 66-1344. The initial report shall include a projection of the amount of ethanol production for which the Department of Revenue has entered agreements to provide ethanol production credits pursuant to section 66-1344.01 and any additional ethanol production which the Department of Revenue and the Nebraska Ethanol Board reasonably anticipate may qualify for credits pursuant to section 66-1344.

Source: Laws 1992, LB 754, § 9; R.S.Supp.,1992, § 66-1327; Laws 1993, LB 364, § 16; Laws 1994, LB 961, § 2; Laws 1994, LB 1066, § 55; Laws 1994, LB 1160, § 114; Laws 1995, LB 182, § 62; Laws 1995, LB 377, § 8; Laws 1999, LB 605, § 2; Laws 2001, LB 329, § 13; Laws 2001, LB 536, § 3; Laws 2004, LB 479, § 7; Laws 2004, LB 983, § 59; Laws 2004, LB 1065, § 7; Laws 2007, LB322, § 13; Laws 2007, LB701, § 27.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1345.01 Corn and grain sorghum; excise tax; procedure.

An excise tax is levied upon all corn and grain sorghum sold through commercial channels in Nebraska or delivered in Nebraska. For any sale or delivery of corn or grain sorghum occurring on or after July 1, 1995, and before January 1, 2000, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after January 1, 2000, and before January 1, 2001, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2001, and before October 1, 2004, the tax is one-half cent per bushel for corn and one-half cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2004, and before October 1, 2005, the tax is three-fourths cent per bushel for corn and three-fourths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2005, and before October 1, 2012, the tax is seven-eighths cent per bushel for corn and seven-eighths cent per hundredweight for grain sorghum. For any sale or delivery of corn or grain sorghum occurring on or after October 1, 2012, and before October 1, 2019, the tax is three-fifths cent per bushel for corn and three-fifths cent per hundredweight for grain sorghum. The tax shall be in addition to any fee imposed pursuant to sections 2-3623 and 2-4012.

The excise tax shall be imposed at the time of sale or delivery and shall be collected by the first purchaser. The tax shall be collected, administered, and enforced in conjunction with the fees imposed pursuant to sections 2-3623 and 2-4012. The tax shall be collected, administered, and enforced by the Department of Agriculture. No corn or grain sorghum shall be subject to the tax imposed by this section more than once.

In the case of a pledge or mortgage of corn or grain sorghum as security for a loan under the federal price support program, the excise tax shall be deducted from the proceeds of such loan at the time the loan is made. If, within the life of the loan plus thirty days after the collection of the excise tax for corn or grain sorghum that is mortgaged as security for a loan under the federal price support program, the grower of the corn or grain sorghum so mortgaged decides to purchase the corn or grain sorghum and use it as feed, the grower shall be entitled to a refund of the excise tax previously paid. The refund shall be payable by the department upon the grower's written application for a refund. The application shall have attached proof of the tax deducted.

The excise tax shall be deducted whether the corn or grain sorghum is stored in this or any other state. The excise tax shall not apply to the sale of corn or grain sorghum to the federal government for ultimate use or consumption by the people of the United States when the State of Nebraska is prohibited from imposing such tax by the Constitution of the United States and laws enacted pursuant thereto.

Source: Laws 1995, LB 377, § 2; Laws 1996, LB 1336, § 7; Laws 1999, LB 605, § 3; Laws 2001, LB 536, § 4; Laws 2004, LB 479, § 8; Laws 2004, LB 1065, § 8; Laws 2005, LB 90, § 18; Laws 2007, LB322, § 14; Laws 2007, LB701, § 28.

66-1345.02 Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.

(1) The first purchaser, at the time of sale or delivery, shall retain the excise tax as provided in section 66-1345.01 and shall maintain the necessary records of the excise tax for each sale or delivery of corn or grain sorghum. Records maintained by the first purchaser shall provide (a) the name and address of the seller or deliverer, (b) the date of the sale or delivery, (c) the number of bushels of corn or hundredweight of grain sorghum sold or delivered, and (d) the amount of excise tax retained on each sale or delivery. The records shall be open for inspection and audit by authorized representatives of the Department of Agriculture during normal business hours observed by the first purchaser.

(2) The first purchaser shall render and have on file with the department by the last day of each January, April, July, and October on forms prescribed by the department a statement of the number of bushels of corn and hundredweight of grain sorghum sold or delivered in Nebraska. At the time the statement is filed, the first purchaser shall pay and remit to the department the excise tax.

(3) The department shall remit the excise tax collected to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund within thirty days after the end of each quarter through December 31, 2012. Beginning January 1, 2013, the department shall remit the excise tax collected to the State Treasurer for credit to the Water Resources Cash Fund within thirty days after the end of each quarter.

(4) The department shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Ethanol Production Incentive Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month, with such transfers ending December 31, 2012. Beginning January 1, 2013, the Department of Agriculture shall calculate its costs in collecting and enforcing the excise tax imposed by section 66-1345.01 and shall report such costs to the budget division of the Department of Administrative Services within thirty days after the end of the fiscal year. Sufficient funds to cover such costs shall be transferred from the Water Resources Cash Fund to the Management Services Expense Revolving Fund at the end of each calendar month. Funds shall be transferred upon the receipt of a report of costs incurred by the Department of Agriculture for the previous calendar month by the budget division of the Department of Administrative Services.

Source: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB322, § 15; Laws 2007, LB701, § 29.

66-1345.03 Excise tax; violation; penalty.

Any person violating any of the provisions of section 66-1345.01 or 66-1345.02 shall be guilty of a Class III misdemeanor.

Source: Laws 1995, LB 377, § 5.

66-1345.04 Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

(1) The State Treasurer shall transfer from the General Fund to the Ethanol Production Incentive Cash Fund, on or before the end of each of fiscal years 1995-96 and 1996-97, $8,000,000 per fiscal year.

(2) It is the intent of the Legislature that the following General Fund amounts be appropriated to the Ethanol Production Incentive Cash Fund in each of the following years:

(a) For each of fiscal years 1997-98 and 1998-99, $7,000,000 per fiscal year;

(b) For fiscal year 1999-2000, $6,000,000;

(c) For fiscal year 2000-01, $5,000,000;

(d) For fiscal year 2001-02 and for each of fiscal years 2003-04 through 2006-07, $1,500,000;

(e) For each of fiscal years 2005-06 and 2006-07, $2,500,000 in addition to the amount in subdivision (2)(d) of this section;

(f) For fiscal year 2007-08, $5,500,000;

(g) For each of fiscal years 2008-09 through 2011-12, $2,500,000;

(h) For each of fiscal years 2005-06 and 2006-07, $5,000,000 in addition to the other amounts in this section;

(i) For fiscal year 2007-08, $15,500,000 in addition to the other amounts in this section;

(j) For fiscal year 2009-10, $8,250,000 in addition to the other amounts in this section; and

(k) For fiscal year 2010-11, $3,000,000 in addition to the other amounts in this section.

Source: Laws 1995, LB 377, § 4; Laws 1999, LB 605, § 5; Laws 2001, LB 536, § 6; Laws 2002, Second Spec. Sess., LB 1, § 3; Laws 2005, LB 90, § 19; Laws 2006, LB 968, § 1; Laws 2007, LB322, § 16; Laws 2009, LB316, § 17.

66-1345.05 Funds received by the Department of Revenue; disposition.

Any funds received by the Department of Revenue which result from an ethanol producer claiming excess credit, and any related interest and penalties thereon, shall be remitted to the State Treasurer for credit to the Ethanol Production Incentive Cash Fund.

Source: Laws 2004, LB 479, § 3.

66-1346 Repealed. Laws 2004, LB 479, § 12.

66-1347 Repealed. Laws 1999, LB 605, § 8.

66-1348 Investment agreements; act; how construed.

Nothing in the Ethanol Development Act shall be construed to extend or affect the terms of any investment agreement entered into by the Ethanol Authority and Development Board prior to April 30, 1992.

Source: Laws 1993, LB 364, § 19.

66-1349 Ethanol facility eligible for tax credits or incentives; employ residents.

Any ethanol facility eligible for tax credits or incentives under the Ethanol Development Act, the Employment and Investment Growth Act, or the Nebraska Advantage Rural Development Act shall whenever possible employ workers who are residents of the State of Nebraska.

Source: Laws 1994, LB 961, § 4; Laws 2005, LB 312, § 3.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Ethanol Development Act, see section 66-1330.
Nebraska Advantage Rural Development Act, see section 77-27,187.

66-1350 Repealed. Laws 2004, LB 810, § 1; Laws 2004, LB 940, § 4.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

Section
66-1401. Act, how cited.
66-1402. Purpose of act.
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66-1405. Tax rate; how determined; setoff authorized.
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66-1411.01. Director; enforcement powers.
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66-1413. Contract to administer act; authorized.
66-1414. Fuel tax; disposition; Motor Carrier Services Division Distributive Fund; created; use; investment.
66-1415. Decal fee; Motor Carrier Division Cash Fund; use.
66-1416. Sections; purpose; terms, defined.
66-1417. Trip permit or payment of motor fuels taxes; required; violation; penalty.
66-1418. Trip permits; issuance; fees.
66-1419. Records; required.

66-1401 Act, how cited.

Sections 66-1401 to 66-1419 shall be known and may be cited as the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 1; Laws 1996, LB 1218, § 22; Laws 1998, LB 1056, § 3; Laws 2004, LB 983, § 60.

66-1402 Purpose of act.

It is the purpose of the International Fuel Tax Agreement Act to simplify the motor fuel tax licensing, bonding, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the director to participate in cooperative fuel tax agreements with another state or states to permit the administration, collection, and enforcement of each state's motor fuel taxes by the base state.

Source: Laws 1988, LB 836, § 2; Laws 1996, LB 1218, § 23.

66-1403 Terms, defined.

For purposes of the International Fuel Tax Agreement Act, unless the context otherwise requires:

(1) Agreement means a cooperative fuel tax agreement entered into under section 66-1404;

(2) Base state means the state where (a) the motor vehicles are based for vehicle registration purposes, (b) the operational control and operational records of the licensee's motor vehicles are maintained or can be made available, and (c) some mileage is accrued by motor vehicles within the fleet;

(3) Director means the Director of Motor Vehicles or his or her designee and includes the Division of Motor Carrier Services of the Department of Motor Vehicles; and

(4) Licensee means a person licensed pursuant to the methods established in subdivision (2) of section 66-1406.

Source: Laws 1988, LB 836, § 3; Laws 1991, LB 627, § 135; Laws 1996, LB 1218, § 24.

66-1404 Cooperative fuel tax agreements; local reciprocal exemption agreements; authorized.

The director may enter into a cooperative fuel tax agreement with another state or states which provides for the administration, collection, and enforcement by the base state of each state's motor fuel taxes on motor fuel used by interstate motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to vehicle licensing, size, weight, or load or the operation of motor vehicles upon the highways of this state. The director may also enter into agreements that provide for local reciprocal exemptions from motor fuel tax apportionment for a motor carrier operating within a limited local delivery area near the borders of the state. The agreements for local reciprocal exemptions may only extend to deliveries not more than fifteen miles into another state and shall require a ninety-day notice to rescind the agreement.

Source: Laws 1988, LB 836, § 4; Laws 1996, LB 1218, § 25; Laws 1999, LB 77, § 1.

66-1405 Tax rate; how determined; setoff authorized.

The amount of the tax imposed and collected on behalf of this state under an agreement shall be determined as provided in Chapter 66, articles 4 and 6. The Department of Revenue in administering such articles shall provide information and assistance to the director regarding the amount of tax imposed and collected from time to time as may be necessary. The amount of tax due under an agreement may be collected by setoff against any state income tax refund due to the taxpayer pursuant to sections 77-27,210 to 77-27,221.

Source: Laws 1988, LB 836, § 5; Laws 1996, LB 1218, § 26; Laws 1997, LB 720, § 20.

66-1406 Agreements; provisions.

An agreement may provide for:

(1) Defining the classes of motor vehicles upon which the motor fuel taxes are to be collected under the agreement;

(2) Establishing methods for motor fuel tax licensing, license revocation, and tax collection for motor carriers by the base state on behalf of itself and all other states which are parties to the agreement;

(3) Establishing procedures for the granting of credits or refunds;

(4) Defining conditions and criteria relative to bonding requirements including criteria for exemption from bonding;

(5) Establishing tax reporting periods and tax report due dates not to exceed one calendar month after the close of the reporting period;

(6) Providing for a penalty at a rate of fifty dollars for each reporting period or ten percent of the delinquent tax whichever is greater for failure to file a report, for filing a late report, or for filing an underpayment of taxes due;

(7) Interest on all delinquent taxes at a rate set by the base state;

(8) Establishing procedures for forwarding of motor fuel taxes, penalties, and interest collected on behalf of another state to that state;

(9) Record-keeping requirements for licensees; and

(10) Any additional provisions which will facilitate the administration of the agreement.

Source: Laws 1988, LB 836, § 6; Laws 1991, LB 627, § 136; Laws 2001, LB 387, § 10.

Cross References

Conducting activities without a license, penalty, see section 66-727.

66-1406.01 License required; when.

Any motor carrier involved in interstate commerce who is required to pay motor fuel taxes shall obtain a license from the director pursuant to an agreement entered into under the International Fuel Tax Agreement Act.

Source: Laws 1998, LB 1056, § 4.

66-1406.02 License; director; powers.

(1) The director may suspend, revoke, cancel, or refuse to issue or renew a license under the International Fuel Tax Agreement Act:

(a) If the applicant's or licensee's registration certificate issued pursuant to the International Registration Plan Act has been suspended, revoked, or canceled or the director refused to issue or renew such certificate;

(b) If the applicant or licensee is in violation of sections 75-392 to 75-399;

(c) If the applicant's or licensee's security has been canceled;

(d) If the applicant or licensee failed to provide additional security as required;

(e) If the applicant or licensee failed to file any report or return required by the motor fuel laws, filed an incomplete report or return required by the motor fuel laws, did not file any report or return required by the motor fuel laws electronically, or did not file a report or return required by the motor fuel laws on time;

(f) If the applicant or licensee failed to pay taxes required by the motor fuel laws due within the time provided;

(g) If the applicant or licensee filed any false report, return, statement, or affidavit, required by the motor fuel laws, knowing it to be false;

(h) If the applicant or licensee would no longer be eligible to obtain a license; or

(i) If the applicant or licensee committed any other violation of the International Fuel Tax Agreement Act or the rules and regulations adopted and promulgated under the act.

(2) Prior to taking any action pursuant to subsection (1) of this section, the director shall notify and advise the applicant or licensee of the proposed action and the reasons for such action in writing, by registered or certified mail, to his or her last-known business address as shown on the application or license. The notice shall also include an advisement of the procedures in subsection (3) of this section.

(3) The applicant or licensee may, within thirty days after the mailing of the notice, petition the director in writing for a hearing to contest the proposed action. The hearing shall be commenced in accordance with the rules and regulations adopted and promulgated by the Department of Motor Vehicles. If a petition is filed, the director shall, within twenty days after receipt of the petition, set a hearing date at which the applicant or licensee may show cause why the proposed action should not be taken. The director shall give the applicant or licensee reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or licensee, the applicant or licensee may appeal the decision in accordance with the Administrative Procedure Act.

(4) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, the filing of the petition shall stay any action by the director until a hearing is held and a final decision and order is issued.

(5) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if no petition is filed at the expiration of thirty days after the date on which the notification was mailed, the director may take the proposed action described in the notice.

(6) Except as provided in subsection (2) of section 60-3,205 and subsection (8) of this section, if, in the judgment of the director, the applicant or licensee has complied with or is no longer in violation of the provisions for which the director took action under this section, the director may reinstate the license without delay. An applicant for reinstatement, issuance, or renewal of a license within three years after the date of suspension, revocation, cancellation, or refusal to issue or renew shall submit a fee of one hundred dollars to the director. The director shall remit the fee to the State Treasurer for credit to the Highway Cash Fund.

(7) Suspension of, revocation of, cancellation of, or refusal to issue or renew a license by the director shall not relieve any person from making or filing the reports or returns required by the motor fuel laws in the manner or within the time required.

(8) Any person who receives notice from the director of action taken pursuant to subsection (1) of this section shall, within three business days, return such registration certificate and license plates issued pursuant to section 60-3,198 to

the department. If any person fails to return the registration certificate and license plates to the department, the department shall notify the Nebraska State Patrol that any such person is in violation of this section.

Source: Laws 1998, LB 1056, § 5; Laws 2003, LB 563, § 38; Laws 2006, LB 853, § 22; Laws 2007, LB358, § 11; Laws 2009, LB331, § 13.

Cross References

Administrative Procedure Act, see section 84-920.
International Registration Plan Act, see section 60-3,192.

66-1407 Excess tax paid; credit.

Any licensee paying more tax than is required during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax paid. Upon request, this credit may be refunded to the licensee by the director in accordance with the agreement.

Source: Laws 1988, LB 836, § 7; Laws 1996, LB 1218, § 27.

66-1408 Audits authorized.

An agreement may require the director to perform audits of persons required to be licensed who are based in this state to determine if the motor fuel taxes to be collected under the agreement have been properly reported and paid to each state participating in the agreement. The agreement may authorize other states to perform audits of persons required to be licensed who are based in such other state on behalf of the State of Nebraska and forward the findings to the director. The director may issue a notice of deficiency determination based on the findings from the other state.

The agreement shall not preclude the director from auditing the records of any person who has used motor fuels in this state. Any person required to be licensed shall make his or her records available on request of the director.

If the person is based in this state, the records shall be made available at the location designated by the director or such person may request the director to audit such records at the person's place of business. If the place of business is located outside this state, the director may require the person to reimburse the director for authorized per diem and travel expenses.

Source: Laws 1988, LB 836, § 8; Laws 1996, LB 1218, § 28.

66-1409 Director; disclose information; when.

The director may forward to the representative of another state designated in the agreement any information in the director's possession relative to the manufacture, receipt, sale, use, transportation, or shipment of motor fuels by any person required to be licensed. The director may disclose information to the representative of the other state which relates to the location of officers, motor vehicles, and other real and personal property of persons required to be licensed under the agreement who use motor fuels. Any information covered by an agreement with the Internal Revenue Service may only be released in accordance with such agreement.

Source: Laws 1988, LB 836, § 9; Laws 1996, LB 1218, § 29.

66-1410 Rules and regulations.

The director shall adopt and promulgate rules and regulations necessary to implement any agreement entered into under the International Fuel Tax Agreement Act.

Source: Laws 1988, LB 836, § 10; Laws 1996, LB 1218, § 30.

66-1411 Legal remedies; rules and regulations.

(1) The legal remedies for any person served with an order or assessment under the International Fuel Tax Agreement Act shall be as prescribed in Chapter 66, article 7, and the Administrative Procedure Act.

(2) The director shall adopt and promulgate rules and regulations for enforcement, collection, and appeals consistent with Chapter 66, article 7, the Administrative Procedure Act, and the International Fuel Tax Agreement Act. Any person filing a report or return for tax due shall follow the filing periods or due dates established by the agreement under section 66-1406.

Source: Laws 1988, LB 836, § 11; Laws 1996, LB 1218, § 31; Laws 1997, LB 720, § 21.

Cross References

Administrative Procedure Act, see section 84-920.

66-1411.01 Director; enforcement powers.

The director may use the provisions of the Uniform State Tax Lien Registration and Enforcement Act for purposes of enforcing the International Fuel Tax Agreement Act.

Source: Laws 1996, LB 1218, § 36.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

66-1412 Agreement; controlling provisions.

If the director enters into any agreement authorized by the International Fuel Tax Agreement Act and the provisions set forth in the agreement are in conflict with any rules or regulations adopted and promulgated by the director, the agreement shall control to the extent of any conflict.

Source: Laws 1988, LB 836, § 12; Laws 1996, LB 1218, § 32.

66-1413 Contract to administer act; authorized.

The Division of Motor Carrier Services of the Department of Motor Vehicles may contract with another state agency or an association organized under the laws of this state, not for profit, to administer for the division the parts of the International Fuel Tax Agreement Act as designated by the director.

Source: Laws 1988, LB 836, § 13; Laws 1996, LB 1218, § 33.

66-1414 Fuel tax; disposition; Motor Carrier Services Division Distributive Fund; created; use; investment.

(1) Any fuel tax collected pursuant to the agreement shall be remitted to the State Treasurer for credit to the Motor Carrier Services Division Distributive Fund to carry out the International Fuel Tax Agreement Act.

(2) The Motor Carrier Services Division Distributive Fund is created. The fund shall be set apart and maintained by the State Treasurer to carry out the International Fuel Tax Agreement Act and the International Registration Plan Act. Any money in the Motor Carrier Services Division Distributive 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. Any interest received on money in the Motor Carrier Services Division Distributive Fund shall be credited to the Highway Trust Fund.

Source: Laws 1988, LB 836, § 14; Laws 1991, LB 627, § 137; Laws 1994, LB 1066, § 56; Laws 1994, LB 1160, § 115; Laws 1995, LB 182, § 63; Laws 1996, LB 1218, § 34; Laws 1997, LB 720, § 22; Laws 1998, LB 1056, § 6; Laws 2003, LB 563, § 39.

Cross References

International Registration Plan Act, see section 60-3,192.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1415 Decal fee; Motor Carrier Division Cash Fund; use.

(1) An additional fee may be collected by the issuing agency or association from a licensee for each annual decal issued pursuant to the agreement. The fee shall be in an amount determined by the director to be sufficient to recover reasonable administrative costs of the agreement but not more than ten dollars per annual decal. The fee shall be remitted to the State Treasurer and credited to the Motor Carrier Division Cash Fund, except that the director may by contract with an association provide for the association to retain a portion of the fee as payment for services rendered under the contract.

(2) The Motor Carrier Division Cash Fund shall be used to pay administrative costs of the International Fuel Tax Agreement Act. If any staff used for enforcing the agreement provided for in the act is used for any other state tax or program, the costs attributed to such other tax or program shall be borne by either the General Fund or the fund to which the money resulting from such other tax or program is credited, however it is appropriated by the Legislature. Any money in the Interstate Motor Carriers Base State Cash Fund on July 1, 1996, shall be transferred to the Motor Carrier Division Cash Fund on such date.

Source: Laws 1988, LB 836, § 15; Laws 1996, LB 1218, § 35.

66-1416 Sections; purpose; terms, defined.

The purpose of sections 66-1416 to 66-1419 is to provide an additional method of collecting motor fuels taxes from interstate motor vehicle operators commensurate with their operations in Nebraska and to permit the department to suspend the collection as to transportation entering Nebraska from any other state when it appears that Nebraska tax revenue and interstate highway transportation moving out of Nebraska will not be unduly prejudiced thereby.

For purposes of such sections, (1) fuel used or consumed in operations includes all fuel placed in the supply tanks and consumed in the engine of a qualified motor vehicle and (2) qualified motor vehicle means a motor vehicle used, designed, or maintained for transportation of persons or property which (a) has two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, (b) has three or more axles regardless of

weight, or (c) is used in combination when the weight of such combination exceeds twenty-six thousand pounds gross vehicle or registered gross vehicle weight. Qualified motor vehicle does not include a recreational vehicle.

Source: Laws 2004, LB 983, § 61.

66-1417 Trip permit or payment of motor fuels taxes; required; violation; penalty.

No person shall bring into this state in the fuel supply tanks of a qualified motor vehicle or in any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuels to be used in the operation of the vehicle in this state unless he or she has purchased a trip permit pursuant to section 66-1418 or paid or made arrangements in advance for payment of Nebraska motor fuels taxes on the gallonage consumed in operating the vehicle in this state.

Any person who brings into this state in the fuel supply tanks of a qualified motor vehicle motor fuels in violation of the International Fuel Tax Agreement Act shall be subject to an administrative penalty of one hundred dollars for each violation to be assessed and collected by the department or another state agency which may be contracted with to act as the department's agent for such purpose. All such penalties collected shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2004, LB 983, § 62.

66-1418 Trip permits; issuance; fees.

The department shall provide for a trip permit to be issued. Such trip permits shall be issued for a fee of twenty dollars and shall be valid for a period of seventy-two hours. The carrier enforcement division designated under section 60-1303 shall act as an agent for the department in collecting the fees prescribed in this section and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. Such trip permits shall be available at weighing stations operated by the carrier enforcement division and at various vendor stations as determined appropriate by the carrier enforcement division. Trip permits shall be obtained at the first available location, whether that is a weighing station or a vendor station. The vendor stations shall be entitled to collect and retain an additional fee of ten percent of the fee collected pursuant to this section as reimbursement for the clerical work of issuing the permits.

Source: Laws 2004, LB 983, § 63.

66-1419 Records; required.

Every person operating under sections 66-1416 to 66-1419 shall make and keep for a period of three years, or five years if required reports, returns, or statements are not filed, such records as may reasonably be required by the department for the administration of such sections.

If, in the normal conduct of the business, the required records are maintained and kept at an office outside the State of Nebraska, it shall be a sufficient compliance with this section if the records are made available for audit and

examination by the department within this state, but such audit and examination shall be without expense to the State of Nebraska.

Source: Laws 2004, LB 983, § 64.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

Section

66-1501 Act, how cited.

Sections 66-1501 to 66-1532 shall be known and may be cited as the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 1; Laws 1991, LB 409, § 1; Laws 1994, LB 1160, § 116; Laws 1996, LB 1226, § 1; Laws 1998, LB 1161, § 26; Laws 2004, LB 962, § 103.

66-1502 Statement of purpose.

(1) The Legislature restates the declaration of legislative purpose as set forth in section 81-1501 that the public policy of this state is hereby declared to be:

(a) To conserve the water in this state and to protect and improve the quality of water for human consumption, wildlife, fish and other aquatic life, industry, recreation, and other productive, beneficial uses;

(b) To achieve and maintain a reasonable degree of purity of the natural atmosphere of this state that human beings and all other animals and plants which are indigenous to this state will flourish in approximately the same balance as they have in recent history and to adopt and promulgate laws, rules, and regulations and to uniformly enforce the same in such a manner as to give meaningful recognition to the protection of each element of the environment, air, water, and land; and

(c) To cooperate with other states and the federal government to accomplish the objectives set forth in the Environmental Protection Act.

(2) The Legislature finds that the number of leaking petroleum storage tanks throughout the state is increasing and that there exists a serious threat to the health and safety of citizens because petroleum contained in leaking storage tanks is a potential land and ground water contaminant and major fire and explosive hazard. Furthermore, owners of petroleum tanks may not have the ability to assess and clean up any releases from those petroleum tanks.

(3) The Legislature finds and declares that it is in the public interest that a distribution network for petroleum be available to the public in the State of Nebraska. It is essential in this state to encourage owners of petroleum tanks across the state to remain in business to maintain the viability of the distribution network. At the present time, meeting financial responsibility requirements imposed by the federal government has placed a burden on the owners of petroleum tanks that jeopardizes their ability to store and distribute petroleum and to remain a part of the distribution network.

Source: Laws 1989, LB 289, § 2.

Cross References

Environmental Protection Act, see section 81-1532.

66-1503 Definitions, where found.

For purposes of the Petroleum Release Remedial Action Act, the definitions found in sections 66-1504 to 66-1515.01 shall be used.

Source: Laws 1989, LB 289, § 3; Laws 1991, LB 409, § 2; Laws 1994, LB 1160, § 117.

66-1504 Department, defined.

Department shall mean the Department of Environmental Quality.

Source: Laws 1989, LB 289, § 4; Laws 1993, LB 3, § 38.

66-1505 Repealed. Laws 1994, LB 1160, § 127.

66-1506 Fund, defined.

Fund shall mean the Petroleum Release Remedial Action Cash Fund created in section 66-1519.

Source: Laws 1989, LB 289, § 6.

66-1507 Importer, defined.

Importer shall mean any person who imports or causes to be imported petroleum from any other state or territory of the United States or from a foreign country for such person's own use in or for sale in this state, whether or not in the original package, receptacle, or container. Importer shall not include a person who imports petroleum in a tank directly connected to the engine of a motor vehicle, train, watercraft, or airplane for purposes of providing fuel to the engine to which the tank is connected.

Source: Laws 1989, LB 289, § 7.

66-1508 Operator, defined.

Operator shall mean a person in control of or having responsibility for the daily operation of a tank. Operator shall not include a person described in subsection (2) of section 66-1509.

Source: Laws 1989, LB 289, § 8; Laws 1991, LB 409, § 3.

66-1509 Owner, defined.

(1) Owner shall mean:

(a) In the case of a tank in use on or after November 8, 1984, or brought into use after such date, any person who owns a tank used for the storage, use, or dispensing of petroleum; and

(b) In the case of a tank in use before November 8, 1984, but no longer in use on such date, any person who owned such tank immediately before the discontinuation of its use.

(2) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(a) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(b) Acquires ownership of a tank or the property on or within which a tank is or was located:

(i) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(ii) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(3) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

Source: Laws 1989, LB 289, § 9; Laws 1991, LB 409, § 4; Laws 1996, LB 1226, § 3.

Cross References

Uniform Fraudulent Transfer Act, see section 36-701.

66-1510 Petroleum, defined.

Petroleum shall mean:

(1) For purposes of the fee provisions of section 66-1521:

(a) Motor vehicle fuel as defined in section 66-482, except natural gasoline used as a denaturant by an ethanol facility as defined in section 66-1333; and

(b) Diesel fuel as defined in section 66-482, including kerosene which has been blended for use as a motor fuel; and

(2) For purposes of all provisions of the Petroleum Release Remedial Action Act other than the fee provisions of section 66-1521:

(a) The fuels defined in subdivision (1) of this section; and

(b) A fraction of crude oil that is liquid at a temperature of sixty degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, except any such fraction which is regulated as a hazardous substance under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(14), as such act existed on January 1, 2005.

Source: Laws 1989, LB 289, § 10; Laws 1994, LB 1160, § 119; Laws 1995, LB 182, § 64; Laws 1997, LB 517, § 1; Laws 2004, LB 983, § 65; Laws 2005, LB 298, § 1.

66-1511 Refiner, defined.

Refiner shall mean any person who refines, prepares, blends, distills, manufactures, or compounds petroleum in Nebraska for such person's own use in this state or for sale or delivery in this state.

Source: Laws 1989, LB 289, § 11.

66-1512 Release, defined.

Release shall mean any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank or any overfilling of a tank into ground water, surface water, surface soils, or subsurface soils whether occurring before, on, or after May 27, 1989.

Source: Laws 1989, LB 289, § 12; Laws 1991, LB 409, § 5.

66-1513 Remedial action, defined.

Remedial action shall mean any immediate or long-term response to a release or suspected release in accordance with rules and regulations adopted and promulgated by the department or the State Fire Marshal, including tank testing only in conjunction with a release or suspected release, site investigation, site assessment, cleanup, restoration, mitigation, and any other action

ordered by the department or the State Fire Marshal which is reasonable and necessary. Remedial action shall not include:

(1) Tank restoration, upgrading, replacement, or rehabilitation;

(2) Actions which do not minimize, eliminate, or clean up a release or suspected release to protect the public safety, health, and welfare or the environment; or

(3) Aesthetic improvements.

Costs of remedial action shall not include costs for the actions specified in subdivisions (1) through (3) of this section, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan.

Source: Laws 1989, LB 289, § 13; Laws 1991, LB 409, § 6; Laws 1996, LB 1226, § 4.

66-1514 Responsible person, defined.

Responsible person shall mean a person who is an owner or operator of a tank. If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

(1) A person in the chain of title of a tank or in the property on or within which a tank is or was located;

(2) A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(3) A person who has acquired ownership of a tank or the property on or within which a tank is or was located:

(a) Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or

(b) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

Such voluntary action shall not be construed to render such party responsible or liable for remedial action or payment of the claim.

Source: Laws 1989, LB 289, § 14; Laws 1991, LB 409, § 7; Laws 1996, LB 1226, § 5.

66-1514.01 Supplier, defined.

Supplier shall mean any person who owns petroleum products imported by barge, barge line, or pipeline and stored at a barge, barge line, or pipeline terminal in this state.

Source: Laws 1994, LB 1160, § 118.

66-1515 Tank, defined.

Tank shall mean any one or a combination of stationary aboveground or underground containers and enclosures, including structures and appurtenances connected to them, that is or has been used to contain or dispense

petroleum, but tank shall not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. chapter 29, as in effect on January 1, 1988, or any lease production tank used in the production of crude oils.

Source: Laws 1989, LB 289, § 15.

66-1515.01 Third-party claim, defined.

Third-party claim shall mean a final judgment against a responsible person obtained by a third party for compensation for bodily injury and property damage caused by a release first reported after January 1, 1990.

Source: Laws 1991, LB 409, § 8.

66-1516 Responsibility for release or third-party claim; avoidance; prohibited; when.

Except as provided in section 81-15,124.05, no responsible person may avoid responsibility under state law for a release or third-party claim by means of a conveyance of any right, title, or interest in real property or by any indemnification, hold-harmless, or similar agreement. This section shall not be construed to:

(1) Prohibit a responsible person from entering into an agreement by which the person is insured or is a member of a risk retention group and is thereby indemnified for part or all of the liability;

(2) Prohibit the enforcement of an insurance, hold-harmless, or indemnification agreement; or

(3) Bar a cause of action brought by a responsible person or by an insurer or guarantor, whether by right of subrogation or otherwise.

Source: Laws 1989, LB 289, § 16; Laws 1991, LB 409, § 9; Laws 2001, LB 461, § 1.

66-1517 Reimbursement for remedial actions and third-party claims; act; how construed.

Reimbursement for remedial actions and third-party claims shall be governed by the Petroleum Release Remedial Action Act.

Nothing in the act shall be construed to limit the powers of the department or preclude the pursuit of any other administrative, civil, injunctive, or criminal remedies by the department or any other person. Administrative remedies need not be exhausted in order to proceed under the act. The remedies provided by the act shall be in addition to those provided under existing statutory or common law.

For purposes of section 25-328, the state shall have an interest in any litigation which might result in a third-party claim.

Nothing in the act shall be construed to limit a person's duty to notify the department and the State Fire Marshal or to take other action related to a release as required pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act.

Source: Laws 1989, LB 289, § 17; Laws 1991, LB 409, § 10.

Cross References

Environmental Protection Act, see section 81-1532.
Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1518 Rules and regulations; schedule of rates; use.

(1) The Environmental Quality Council shall adopt and promulgate rules and regulations governing reimbursements authorized under the Petroleum Release Remedial Action Act. Such rules and regulations shall include:

(a) Procedures regarding the form and procedure for application for payment or reimbursement from the fund, including the requirement for timely filing of applications;

(b) Procedures for the requirement of submitting cost estimates for phases or stages of remedial actions, procurement requirements to be followed by responsible persons, and requirements for reuse of fixtures and tangible personal property by responsible persons during a remedial action;

(c) Procedures for investigation of claims for payment or reimbursement;

(d) Procedures for determining the amount and type of costs that are eligible for payment or reimbursement from the fund;

(e) Procedures for auditing persons who have received payments from the fund;

(f) Procedures for reducing reimbursements made for a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements. Reimbursement may be reduced as much as one hundred percent; and

(g) Other procedures necessary to carry out the act.

(2) The Director of Environmental Quality shall (a) estimate the cost to complete remedial action at each petroleum contaminated site where the responsible party has been ordered by the department to begin remedial action, and, based on such estimates, determine the total cost that would be incurred in completing all remedial actions ordered; (b) determine the total estimated cost of all approved remedial actions; (c) determine the total dollar amount of all pending claims for payment or reimbursement; (d) determine the total of all funds available for reimbursement of pending claims; and (e) include the determinations made pursuant to this subsection in the department's annual report to the Legislature.

(3) The Department of Environmental Quality shall make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall consider the schedule of reasonable rates in reviewing all costs for the remedial action which are submitted in a plan. The rates shall be used to determine the amount of reimbursement for the eligible and reasonable costs of the remedial action, except that (a) the reimbursement for the costs of the remedial action shall not exceed the actual eligible and reasonable costs incurred by the responsible person or his or her designated representative and (b) reimbursement may be made for costs which exceed or are not included on the schedule of reasonable rates if the application for such reimbursement is accompanied

by sufficient evidence for the department to determine and the department does determine that such costs are reasonable.

Source: Laws 1989, LB 289, § 18; Laws 1991, LB 409, § 11; Laws 1993, LB 3, § 39; Laws 1994, LB 1349, § 9; Laws 1996, LB 1226, § 6; Laws 1997, LB 517, § 2; Laws 1998, LB 1161, § 27; Laws 1999, LB 270, § 1; Laws 2001, LB 461, § 2; Laws 2009, LB154, § 14.

66-1519 Petroleum Release Remedial Action Cash Fund; created; use; investment.

(1) There is hereby created the Petroleum Release Remedial Action Cash Fund to be administered by the department. Revenue from the following sources shall be remitted to the State Treasurer for credit to the fund:

(a) The fees imposed by sections 66-1520 and 66-1521;

(b) Money paid under an agreement, stipulation, cost-recovery award under section 66-1529.02, or settlement; and

(c) Money received by the department in the form of gifts, grants, reimbursements, property liquidations, or appropriations from any source intended to be used for the purposes of the fund.

(2) Money in the fund may be spent for: (a) Reimbursement for the costs of remedial action by a responsible person or his or her designated representative and costs of remedial action undertaken by the department in response to a release first reported after July 17, 1983, and on or before June 30, 2012, including reimbursement for damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred; (b) payment of any amount due from a third-party claim; (c) fee collection expenses incurred by the State Fire Marshal; (d) direct expenses incurred by the department in carrying out the Petroleum Release Remedial Action Act; (e) other costs related to fixtures and tangible personal property as provided in section 66-1529.01; (f) interest payments as allowed by section 66-1524; (g) claims approved by the State Claims Board authorized under section 66-1531; (h) a grant to a city of the metropolitan class in the amount of three hundred thousand dollars, provided no later than September 15, 2005, to carry out the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4851 et seq., as such act existed on October 1, 2003; and (i) methyl tertiary butyl ether testing, to be conducted randomly at terminals within the state for up to two years ending June 30, 2003. The amount expended on the testing shall not exceed forty thousand dollars. The testing shall be conducted by the Department of Agriculture. The department may enter into contractual arrangements for such purpose. The results of the tests shall be made available to the Department of Environmental Quality.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General Fund at the direction of the Legislature. Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the Water Policy Task Force Cash Fund at the direction of the Legislature. The State Treasurer shall transfer one million five hundred thousand dollars from the Petroleum Release Remedial Action Cash Fund to the Ethanol Production Incentive Cash Fund on July 1 of each of the following years: 2004 through 2011.

(4) Any money in the Petroleum Release Remedial Action Cash 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.

Source: Laws 1989, LB 289, § 19; Laws 1991, LB 409, § 12; Laws 1993, LB 237, § 1; Laws 1994, LB 1066, § 57; Laws 1996, LB 1226, § 7; Laws 1998, LB 1161, § 28; Laws 1999, LB 270, § 2; Laws 2001, LB 461, § 3; Laws 2002, LB 1003, § 41; Laws 2002, LB 1310, § 7; Laws 2003, LB 367, § 2; Laws 2004, LB 962, § 105; Laws 2004, LB 1065, § 9; Laws 2005, LB 40, § 4; Laws 2008, LB1145, § 1; Laws 2009, LB154, § 15.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1519.01 Petroleum Release Remedial Action Cash Fund; transfer to Wastewater Treatment Facilities Construction Loan Fund; authorized; repayment; contracts authorized.

(1) Prior to December 31, 1996, the department may authorize the State Treasurer to transfer funds from the Petroleum Release Remedial Action Cash Fund to the Wastewater Treatment Facilities Construction Loan Fund in such amount as determined by the department to be necessary to satisfy the state match requirement necessary to obtain federal capitalization grants under the federal Clean Water Act, as defined in section 81-15,149. The department may enter into contracts for repayment of such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such transfers. Such contracts may allow repayments to be completed on or after December 31, 1996.

(2) Prior to December 31, 1996, the department may authorize the State Treasurer to deposit amounts received from the Wastewater Treatment Facilities Construction Loan Fund, including amounts due from federal capitalization grants for the benefit of the Wastewater Treatment Facilities Construction Loan Fund, in the Petroleum Release Remedial Action Cash Fund. The department may authorize the State Treasurer to repay such amounts, plus any additional amounts, including interest, determined by the department to be reasonable and necessary with respect to such deposits, and the department may enter into contracts with respect thereto for the benefit of the Wastewater Treatment Facilities Construction Loan Fund. The terms of any such contracts or authorizations may end on or after December 31, 1996.

(3) The department may agree, in the contracts authorized under subsection (2) of this section, that specific amounts or sources of money in the Petroleum Release Remedial Action Cash Fund shall be obligated or pledged to the repayment of deposits from the Wastewater Treatment Facilities Construction Loan Fund, and that some or all of such specified amounts shall not be available to provide reimbursement pursuant to section 66-1523 or payments pursuant to section 66-1529.01 or 66-1529.02. Such specified amounts shall not exceed the amounts the department deems reasonably necessary to provide adequate security for the repayment of deposits. Any such pledge shall be valid and binding from the time the pledge is made, the amounts or sources of money so pledged shall immediately be subject to the lien of such pledge without any

physical delivery thereof or further act, the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise, regardless of whether the parties have notice thereof, and no such pledge agreement need be recorded.

Source: Laws 1996, LB 1226, § 2; Laws 1998, LB 1161, § 29.

66-1520 Owner of registered tank; petroleum release remedial action fee; amount.

(1) On each January 1, all owners of operating tanks registered in accordance with section 81-15,121 shall pay a petroleum release remedial action fee of ninety dollars to the State Fire Marshal for each registered tank.

(2) The State Fire Marshal shall remit the fees received pursuant to this section to the State Treasurer for credit to the fund.

Source: Laws 1989, LB 289, § 20; Laws 1991, LB 409, § 13; Laws 1998, LB 1161, § 30.

66-1521 Petroleum release remedial action fee; amount; license required; filing; violation; penalty; Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue; powers and duties; Petroleum Release Remedial Action Collection Fund; created; use; investment.

(1) A petroleum release remedial action fee is hereby imposed upon the producer, refiner, importer, distributor, wholesaler, or supplier who engages in the sale, distribution, delivery, and use of petroleum within this state, except that the fee shall not be imposed on petroleum that is exported. The fee shall also be imposed on diesel fuel which is indelibly dyed. The amount of the fee shall be nine-tenths of one cent per gallon on motor vehicle fuel as defined in section 66-482 and three-tenths of one cent per gallon on diesel fuel as defined in section 66-482. The amount of the fee shall be used first for payment of claims approved by the State Claims Board pursuant to section 66-1531; second, up to three million dollars of the fee per year shall be used for reimbursement of owners and operators under the Petroleum Release Remedial Action Act for investigations of releases ordered pursuant to section 81-15,124; and third, the remainder of the fee shall be used for any other purpose authorized by section 66-1519. The fee shall be paid by all producers, refiners, importers, distributors, wholesalers, and suppliers subject to the fee by filing a monthly return on or before the twenty-fifth day of the calendar month following the monthly period to which it relates. The pertinent provisions, specifically including penalty provisions, of the motor fuel laws as defined in section 66-712 shall apply to the administration and collection of the fee except for the treatment given refunds. There shall be a refund allowed on any fee paid on petroleum which was taxed and then exported, destroyed, or purchased for use by the United States Government or its agencies. The department may also adjust for all errors in the payment of the fee. In each calendar year, no claim for refund related to the fee can be for an amount less than ten dollars.

(2) No producer, refiner, importer, distributor, wholesaler, or supplier shall engage in the sale, distribution, delivery, or use of petroleum in this state without having first obtained a petroleum release remedial action license. Application for a license shall be made to the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue upon a form prepared and furnished by the division. If the applicant is an individual, the application shall

include the applicant's social security number. Failure to obtain a license prior to engaging in the sale, distribution, delivery, or use of petroleum shall be a Class IV misdemeanor. The division may suspend or cancel the license of any producer, refiner, importer, distributor, wholesaler, or supplier who fails to pay the fee imposed by subsection (1) of this section in the same manner as licenses are suspended or canceled pursuant to section 66-720.

(3) The division may adopt and promulgate rules and regulations necessary to carry out this section.

(4) The division shall deduct and withhold from the petroleum release remedial action fee collected pursuant to this section an amount sufficient to reimburse the direct costs of collecting and administering the petroleum release remedial action fee. Such costs shall not exceed one hundred fifty thousand dollars for each fiscal year. The one hundred fifty thousand dollars shall be prorated, based on the number of months the fee is collected, whenever the fee is collected for only a portion of a year. The amount deducted and withheld for costs shall be deposited in the Petroleum Release Remedial Action Collection Fund which is hereby created. The Petroleum Release Remedial Action Collection Fund shall be appropriated to the Department of Revenue. 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.

(5) The division shall collect the fee imposed by subsection (1) of this section.

Source: Laws 1989, LB 289, § 21; Laws 1991, LB 409, § 14; Laws 1991, LB 627, § 139; Laws 1994, LB 1066, § 58; Laws 1994, LB 1160, § 120; Laws 1997, LB 752, § 153; Laws 1998, LB 1161, § 31; Laws 2000, LB 1067, § 31; Laws 2004, LB 983, § 66; Laws 2009, LB165, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1522 Repealed. Laws 1998, LB 1161, § 99.

66-1523 Reimbursement; amount; limitations; Prompt Payment Act applicable.

(1) Except as provided in subsection (2) of this section, the department shall provide reimbursement from the fund in accordance with section 66-1525 to eligible responsible persons for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2012, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred seventy-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first ten thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed fifteen thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost

as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred seventy-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(2) Upon the determination by the department that the responsible person sold no less than two thousand gallons of petroleum and no more than two hundred fifty thousand gallons of petroleum during the calendar year immediately preceding the first report of the release or stored less than ten thousand gallons of petroleum in the calendar year immediately preceding the first report of the release, the department shall provide reimbursement from the fund in accordance with section 66-1525 to such an eligible person for the cost of remedial action for releases reported after July 17, 1983, and on or before June 30, 2012, and for the cost of paying third-party claims. The reimbursement for the cost of remedial action shall not exceed nine hundred eighty-five thousand dollars per occurrence. The total of the claims paid under section 66-1531 and the reimbursement for third-party claims shall not exceed one million dollars per occurrence. The responsible person shall pay the first five thousand dollars of the cost of the remedial action or third-party claim, twenty-five percent of the remaining cost of the remedial action or third-party claim not to exceed ten thousand dollars, and the amount of any reduction authorized under subsection (5) of section 66-1525. If the department determines that a responsible person was ordered to take remedial action for a release which was later found to be from a tank not owned or operated by such person, (a) such person shall be fully reimbursed and shall not be required to pay the first cost or percent of the remaining cost as provided in this subsection and (b) the first cost and percent of the remaining cost not required to be paid by the person ordered to take remedial action shall be paid to the fund as a cost of remedial action by the owner or operator of the tank found to be the cause of the release. In no event shall reimbursements or payments from the fund exceed the annual aggregate of one million nine hundred eighty-five thousand dollars per responsible person. Reimbursement of a cost incurred as a result of a suspension ordered by the department shall not be limited by this subsection if the suspension was caused by insufficiency in the fund to provide reimbursement.

(3) The department may make partial reimbursement during the time that remedial action is being taken if the department is satisfied that the remedial action being taken is as required by the department.

(4) If the fund is insufficient for any reason to reimburse the amount set forth in this section, the maximum amount that the fund shall be required to reimburse is the amount in the fund. If reimbursements approved by the department exceed the amount in the fund, reimbursements with interest shall be made when the fund is sufficiently replenished in the order in which the applications for them were received by the department, except that an application pending before the department on January 1, 1996, submitted by a local government as defined in section 13-2202 shall, after July 1, 1996, be reimbursed first when funds are available. This exception applies only to local government applications pending on and not submitted after January 1, 1996.

(5) Applications for reimbursement properly made before, on, or after April 16, 1996, shall be considered bills for goods or services provided for third parties for purposes of the Prompt Payment Act.

(6) Notwithstanding any other provision of law, there shall be no reimbursement from the fund for the cost of remedial action or for the cost of paying third-party claims for any releases reported on or after July 1, 2012.

(7) For purposes of this section, occurrence shall mean an accident, including continuous or repeated exposure to conditions, which results in a release from a tank.

Source: Laws 1989, LB 289, § 23; Laws 1991, LB 409, § 16; Laws 1993, LB 237, § 2; Laws 1996, LB 1226, § 9; Laws 1998, LB 1161, § 32; Laws 1999, LB 270, § 3; Laws 2001, LB 461, § 4; Laws 2004, LB 962, § 106; Laws 2008, LB1145, § 2.

Cross References

Prompt Payment Act, see section 81-2401.

66-1524 State not liable; when; payment of principal and interest on unpaid applications.

The State of Nebraska shall not be liable for any reimbursement under the Petroleum Release Remedial Action Act in the event that the fund is insufficient to reimburse the amount set forth in section 66-1523. Interest on any unpaid application for reimbursement shall continue to accrue on the principal amount of the application pursuant to the Prompt Payment Act until the principal amount of the reimbursement is paid, except such interest is not a liability of the state and is not required to be paid during any period of time that the fund is insufficient to pay the reimbursement.

On and after April 16, 1996, the department shall pay any unpaid applications by first paying the principal amount of all unpaid applications and then any accrued interest on the unpaid applications, except that the department shall not pay interest on interest. Notwithstanding provisions of the Prompt Payment Act and for purposes of applications on file with the department on April 16, 1996, applicants shall request payment of interest within ninety days of such date. For applications filed after April 16, 1996, all provisions of the Prompt Payment Act shall apply.

Source: Laws 1989, LB 289, § 24; Laws 1996, LB 1226, § 10.

Cross References

Prompt Payment Act, see section 81-2401.

66-1525 Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.

(1) Any responsible person or his or her designated representative who has taken remedial action in response to a release first reported after July 17, 1983, and on or before June 30, 2012, or against whom there is a third-party claim may apply to the department under the rules and regulations adopted and promulgated pursuant to section 66-1518 for reimbursement for the costs of the remedial action or third-party claim. Partial payment of such reimbursement to the responsible person may be authorized by the department at the approved stages prior to the completion of remedial action when a remedial action plan has been approved. If any stage is projected to take more than ninety days to

complete partial payments may be requested every sixty days. Such partial payment may include the eligible and reasonable costs of such plan or pilot projects conducted during the remedial action.

(2) No reimbursement may be made unless the department makes the following eligibility determinations:

(a) The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

(b) Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the Environmental Protection Act and the Petroleum Products and Hazardous Substances Storage and Handling Act. Substantial compliance shall be determined by the department taking into consideration the purposes of the Petroleum Release Remedial Action Act and the adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

(c) The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release;

(d) The department has approved the plan submitted by the responsible person for the remedial action in accordance with rules and regulations adopted and promulgated by the department pursuant to the Environmental Protection Act or the Petroleum Products and Hazardous Substances Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested. However, responsible persons may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for reimbursement at a later time if the responsible person complies with procedures provided to the responsible party by the department or set out in rules and regulations adopted and promulgated by the Environmental Quality Council;

(e) The costs for the remedial action were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

(f) If reimbursement for a third-party claim is involved, the cause of action for the third-party claim accrued after April 26, 1991, and the Attorney General was notified by any person of the service of summons for the action within ten days of such service; and

(g) The responsible person or his or her designated representative has paid the amount specified in subsection (1) or (2) of section 66-1523.

(3) The State Fire Marshal shall review each application prior to consideration by the department and provide to the department any information the State Fire Marshal deems relevant to subdivisions (2)(a) through (g) of this section. The State Fire Marshal shall issue a determination with respect to an

applicant's compliance with rules and regulations adopted and promulgated by the State Fire Marshal. The State Fire Marshal shall issue a compliance determination to the department within thirty days after receiving an application from the department.

(4) The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

(5) Reimbursements made for a remedial action may be reduced as much as one hundred percent for failure by the responsible person to comply with applicable statutory or regulatory requirements. In determining the amount of the reimbursement reduction, the department shall consider:

(a) The extent of and reasons for noncompliance;

(b) The likely environmental impact of the noncompliance; and

(c) Whether noncompliance was negligent, knowing, or willful.

(6) Except as provided in subsection (4) of this section, the department shall notify the responsible person of its approval or denial of the remedial action plan within one hundred twenty days after receipt of a remedial action plan which contains all the required information. If after one hundred twenty days the department fails to either deny, approve, or amend the remedial action plan submitted, the proposed plan shall be deemed approved. If the remedial action plan is denied, the department shall provide the reasons for such denial.

Source: Laws 1989, LB 289, § 25; Laws 1991, LB 409, § 17; Laws 1993, LB 237, § 3; Laws 1994, LB 1349, § 10; Laws 1996, LB 1226, § 11; Laws 1998, LB 1161, § 33; Laws 1999, LB 270, § 4; Laws 2001, LB 461, § 5; Laws 2004, LB 962, § 107; Laws 2008, LB1145, § 3.

Cross References

Environmental Protection Act, see section 81-1532.
Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

66-1526 Reimbursement; not subject to legal process or attachment; when.

The amount of reimbursement to be paid for remedial action which was done by a third party shall not be subject to legal process or attachment if paid to the responsible person for the purpose of payment to a third party who performed the remedial action.

Source: Laws 1989, LB 289, § 26.

66-1527 Failure to complete remedial action; reimburse fund.

If the responsible person who has received partial reimbursement from the fund for remedial action does not complete the remedial action as required by the rules and regulations, the responsible person shall reimburse to the fund an amount equal to the reimbursements received from the fund.

Source: Laws 1989, LB 289, § 27.

66-1528 Person receiving conveyance; action; not barred.

Nothing in the Petroleum Release Remedial Action Act shall be construed to bar a common-law, statutory, or any other cause of action which may be maintained against a responsible person by a private person who, subsequent to

a release, received a conveyance of any right, title, or interest in the parcel of real property on which such release occurred.

Source: Laws 1989, LB 289, § 28.

66-1529 Reimbursement; assignment; authorized.

Nothing in the Petroleum Release Remedial Action Act shall be construed to prohibit a responsible person from assigning to a third party any right, title, or interest which the responsible person may have in and to the proceeds from reimbursement for remedial action. Such third party may be a designated representative for the purposes of the act.

Source: Laws 1989, LB 289, § 29.

66-1529.01 Remedial action; fixtures and tangible personal property; treatment.

(1) The department shall reimburse the responsible person from the fund for damages to fixtures and costs of tangible personal property related to the remedial action as set forth in subsections (2) and (3) of this section.

(2) The responsible person shall be reimbursed from the fund for reasonable repair or replacement costs approved in a remedial action plan for fixtures which are damaged by the remedial action, except in the case of intentional acts or gross negligence by the responsible person or his or her agents. Costs for removal of fixtures are eligible for reimbursement at the time of site closure if such fixtures were a part of the approved remedial action. All fixtures reimbursed by the fund which are attached to real property are owned by the responsible person or the property owner, if different from the responsible person.

(3) The responsible person shall be reimbursed from the fund for the value of tangible personal property purchased by the responsible person and used in the remedial action. Reimbursement shall be according to the current schedule of reasonable rates made available by the department pursuant to section 66-1518. All tangible personal property reimbursed by the fund is owned by the state. The department may use tangible personal property reimbursed by the fund in other remedial actions, store such property until needed, maintain the property, or sell or dispose of such property in a manner beneficial to the fund. Any proceeds from the sale or disposal of such property shall be remitted to the State Treasurer for credit to the fund.

Source: Laws 1991, LB 409, § 18; Laws 1996, LB 1226, § 12; Laws 1998, LB 1161, § 34.

66-1529.02 Remedial actions by department; third-party claims; recovery of expenses.

(1) The department may undertake remedial actions in response to a release first reported after July 17, 1983, and on or before June 30, 2012, with money available in the fund if:

(a) The responsible person cannot be identified or located;

(b) An identified responsible person cannot or will not comply with the remedial action requirements; or

(c) Immediate remedial action is necessary, as determined by the Director of Environmental Quality, to protect human health or the environment.

(2) The department may pay the costs of a third-party claim meeting the requirements of subdivision (2)(f) of section 66-1525 with money available in the fund if the responsible person cannot or will not pay the third-party claim.

(3) Reimbursement for any damages caused by the department or a person acting at the department's direction while investigating or inspecting or during remedial action on property other than property on which a release or suspected release has occurred shall be considered as part of the cost of remedial action involving the site where the release or suspected release occurred. The costs shall be reimbursed from money available in the fund. If such reimbursement is deemed inadequate by the party claiming the damages, the party's claim for damages caused by the department shall be filed as provided in section 76-705.

(4) All expenses paid from the fund under this section, court costs, and attorney's fees may be recovered in a civil action in the district court of Lancaster County. The action may be brought by the county attorney or Attorney General at the request of the director against the responsible person. All recovered expenses shall be deposited into the fund.

Source: Laws 1991, LB 409, § 19; Laws 1993, LB 3, § 41; Laws 1993, LB 237, § 4; Laws 1998, LB 1161, § 35; Laws 1999, LB 270, § 5; Laws 2001, LB 461, § 6; Laws 2004, LB 962, § 108; Laws 2008, LB1145, § 4.

66-1530 Department; federal funding; duty.

The department shall cooperate in any action necessary to obtain federal funding to carry out the Petroleum Release Remedial Action Act.

Source: Laws 1989, LB 289, § 30.

66-1531 Claim under State Miscellaneous Claims Act authorized; procedure; limitations.

A person, other than a responsible person, may file a claim with the State Claims Board under the State Miscellaneous Claims Act for (1) property damage caused by a release and (2) reasonable costs directly incurred due to uninhabitability of a dwelling or unfitness of a water supply caused by a release. For purposes of claims made under this section, property damage means damage to real estate or water well contaminated as a result of a release. Claims approved under this section shall be approved on the basis of merit and eligibility as set forth in section 66-1525. Claims approved under this section shall be reduced by any third-party claim, as defined in section 66-1515.01, for the same damage. A claim approved under this section shall not be considered to be from a collateral source in a judicial proceeding for the same damage. Any claim under this section shall be paid from the Petroleum Release Remedial Action Cash Fund within sixty days after the claim is approved pursuant to section 81-8,300, subject to section 66-1523. A claim approved under this section shall not exceed two hundred thousand dollars and the total claims paid for property damage shall not exceed eight hundred thousand dollars per occurrence.

Source: Laws 1998, LB 1161, § 25.

Cross References

State Miscellaneous Claims Act, see section 81-8,294.

66-1532 Private insurance required; when.

Beginning July 1, 2009, the owner of any new tank at a site where tanks have not been previously located shall be fully insured through private insurance to cover the costs of any remedial action to such tank or the site on which such tank is located after such date.

Source: Laws 2004, LB 962, § 104.

ARTICLE 16

PROPANE EDUCATION AND RESEARCH ACT

Section
66-1601. Act, how cited.
66-1602. Purposes of act.
66-1603. Definitions, where found.
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66-1605. Council, defined.
66-1606. Education, defined.
66-1607. Industry, defined.
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66-1609. Manufacturer and distributor of liquefied petroleum gas equipment, defined.
66-1610. Odorized propane, defined.
66-1611. Person, defined.
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66-1615. Retail marketer, defined.
66-1616. Wholesaler, supplier, or importer, defined.
66-1617. Propane Education and Research Council; referendum for creation; approval.
66-1618. Council; members; appointment; terms.
66-1619. Council; powers and duties; rules and regulations.
66-1620. Council; implement act; use of funds.
66-1621. Propane education and research fee; collection and use.
66-1622. Act; how construed.
66-1623. Retail marketers; liability insurance; employees; training requirements; violation; penalty.
66-1624. Council; suspension or termination; referendum.
66-1625. Price of propane; legislative intent.
66-1626. Collection of fees.
66-1627. Venue.

66-1601 Act, how cited.

Sections 66-1601 to 66-1627 shall be known and may be cited as the Propane Education and Research Act.

Source: Laws 1998, LB 699, § 1.

66-1602 Purposes of act.

The purposes of the Propane Education and Research Act are (1) to authorize the creation of an industry-financed entity which will enable the Nebraska propane industry to educate the public and industry employees about proper safety and procedures in the storage, handling, transportation, and use of propane in any of its traditional residential, commercial, recreational, or agricultural applications and (2) to support efforts to increase the efficiency and value of propane energy service to the industry and its customers.

Source: Laws 1998, LB 699, § 2.

66-1603 Definitions, where found.

For purposes of the Propane Education and Research Act, the definitions found in sections 66-1604 to 66-1616 shall be used.

Source: Laws 1998, LB 699, § 3.

66-1604 Bulk, defined.

Bulk means quantities of more than five thousand gallons.

Source: Laws 1998, LB 699, § 4.

66-1605 Council, defined.

Council means the Propane Education and Research Council established under sections 66-1617 and 66-1618.

Source: Laws 1998, LB 699, § 5.

66-1606 Education, defined.

Education means any action which provides information, instruction, or safety guidelines about propane, propane equipment, mechanical and technical practices, and uses of propane to propane consumers or industry employees.

Source: Laws 1998, LB 699, § 6.

66-1607 Industry, defined.

Industry means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment.

Source: Laws 1998, LB 699, § 7.

66-1608 Industry trade association, defined.

Industry trade association means an organization which represents a segment of the industry and which is exempt from tax under section 501(c)(3) or (6) of the Internal Revenue Code.

Source: Laws 1998, LB 699, § 8.

66-1609 Manufacturer and distributor of liquefied petroleum gas equipment, defined.

Manufacturer and distributor of liquefied petroleum gas equipment means any person engaged in manufacturing, assembling, and marketing appliances, containers, and products used in the liquefied petroleum gas industry and any person in the wholesale marketing of appliances, containers, and products used in the liquefied petroleum gas industry.

Source: Laws 1998, LB 699, § 9.

66-1610 Odorized propane, defined.

Odorized propane means propane with odorant added.

Source: Laws 1998, LB 699, § 10.

66-1611 Person, defined.

Person means any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity.

Source: Laws 1998, LB 699, § 11.

66-1612 Propane, defined.

Propane means propane, butane, mixtures, and liquefied petroleum gas as defined by the National Fire Protection Association Standard 58 for the Storage and Handling of Liquefied Petroleum Gases the chemical composition of which is predominantly C3H8, whether recovered from natural gas or crude oil.

Source: Laws 1998, LB 699, § 12.

66-1613 Qualified industry organization, defined.

Qualified industry organization means any organization or industry trade association the members of which are engaged in the sale or distribution of odorized propane to the ultimate consumer or the sale of propane utilization equipment to the ultimate consumer.

Source: Laws 1998, LB 699, § 13.

66-1614 Research, defined.

Research means any type of study, investigation, or other activity performed by a qualified public or private research group for the purpose of advancing and improving the existing technology related to the propane industry, including the development of increased efficiency of propane use, of enhancing the safety of propane and propane utilization equipment, or of furthering the development of such information and products.

Source: Laws 1998, LB 699, § 14.

66-1615 Retail marketer, defined.

Retail marketer means any person with bulk propane storage engaged in the sale of odorized propane to the ultimate consumer or to retail propane dispensers within Nebraska.

Source: Laws 1998, LB 699, § 15.

66-1616 Wholesaler, supplier, or importer, defined.

Wholesaler, supplier, or importer means the owner of the propane at the time it is first delivered into Nebraska regardless of the state where production occurs, with ownership of the propane determined by the freight on board designation.

Source: Laws 1998, LB 699, § 16.

66-1617 Propane Education and Research Council; referendum for creation; approval.

(1) One or more qualified industry organizations, which in the aggregate represent at least thirty-five percent of the total volume of odorized propane sold at retail in the State of Nebraska, may conduct a referendum among retail

marketers for the creation of the Propane Education and Research Council. The organization conducting the referendum shall pay the cost of the referendum. If the council is established, the council shall reimburse the organization for the costs incurred by the independent accounting firm under subsection (2) of this section and any other costs for the referendum incurred which the council finds reasonable and necessary.

(2) The referendum shall be conducted by an independent accounting firm selected by the qualified industry organization initiating the referendum. Each retail marketer voting in the referendum shall be allowed one vote for each gallon of retail odorized propane sold by such retail marketer within the State of Nebraska in the previous calendar year or other specified representative period. All persons voting in the referendum shall certify to the independent accounting firm the volume of odorized propane represented by their votes. This information shall be treated as confidential information. Only vote totals shall be made public.

(3) Upon approval by retail marketers representing a majority of the votes cast in the referendum, the qualified industry organization initiating the referendum shall certify the vote to the Governor, the Propane Education and Research Council shall be created, and its members shall be appointed by the Governor as provided in section 66-1618.

Source: Laws 1998, LB 699, § 17.

66-1618 Council; members; appointment; terms.

(1) The council shall be appointed by the Governor within sixty days after the date the vote is certified to the Governor pursuant to section 66-1617. The council shall consist of nine members, including four members representing retail marketers, one member representing wholesalers, suppliers, and importers, one member representing manufacturers and distributors of liquefied petroleum gas equipment, one member representing the academic or propane research community, one propane user or consumer, and the State Fire Marshal or his or her designee. Other than the State Fire Marshal or his or her designee and the representatives of the research community and consumers, members shall be full-time employees or owners of businesses in the industry or representatives of agriculture cooperatives. Only one person from any company or an affiliated company may serve on the council at a time. All members shall be Nebraska residents, except that the members representing wholesalers, suppliers, and importers and manufacturers and distributors of liquefied petroleum gas equipment may be residents of other states.

(2) Members of the council shall serve terms of three years, except that, of the initial members, three shall be appointed for terms of one year and three shall be appointed for terms of two years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Members may serve a maximum of two consecutive full terms, except that members filling unexpired terms may serve a maximum of seven consecutive years. Members filling unexpired terms shall be appointed in a manner consistent with this section. Former members may be reappointed if they have not been members for a period of two years.

Source: Laws 1998, LB 699, § 18; Laws 2008, LB805, § 1.

66-1619 Council; powers and duties; rules and regulations.

(1) The council shall provide rules and regulations to carry out its responsibilities under the Propane Education and Research Act.

(2) The council may enter into contracts with, use facilities and equipment of, or employ the personnel of a qualified industry organization in carrying out the council's responsibilities under the act.

(3) The council shall protect the handling of council funds through fidelity bonds.

(4) The administrative costs of operating the council shall not exceed twenty percent of the funds collected pursuant to section 66-1621 in any fiscal year.

(5) The council shall operate in accordance with the Open Meetings Act.

(6) At the beginning of each fiscal year, the council shall prepare a budget plan which includes the estimated costs of all programs, projects, and contracts. The council shall provide an opportunity for public comment on the budget. The council shall prepare and make available to the public an annual report detailing the activities of the council in the previous year, those planned for the coming year, and the costs related to the activities.

(7) The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. Copies of the audit shall be provided to the executive director, if one is appointed by the council, to all members of the council, to the Clerk of the Legislature, and to any other member of the industry upon request.

(8) The council shall issue notice of meetings and shall require reports on the activities of the committees and subcommittees and on compliance, violations, and complaints regarding the implementation of the Propane Education and Research Act.

Source: Laws 1998, LB 699, § 19; Laws 2004, LB 821, § 15.

Cross References

Open Meetings Act, see section 84-1407.

66-1620 Council; implement act; use of funds.

The council shall develop programs and projects and enter into contracts or agreements for implementing the Propane Education and Research Act, including, but not limited to, programs to enhance consumer and employee safety and training, programs to provide research and development to improve existing propane technology, programs to increase efficiency of propane use, and any other programs to educate the public about the environmental and safety aspects of propane. At least seventy percent of the funds collected pursuant to section 66-1621 shall be used for education or for improvement of propane utilization safety equipment technology. No funds shall be used for the sole purpose of advertising propane or propane utilization equipment. Safety issues shall receive first priority in the development of all programs and projects funded by the council. The council shall provide for the payment of the costs for the programs and projects with funds collected pursuant to such section and shall coordinate its activities with qualified industry organizations to provide efficient delivery of services and to avoid unnecessary costs or duplication of activities.

Source: Laws 1998, LB 699, § 20.

66-1621 Propane education and research fee; collection and use.

(1) The council may levy a propane education and research fee on odorized propane sold in Nebraska to fund the Propane Education and Research Act. The fee shall not exceed two-tenths of one cent per gallon. The fee shall be calculated by multiplying the fee rate by the number of net gallons of odorized propane on a bill of lading, an invoice, or a shipping document of the wholesaler, supplier, or importer who first sells or offers for sale odorized propane or uses odorized propane in this state, who shall pay the fee. If the quantity specified in the bill of lading, invoice, or shipping document is listed in units other than gallons, the wholesaler, supplier, or importer shall convert those units to gallons, using conversion tables approved by the council, prior to remitting the fee to the council.

Fee payments shall be remitted to the council on a regular basis as established by the council. Nonodorized propane shall not be subject to the fee until odorized. The council may establish a late payment charge and provide for interest, at a rate equal to the maximum rate of interest allowed per annum under section 45-104.01 as such rate may from time to time be adjusted by the Legislature, to be imposed on any person who fails to remit any amount due under the act.

(2) Any funds which are due to the State of Nebraska and collected from a national assessment levied on propane shall be designated and accrue to the benefit of the council and shall be spent in accordance with the federal Propane Education and Research Act of 1996.

(3) Funds collected by the council shall not be used in any manner for influencing legislation or for political campaign contributions.

Source: Laws 1998, LB 699, § 21.

66-1622 Act; how construed.

The Propane Education and Research Act does not preempt or supersede any other program relating to propane safety or education which has been organized and is operating under state law.

Source: Laws 1998, LB 699, § 22.

66-1623 Retail marketers; liability insurance; employees; training requirements; violation; penalty.

All retail marketers of retail propane in Nebraska shall carry minimum liability insurance coverage of at least two million dollars, with proof of insurance provided to the State Fire Marshal. All persons employed in the installation or service of any propane system shall fully comply with training requirements provided in applicable sections governing the sale of propane as set forth by the National Fire Protection Association. Applicable requirements for guidelines as set forth by the National Fire Protection Association shall be enforced by the office of the State Fire Marshal.

Violation of this section shall subject the violator to a civil penalty of not less than one hundred dollars per day and not more than one thousand dollars per day. In case of a continuing violation, each day constitutes a separate offense. The amount of the penalty shall be based on the degree and extent of the violation. The Attorney General or each county attorney to whom the State Fire

Marshal reports a violation shall institute appropriate proceedings without delay to assure compliance with this section.

Source: Laws 1998, LB 699, § 23.

66-1624 Council; suspension or termination; referendum.

(1) The council may on its own initiative and shall upon the petition of retail marketers representing at least thirty-five percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska hold a referendum to be conducted by an independent accounting firm selected by the council to determine whether the council should be suspended or terminated. The council shall pay the costs of the referendum under this section.

(2) The council shall be suspended or terminated if suspension or termination is approved by retail marketers representing more than fifty percent, as determined by the council, of the total volume of odorized propane sold at retail in the State of Nebraska.

Source: Laws 1998, LB 699, § 24.

66-1625 Price of propane; legislative intent.

It is the intent of the Legislature that the price of propane shall always be determined by market forces. The council shall take no action to interfere in any manner with the free market process.

Source: Laws 1998, LB 699, § 25.

66-1626 Collection of fees.

Any person who unreasonably fails or refuses to pay any fee due under the Propane Education and Research Act may be subject to legal action by the council to recover the fees due, plus interest and costs.

Source: Laws 1998, LB 699, § 26.

66-1627 Venue.

The district court or county court of the county in which the violation occurs or in which the person required to pay the fee under section 66-1621 resides shall have jurisdiction to enjoin violations of the Propane Education and Research Act or the rules and regulations provided for under the act, as well as jurisdiction for civil actions to recover fees due, plus interest and costs. If neither of the jurisdictional considerations in this section applies, the district court of Lancaster County shall have jurisdiction.

Source: Laws 1998, LB 699, § 27.

ARTICLE 17
BIOPOWER STEERING COMMITTEE

Section
66-1701. Repealed. Laws 2009, LB 246, § 2.

66-1701 Repealed. Laws 2009, LB 246, § 2.

ARTICLE 18
STATE NATURAL GAS REGULATION ACT

STATE NATURAL GAS REGULATION ACT

Section
66-1801. Act, how cited.
66-1802. Terms, defined.
66-1803. Exemptions from act; conditions; action to determine.
66-1804. Commission; powers; act, how construed.
66-1805. Rules and regulations; commission; additional powers; Attorney General; duties.
66-1806. Jurisdictional utilities; filings required.
66-1807. Commission; powers; how construed.
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66-1809. Commission; investigations authorized; hearing; powers.
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66-1816. Jurisdictional utility; ownership of competitor; prohibited; when.
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66-1840. Commission; investigation expenses; assessment against jurisdictional utility; procedure.
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66-1843. Jurisdictional utility; failure to pay assessment; procedure.
66-1844. Jurisdictional utility; objections to assessment; procedure.
66-1845. Jurisdictional utility; assessment; action to recover.
66-1846. Action to recover assessment; requirements.
66-1847. Public natural gas utilities; requirements.
66-1848. Competitive natural gas providers and aggregators; terms, defined.
66-1849. Competitive natural gas providers and aggregators; certification by commission; costs and expenses; allocation.
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66-1851. Jurisdictional utility; customer choice or other programs; how treated.
66-1852. Extension of natural gas mains or other services; limitations.
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Section
66-1855. Banded rates; commission; powers.
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66-1857. Rights and remedies; how construed.
66-1858. Metropolitan utilities district; solicitations prohibited; proposals authorized; when.
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66-1863. Enlargement or extension of area; review by Public Service Commission; when required.
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66-1865. Jurisdictional utility; application and proposed rate schedules; filing; commission; powers.
66-1866. Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.
66-1867. Jurisdictional utility; prior filing subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; affected cities; powers; commission; powers; change in rate schedules.

66-1801 Act, how cited.

Sections 66-1801 to 66-1867 shall be known and may be cited as the State Natural Gas Regulation Act.

Source: Laws 2003, LB 790, § 1; Laws 2006, LB 1249, § 2; Laws 2009, LB658, § 1.

66-1802 Terms, defined.

For purposes of the State Natural Gas Regulation Act:

(1) Agricultural ratepayer means a ratepayer whose usage of natural gas does not qualify the ratepayer as a high-volume ratepayer and (a) whose principal use of natural gas is for agricultural crop or livestock production, irrigation pumping, crop drying, or animal feed or food production or (b) whose service is provided on an interruptible basis;

(2) Appropriate pretax revenue means the revenue necessary to produce net operating income equal to:

(a) The jurisdictional utility's weighted cost of capital multiplied by the net original cost of eligible infrastructure system replacements, including recognition of accumulated deferred income taxes and accumulated depreciation associated with eligible infrastructure system replacements which are included in an infrastructure system replacement cost recovery charge;

(b) Recovery of state, federal, and local income or excise taxes applicable to such income; and

(c) Recovery of depreciation expenses;

(3) BTU means the amount of energy necessary to raise the temperature of one pound of water one degree Fahrenheit;

(4) City means any city or village in the State of Nebraska;

(5) Commission means the Public Service Commission;

(6) Eligible infrastructure system replacement means jurisdictional utility plant projects that:

(a) Do not increase revenue by directly connecting the infrastructure system replacement to new customers;

(b) Are in service and used and required to be used;

(c) Were not included in the jurisdictional utility's rate base in its most recent general rate proceeding; and

(d) May enhance the capacity of the system but are only eligible for infrastructure system replacement cost recovery to the extent the jurisdictional utility plant project constitutes a replacement of existing infrastructure;

(7) Gas gathering system means a natural gas pipeline system used primarily for transporting natural gas from a wellhead, or from a metering point for natural gas produced by one or more wells, to a point of entry into a main transmission line;

(8) General rate filing means any filing which requests changes in overall revenue requirements for a jurisdictional utility but does not include a filing for an infrastructure system replacement cost recovery charge;

(9) High-volume ratepayer means a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption;

(10) Infrastructure system replacement cost recovery charge revenue means revenue produced through an infrastructure system replacement cost recovery charge exclusive of revenue from all other rates and charges;

(11) Interstate pipeline means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the federal Natural Gas Act, 15 U.S.C. 717 et seq., as such act existed on January 1, 2003;

(12) Intrastate natural gas utility business means all of that portion of the business of a natural gas public utility over which the commission has jurisdiction under the State Natural Gas Regulation Act;

(13) Jurisdictional utility means a natural gas public utility subject to the jurisdiction of the commission. Jurisdictional utility does not mean a natural gas public utility which is not subject to the jurisdiction of the commission pursuant to section 66-1803;

(14) Jurisdictional utility plant projects means only the following:

(a) Mains, valves, service lines, regulator stations, vaults, and other pipeline system components installed to comply with state or federal safety requirements as replacements for existing facilities;

(b) Main relining projects, service line insertion projects, joint encapsulation projects, and other similar projects extending the useful life or enhancing the integrity of pipeline system components undertaken to comply with state or federal safety requirements; and

(c) Facility relocations required due to construction or improvement of a highway, road, street, public way, or other public work by or on behalf of the United States, this state, a political subdivision of this state, or another entity having the power of eminent domain, if the costs related to such relocations have not been reimbursed to the jurisdictional utility;

(15) Natural gas public utility means any corporation, company, individual, or association of persons or their trustees, lessees, or receivers that owns,

controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline;

(16) Rate means every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service;

(17) Rate area means the geographic area within the state served by a single natural gas public utility through a common pipeline system from the same natural gas supply source within the common system for which the utility has similar costs for serving ratepayers of the same class; and

(18) Therm is equivalent to one hundred thousand BTUs.

Source: Laws 2003, LB 790, § 2; Laws 2009, LB658, § 2.

66-1803 Exemptions from act; conditions; action to determine.

(1) A natural gas public utility shall not be subject to the jurisdiction of the commission or the requirements of the State Natural Gas Regulation Act if (a) it distributes, sells, or transports natural gas or provides natural gas services to persons receiving services through fewer than seven thousand five hundred meters in the state, (b) it has entered into an agreement with a city in which it distributes, sells, or transports natural gas or provides natural gas services that establishes the terms and conditions of the service and the rates to be paid and such agreement is authorized by an ordinance in effect at the time of the distribution, sale, or transportation of natural gas or provision of natural gas services, and (c) the terms and conditions of such agreement are applicable to customers, if any, served by the natural gas public utility outside the jurisdiction of the city.

(2) Any ratepayer or city served by a natural gas public utility pursuant to subsection (1) of this section, the commission, the public advocate, or the natural gas public utility providing service pursuant to subsection (1) of this section may pursue an action in the district court of the county in which such utility operates for a determination as to whether or not such utility is subject to the jurisdiction of the commission and the requirements of the act by reason of the failure to meet one or more of the qualifying factors set out in subsection (1) of this section.

Source: Laws 2003, LB 790, § 3.

66-1804 Commission; powers; act, how construed.

(1) The commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction. Except as provided in the Nebraska Natural Gas Pipeline Safety Act of 1969, and notwithstanding any other provision of law, such power, authority, and juris-

diction shall extend to, but not be limited to, all matters encompassed within the State Natural Gas Regulation Act.

(2) The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be liberally construed, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.

Source: Laws 2003, LB 790, § 4; Laws 2006, LB 1249, § 3.

Cross References

Nebraska Natural Gas Pipeline Safety Act of 1969, see section 81-552.

66-1805 Rules and regulations; commission; additional powers; Attorney General; duties.

(1) The commission may adopt and promulgate rules and regulations to govern its proceedings and with regard to the mode and manner of all investigations, tests, audits, inspections, filings, and hearings. The commission may adopt and promulgate rules and regulations governing matters in the State Natural Gas Regulation Act and in furtherance of the act, including, but not limited to:

(a) Procedures and requirements for applications for rate and tariff changes;

(b) Requirements for jurisdictional utilities to maintain and make available to the public and the commission records and information;

(c) Requirements and procedures regarding customer billings and meter readings;

(d) Requirements regarding availability of meter tests;

(e) Requirements regarding billing adjustments for meter errors;

(f) Procedures and requirements for handling customer disputes and complaints;

(g) Procedures and requirements regarding temporary service, changes in location of service, and service interruptions;

(h) Standards and procedures to ensure nondiscriminatory credit policies;

(i) Procedures, requirements, and record-keeping guidelines regarding deposit policies;

(j) Procedures, requirements, and record-keeping guidelines regarding customer refunds;

(k) Policies for refusal of natural gas service;

(l) Policies for disconnection and transfer of natural gas service;

(m) Customer payment plans for delinquent bills;

(n) Requirements regarding advertising;

(o) The assessment and taxation of costs and fees;

(p) Procedures, requirements, and policies regarding the preservation, confidentiality, and disclosure of records in the possession of the commission; and

(q) Reporting requirements for transactions involving affiliated interests of jurisdictional utilities.

(2) The commission may:

(a) Confer with officers of other states and officers of the United States on any matter pertaining to the commission's official duties;

(b) Enter into and establish fair and equitable cooperative agreements or contracts with or act as an agent or licensee for the United States, or any official, agency, or instrumentality thereof, or any similar commission of another state, for the purpose of carrying out the commission's duties and to that end receive and disburse any contributions, grants, or other financial assistance as a result of or pursuant to such agreements or contracts; and

(c) Make joint investigations, hold joint hearings within or outside the state, and issue joint or concurrent orders in conjunction or concurrence with such official, agency, instrumentality, or commission.

(3) The Attorney General, when requested, shall give the commission such counsel and advice as the commission may from time to time require. The Attorney General shall aid and assist the commission in all judicial hearings, suits, and proceedings in which the commission requests the Attorney General's assistance.

Source: Laws 2003, LB 790, § 5.

66-1806 Jurisdictional utilities; filings required.

Every jurisdictional utility shall publish and file with the commission copies of all schedules of rates and shall furnish the commission copies of all terms and conditions of service and contracts between jurisdictional utilities pertaining to any and all jurisdictional services to be rendered by such jurisdictional utilities. The commission may adopt and promulgate reasonable rules and regulations regarding the form and filing of all schedules of rates and all rules and regulations of such jurisdictional utility, including such protection of confidentiality as requested by the jurisdictional utility, and the jurisdictional utility's suppliers and ratepayers, for contracts entered into by them, and as the commission determines reasonable and appropriate.

Source: Laws 2003, LB 790, § 6.

66-1807 Commission; powers; how construed.

Except as otherwise provided in the State Natural Gas Regulation Act, all orders, rules, regulations, practices, services, rates, charges, classifications, and tolls fixed by the commission shall be prima facie reasonable unless or until changed or modified by the commission or in pursuance of proceedings instituted in court as provided in the act.

Source: Laws 2003, LB 790, § 7.

66-1808 Rate changes; term or condition of service; when effective.

(1) The provisions of this section do not apply to general rate filings.

(2) Unless the commission otherwise orders, no jurisdictional utility shall make effective any changed rate or any term or condition of service pertaining to the service or rates of such utility, except by filing the same with the commission at least thirty days prior to the proposed effective date. The commission, for good cause, may allow such changed rate or any term or condition of service pertaining to the service or rates of any such utility, to become effective on less than thirty days' notice. If the commission allows a change to become effective on less than thirty days' notice, the effective date of the allowed change shall be the date established in the commission order approving such change or the date of the order if no effective date is otherwise

established. Any such proposed change shall be shown by filing with the commission a schedule showing the changes, and such changes shall be plainly indicated by proper reference marks in amendments or supplements to existing tariffs, schedules, or classifications, or in new issues thereof.

(3) Whenever any jurisdictional utility files with the commission the changes desired to be made and put in force by such utility, the commission, either upon complaint or upon its own motion, may give notice and hold a hearing upon such proposed changes. Pending such hearing, the commission may suspend the operation of such change and defer the effective date of such change in rate or any term or condition of service pertaining to the service or rates of any such utility, by delivering to such utility a statement in writing of its reasons for such suspension.

(4) The commission shall not delay the effective date of the proposed change in rate or any term or condition of service pertaining to the service or rates of any such jurisdictional utility, more than one hundred eighty days beyond the date the utility filed its application requesting the proposed change. If the commission does not suspend the proposed change within thirty days after the date the same is filed by the utility, such proposed change shall be deemed approved by the commission and shall take effect on the proposed effective date. If the commission has not issued a final order on the proposed change in any rate or any term or condition of service pertaining to the service or rates of any such utility, within one hundred eighty days after the date the utility files its application requesting the proposed change, then the proposed change shall be deemed approved by the commission and the proposed change shall be effective immediately, except that (a) in any proceeding initiated as a result of a filing by a utility of new or changed rates or terms and conditions of service, the commission shall, within thirty days of the receipt of such filing, review the applications, documents, and submissions made with such filing to determine whether or not they conform to the minimum requirements of the commission regarding such filings as established by applicable rule, regulation, or commission order. If such applications, documents, or submissions fail to substantially conform with such requirements, they will be deemed defective and the filing shall not be deemed to have been made until such applications, documents, and submissions are determined to be in conformity by the commission with minimum standards, and (b) nothing in this subsection shall preclude the jurisdictional utility and the commission from agreeing to a waiver or an extension of the one-hundred-eighty-day period.

(5) Except as provided in subsection (4) of this section, no change shall be made in any rate or in any term or condition of service pertaining to the service or rates of any such jurisdictional utility, without the consent of the commission. Within thirty days after such changes have been authorized by the commission or become effective as provided in subsection (4) of this section, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted by the commission, shall be available for public inspection in every office and facility open to the general public of such jurisdictional utility in this state.

(6) Except as to the time limits prescribed in subsection (4) of this section, proceedings under this section shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Source: Laws 2003, LB 790, § 8.

66-1809 Commission; investigations authorized; hearing; powers.

(1) The commission, upon its own initiative, may investigate all schedules of rates, contracts, and terms and conditions of service of jurisdictional utilities. If after notice, investigation, and hearing the commission finds that such rates or terms and conditions of service are unjust, unreasonable, unjustly discriminatory, or unduly preferential, the commission shall have the power to establish and order substituted therefor such rates and such terms and conditions of service as are just and reasonable, effective as of the date of the order.

(2) If after investigation and hearing it is found that any term or condition of service, measurement, practice, act, or service complained of is unjust, unreasonable, unduly preferential, unjustly discriminatory, or otherwise in violation of the State Natural Gas Regulation Act or of the orders of the commission or if it is found that any service is inadequate or that any reasonable service cannot be obtained, the commission may substitute therefor, effective as of the date of the order, such other terms or conditions of service, measurements, practices, acts, or service and make such order respecting any such changes in such terms and conditions of service, measurements, practices, acts, or service as are just and reasonable. When, in the judgment of the commission, public necessity and convenience require, the commission may establish just and reasonable rates, charges, or privileges, but all such rates, charges, and privileges shall be open to all users of a like kind of service under similar circumstances and conditions. Hearings shall be conducted in accordance with rules and regulations adopted and promulgated pursuant to section 75-110.

Source: Laws 2003, LB 790, § 9.

66-1810 Service to high-volume ratepayers, agricultural ratepayers, and interruptible ratepayers; jurisdictional utility; powers.

(1) A jurisdictional utility may provide service at negotiated rates, contracts, and terms and conditions of service under contract to high-volume ratepayers. Service under the contracts shall be provided on such terms and conditions and for such rates or charges as the jurisdictional utility and the high-volume ratepayer agree, without regard to any rates, tolls, tariffs, or charges the jurisdictional utility may have filed with the commission. Upon the request of the commission, the jurisdictional utility shall file such contracts with the commission. The contracts are not public records within the meaning of sections 84-712 to 84-712.09 and their disclosure to any other person or corporation for any purpose is expressly prohibited, except that they may be used by the commission in any investigation or proceeding. Except as provided in this subsection, high-volume ratepayers shall not be subject to the jurisdiction of the commission.

(2) A jurisdictional utility may change any rate or other charge demanded or received from or terms and conditions applicable to its agricultural ratepayers and interruptible ratepayers not otherwise qualifying as high-volume ratepayers, upon notice to the commission and to the public. The commission may not suspend such rate or charge filed by a jurisdictional utility, except that the commission, after hearing and order, may change any such rate or other charge demanded or received from a jurisdictional utility's agricultural ratepayers upon complaint effective as of the date of the order, if such rate or other charge is found in such complaint proceeding to be unduly preferential or unjustly

discriminatory. The provisions of this subsection apply notwithstanding any provision in the State Natural Gas Regulation Act to the contrary.

Source: Laws 2003, LB 790, § 10.

66-1811 Complaint; investigation; hearing; where held; commission; powers.

(1) Upon a complaint in writing made against any jurisdictional utility (a) that any rates or terms and conditions of service of such utility are in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, (b) that any terms and conditions of service or act whatsoever affecting or relating to any service performed or to be performed by such utility for the public, is in any respect unreasonable, unjust, unjustly discriminatory, or unduly preferential, or (c) that any service performed or to be performed by such utility for the public is inadequate, insufficient, or cannot be obtained, the commission may proceed, with or without notice, to make such investigation as it deems necessary.

(2) No order changing such rates, terms and conditions, or acts complained of shall be made or entered by the commission without a formal public hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, of which due notice shall be given by the commission to such utility or to such complainant or complainants, if any.

(3) The commission shall have power to require jurisdictional utilities to make such improvements and do such acts as are or may be required by law to be done by any such utility, including refunds as authorized by law.

(4) The commission may hold public hearings in the area being impacted by any rate investigation or rate increase being considered by the commission to hear public comments.

(5) If after investigation and hearing the rates or terms and conditions of service of any jurisdictional utility are found unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way in violation of the provisions of the State Natural Gas Regulation Act or of any of the laws of the State of Nebraska, the commission shall have the power to establish, and to order substituted therefor, to be effective as of the date of the order, such rates or terms and conditions of service as the commission determines to be just, reasonable, and necessary. If it is found that any term or condition of service, practice, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of the act or of any of the laws of the State of Nebraska, the commission may substitute therefor by order such other terms and conditions of service, practice, service, or act as it determines to be just, reasonable, and necessary, to be effective as of the date of the order.

Source: Laws 2003, LB 790, § 11.

66-1812 Rate proceeding; intervention by county or city.

On timely filing of a petition for intervention, any county or city may intervene, on behalf of ratepayers located within their respective boundaries, in any rate proceeding before the commission that involves the rates of a jurisdictional utility serving ratepayers located within their respective boundaries.

Source: Laws 2003, LB 790, § 12.

66-1813 Proceedings for review; parties; rights and privileges.

In proceedings for review of an action of the commission, the commission and any jurisdictional utility which participated in the agency proceeding and could be bound by the review shall be parties to the proceedings and shall have all rights and privileges granted by the State Natural Gas Regulation Act to any other party to such proceedings.

Source: Laws 2003, LB 790, § 13.

66-1814 Action of commission; review.

Any action of the commission pursuant to the State Natural Gas Regulation Act is subject to review in accordance with section 75-136.

Source: Laws 2003, LB 790, § 14.

66-1815 Jurisdictional utility; reports; failure to file; penalty.

(1) Every jurisdictional utility shall file with the commission an annual report and such monthly or other regular reports, or special reports, and such other information as the commission may require.

(2) Any jurisdictional utility which fails, neglects, or refuses to file with the commission any annual reports, statements, monthly or regular reports, or special reports required by the commission pursuant to the State Natural Gas Regulation Act or rules and regulations of the commission shall be subject to a civil penalty of not more than five hundred dollars.

Source: Laws 2003, LB 790, § 15.

66-1816 Jurisdictional utility; ownership of competitor; prohibited; when.

No jurisdictional utility shall purchase or acquire, take, or hold any part of the voting stock, bonds, or other forms of indebtedness of any competing jurisdictional utility, either as owner or pledgee, unless authorized by the commission.

Source: Laws 2003, LB 790, § 16.

66-1817 Completion and dedication of property.

(1) Any jurisdictional utility property may be deemed to be completed and dedicated to commercial service if construction of the property will be commenced and completed in one year or less.

(2) The commission may determine that property of a jurisdictional utility which has not been completed and dedicated to commercial service may be deemed to be used and useful in the utility's service to the public.

Source: Laws 2003, LB 790, § 17.

66-1818 Commission; examinations and audits; authorized.

The commission shall have authority to examine and audit all accounts of jurisdictional utilities, and all items shall be allocated to the accounts prescribed by the commission. Every jurisdictional utility shall be required to keep and render its books, accounts, papers, and records accurately and truthfully in accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. All accounting information provided by jurisdictional utilities regarding Nebraska jurisdictional operations shall be presented in

accordance with the system of accounts prescribed by the Federal Energy Regulatory Commission. The agents, accountants, or examiners hired or contracted by the Public Service Commission shall have authority under the direction of the commission to inspect and examine any and all relevant books, accounts, papers, records, property, and memoranda kept by such utilities.

Source: Laws 2003, LB 790, § 18.

66-1819 Nonregulated private enterprise; how treated.

(1) For purposes of this section, nonregulated private enterprise means: (a) The business of selling or otherwise providing any gas or electric household appliance; (b) the business of installing any gas or electric household appliance; or (c) the business of servicing any gas or electric household appliance under a contract providing for maintenance or repair of such appliance for a period of time specified by the contract.

(2) Each jurisdictional utility shall maintain, in accordance with generally accepted accounting principles, separate accounts for all nonregulated private enterprise engaged in by such utility. The accounting shall include both costs and revenue associated with such enterprise. Costs to be allocated to such separate accounts shall include materials, labor, insurance, transportation, and all other direct and indirect costs of engaging in the nonregulated private enterprise. Costs or revenue required to be allocated to such separate accounts shall not be included in any rate, toll, or charge for any utility service of the utility.

(3) Except as provided in subsection (4) of this section, the commission may at any time examine and audit the books, accounts, papers, records, and memoranda kept by a natural gas public utility in order to determine compliance with this section.

(4) No audit shall be conducted pursuant to this section more often than once every two years, but nothing in this subsection shall be construed to limit the authority of the commission pursuant to other provisions of the State Natural Gas Regulation Act to examine and audit, for any purpose, the books, accounts, papers, records, and memoranda kept by a natural gas public utility.

Source: Laws 2003, LB 790, § 19.

66-1820 Franchise ordinances; requirements.

No franchise ordinance involving a jurisdictional utility adopted on or after May 31, 2003, shall include provisions contrary to or inconsistent with the State Natural Gas Regulation Act. A city shall file with the commission copies of any such franchise ordinance adopted on or after May 31, 2003, within thirty days of its passage.

Source: Laws 2003, LB 790, § 20.

66-1821 Franchise or certificate of convenience; restrictions.

No franchise or certificate of convenience granted to a jurisdictional utility shall be assigned, transferred, or leased unless the assignment, transfer, or lease has been approved by the commission as being consistent with the public interest.

Source: Laws 2003, LB 790, § 21.

66-1822 Prohibited acts; penalty.

Any person who knowingly makes any false entry in the accounts, books of account, records, or memoranda kept by any jurisdictional utility, who knowingly destroys, mutilates, alters, or by any other means or device falsifies the record of any such account, book of accounts, record, or memorandum, who knowingly neglects or fails to make full, true, and correct entries in such account, book of accounts, record, or memorandum of all facts and transactions pertaining to such utility, or who knowingly makes any false statement required to be made to the commission, shall be guilty of a Class IV felony.

Source: Laws 2003, LB 790, § 22.

66-1823 Criminal and civil proceedings to compel compliance.

The commission may compel compliance with the State Natural Gas Regulation Act and compel compliance with the orders of the commission by proceeding in mandamus, injunction, or other appropriate civil remedies or by appropriate criminal proceedings in any court of competent jurisdiction.

Source: Laws 2003, LB 790, § 23.

66-1824 Federal actions; commission; powers.

(1) The commission shall have power to intervene in any case pending before the relevant federal agency in which interstate rates, service, or safety issues affecting the interest of Nebraska residents, ratepayers, or natural gas public utilities are involved, and the commission is hereby empowered and authorized to pay all expenses of investigation and prosecution of litigation instituted under this section.

(2) If any interstate rate, toll, charge, term or condition of service, classification, or schedule of rates or tolls is found to be unjust, unreasonable, excessive, unjustly discriminatory, unduly preferential, in violation of interstate commerce law, or in conflict with the rules, regulations, or orders of a federal agency, the commission may apply by petition or other proper method to the relevant federal agency for relief.

Source: Laws 2003, LB 790, § 24.

66-1825 Rates; requirements.

(1) Every rate made, demanded, or received by any natural gas public utility shall be just and reasonable. Rates shall not be unreasonably preferential or discriminatory and shall be reasonably consistent in application to a class of ratepayers. Rates negotiated with agricultural ratepayers and high-volume ratepayers in conformity with the State Natural Gas Regulation Act shall not be considered discriminatory.

(2) No jurisdictional utility shall, as to rates or terms and conditions of service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage.

(3) The commission, in the exercise of its power and duty to determine just and reasonable rates for natural gas public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service

to the public, and to earn a fair and reasonable return upon the investment in such property.

(4) Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits.

(5) In determining a fair and reasonable return on the rate base of a jurisdictional utility, a rate-of-return percentage shall be employed that is representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital.

(6) The rate base of the jurisdictional utility shall consist of the utility's property, used and useful in providing utility service, including the applicable investment in utility plant, less accumulated depreciation and amortization, allowance for working capital, such other items as may be reasonably included, and reasonable allocations of common property, less such investment as may be reasonably attributed to other than investor-supplied capital unless such deduction is otherwise prohibited by law.

(7) Operating expenses shall consist of expenses prudently incurred to provide natural gas service including (a) a reasonable allocation of common expenses as authorized and limited by section 66-1819 and (b) the quantity and type of purchased services regulated by the Federal Energy Regulatory Commission.

(8) In determining the cost of service, the Public Service Commission shall give effect to all costs and allocations as reflected in the rate schedules approved by the Federal Energy Regulatory Commission.

(9) The Public Service Commission may include in a jurisdictional utility's rate base the full or partial value of stranded investment which was prudently incurred when the investment actually was, or reasonably was expected to be, used and useful in providing service to ratepayers and was stranded due to changes in regulation or other circumstances reasonably beyond the utility's control and subject to any reasonable obligation of the utility to mitigate the cost.

(10) Subsidization is prohibited. For purposes of this subsection, subsidization means the establishment of rates to be collected from a ratepayer or class of ratepayers of a jurisdictional utility that (a) include costs that properly are includable in rates charged to other ratepayers or classes of ratepayers of the utility, or other persons, firms, companies, or corporations doing business with the jurisdictional utility, (b) exclude costs that properly are includable in rates charged to such ratepayers or classes of ratepayers, or (c) include costs that properly are chargeable or allocable to a nonregulated private enterprise engaged in by such jurisdictional utility.

Source: Laws 2003, LB 790, § 25.

66-1826 Payment of dividends; limitation.

If the commission determines on complaint or upon its own initiative, and after hearing on due notice in accordance with rules and regulations adopted and promulgated pursuant to section 75-110, that the payment of any dividend by a jurisdictional utility will impair the financial condition of such company so that such utility cannot maintain its property in a safe operating condition and render adequate service to its ratepayers, the commission shall enter an order prohibiting the payment of such dividends until such time as such company has

shown to the commission that the conditions upon which such order was based have ceased to exist.

Source: Laws 2003, LB 790, § 26.

66-1827 Encumbrance of property; limitation.

(1) A jurisdictional utility shall not subject property used in its intrastate natural gas utility business in this state to an encumbrance for the purpose of securing the payment of any new indebtedness or replacement indebtedness in an amount exceeding one hundred million dollars attributable to this state unless first approved by the commission. Approval or disapproval by the commission shall be by formal written order, which shall be issued within forty-five days of the filing of the application.

(2) Upon the application of a jurisdictional utility for approval of and prior to the encumbrances, the commission may make such inquiry or investigation, hold such hearings, and examine such witnesses, books, papers, documents, or contracts as in its discretion it may deem necessary. If the commission finds that the proposed financing is reasonable and proper and in the public interest and will not be detrimental to the interests of the ratepayers affected thereby, the commission shall by written order grant its permission for the proposed financing.

Source: Laws 2003, LB 790, § 27.

66-1828 Reorganization or change of control; approval required.

(1) No reorganization or change of control of a jurisdictional utility shall take place without prior approval by the commission. The commission shall not approve any proposed reorganization or change of control if the commission finds, after public notice and public hearing, that the reorganization or change of control will adversely affect the utility's ability to serve its ratepayers.

(2) For purposes of this section, reorganization or change of control means any transaction which, regardless of the means by which it is accomplished, results in a change in the ownership of a majority of the voting capital stock of a jurisdictional utility and does not include a mortgage or pledge transaction entered into to secure a bona fide borrowing by the party granting the mortgage or making the pledge.

Source: Laws 2003, LB 790, § 28.

66-1829 Disclosure of information; limitations.

(1) The commission shall not disclose to or allow inspection by anyone, including, but not limited to, parties to a regulatory proceeding before the commission, any information of a jurisdictional utility that qualifies as a record which may be withheld from the public upon request of the party submitting such record if the information qualifies under subdivision (3) of section 84-712.05, unless the commission finds that disclosure is warranted after consideration of the following factors:

(a) Whether disclosure will significantly aid the commission in fulfilling its functions;

(b) The harm or benefit which disclosure will cause to the public interest;

(c) The harm which disclosure will cause to the utility; and

(d) Alternatives to disclosure that will serve the public interest and protect the utility.

(2) If the commission finds that disclosure is warranted pursuant to subsection (1) of this section, the commission shall give the utility notice before disclosing such information.

Source: Laws 2003, LB 790, § 29.

66-1830 Office of public advocate; created; duties; appointment; qualifications.

(1) The office of public advocate is created as a separate and independent division within the commission. The public advocate shall represent the interests of Nebraska citizens and all classes of jurisdictional utility ratepayers, other than high-volume ratepayers, in matters involving jurisdictional utilities and shall act as trial staff before the commission. In the exercise of his or her powers, the public advocate shall consider all relevant factors, including, but not limited to, the provision of safe, efficient, and reliable utility services at just and reasonable rates.

(2) Notwithstanding the provisions of section 75-105, the executive director of the commission, upon consultation with the members of the commission, shall appoint the public advocate. The public advocate shall serve a four-year term and shall be removed only for good cause. The executive director shall be responsible for reviewing the performance of the public advocate, for removing the public advocate in accordance with law, and for filling any vacancy in that position in the same manner as the original appointment.

(3) The public advocate shall be an attorney and shall have experience in consumer-related utility issues or in the operation, management, or regulation of utilities. No person owning stocks or bonds in a corporation subject in whole or in part to regulation by the commission or who has any pecuniary interest in such corporation shall be appointed as public advocate.

Source: Laws 2003, LB 790, § 30.

66-1831 Public advocate; powers.

(1) The public advocate shall have the power to:

(a) Investigate the legality and reasonableness of rates, charges, and practices of jurisdictional utilities;

(b) Petition for relief, request, initiate, and intervene in any proceeding before the commission concerning such utilities;

(c) Represent and appear for ratepayers and the public in proceedings before the commission and in any negotiations or other measures to resolve disputes that give rise to such proceedings;

(d) Represent and appear for ratepayers and the public in any negotiations or other measures to resolve disputes that give rise to proceedings before the commission and make and seek approval of agreements to settle such disputes; and

(e) Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the commission regarding jurisdictional utilities.

(2) The public advocate shall not advocate for or on behalf of any single individual, organization, or entity.

(3) The public advocate may enter into stipulations with other parties in any proceeding to balance the interests of those it represents with the interests of the jurisdictional utilities as a means of improving the quality of resulting decisions in a highly technical environment and minimizing the cost of regulation.

Source: Laws 2003, LB 790, § 31.

66-1832 Office of public advocate; administration.

The office of the public advocate shall be located at the same location as the commission but shall be kept separate from the commission's other offices as provided by rules and regulations adopted and promulgated by the commission. The public advocate may hire or contract with attorneys, legal assistants, experts, consultants, secretaries, clerks, and such other staff necessary for the full and efficient discharge of the duties of the office as permitted by the budget of the public advocate as approved by the commission. The public advocate shall employ and supervise personnel as authorized by the budget approved by the commission. The employees of the public advocate shall not be supervised or directed by the commission. Funding for the office of public advocate shall be approved by the commission and collected through the assessment process as provided for in sections 66-1840 and 66-1841. The commission shall decide all matters of shared administrative and clerical personnel.

Source: Laws 2003, LB 790, § 32.

66-1833 Public advocate; access to information; limitations.

The public advocate and his or her employees or agents shall have free access to all files, records, and documents of the commission except:

(1) Personal information in confidential personnel records;

(2) Records which represent the work product of legal counsel of the commission, and records of confidential or privileged communications between the members of the commission and its legal counsel, when the records relate to a proceeding before the commission in which the public advocate is, or is appearing for, a party; and

(3) Records that are designated as confidential pursuant to commission rules and regulations, except as permitted by a nondisclosure agreement between a specified representative of the public advocate and the commission and the person who claims the records at issue are confidential.

Source: Laws 2003, LB 790, § 33.

66-1834 Public advocate; records; how kept.

The files, records, and documents of the public advocate shall be separately kept, maintained, and controlled by the public advocate.

Source: Laws 2003, LB 790, § 34.

66-1835 Public advocate; ex parte communications.

In any proceeding before the commission in which the public advocate is a party or is appearing for a party, the public advocate shall be considered a

party for purposes of the restrictions on ex parte communications set forth in sections 75-130.01 and 84-914.

Source: Laws 2003, LB 790, § 35.

66-1836 Investigations; powers.

The commission is hereby authorized to designate or appoint, from among its employees, examiners and referees to make investigations that are required of the commission by law. Such investigations shall be made and conducted as and in the manner and at the place directed by the commission. The examiners and referees shall report their findings and recommendations to the commission.

Source: Laws 2003, LB 790, § 36.

66-1837 Commission; contract for services.

(1) The commission is hereby authorized to contract for professional services and expert assistance, including, but not limited to, the services of engineers, accountants, attorneys, and economists, to assist in investigations and appraisals.

(2) Such contracts shall be negotiated by the chairperson of the commission, the executive director, or the designee of the executive director. The commission shall consider all proposals by persons applying to perform such contracts and shall award the contracts.

Source: Laws 2003, LB 790, § 37.

66-1838 General rate filings; requirements.

(1) The provisions of this section apply only to general rate filings.

(2) Except as provided in subsection (3) of this section, a jurisdictional utility shall provide written notice to each city that will be affected by a proposed change in rates simultaneously with the filing with the commission of a request for a change in rates pursuant to the State Natural Gas Regulation Act. Such notice shall identify the cities that will be affected by the rate filing. The jurisdictional utility shall also file the information prescribed by the act and rules and regulations for rate changes adopted and promulgated by the commission with each city affected by such proposed rate change in electronic or digital format or, upon request, as paper documents.

(3) A jurisdictional utility may determine not to participate in negotiations with affected cities. Such decision, if indicated by written notice in the initial rate filing to the commission, shall relieve it from the duty of supplying notice to such cities as specified in subsection (2) of this section. The jurisdictional utility shall, not later than fifteen days after the initial filing, inform the commission by written notice of any decision not to participate in negotiations.

(4) Affected cities shall have a period of sixty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an agreed rate change with the jurisdictional utility. A copy of the resolution adopted by each city under this section, notice of the rejection by a city of such a resolution, or written notice by an authorized officer of the city of the city's rejection of negotiations shall be provided to the commission and to the jurisdictional utility within seven days after its adoption.

(5) Any city may, at any time, by resolution adopted by its governing body and filed with the commission, indicate its rejection of participation in any future negotiations pertaining to any rate change whenever the same may be filed. Such resolution shall be treated as a duly filed notice of rejection of participation in negotiations for any rate filing by a jurisdictional utility at any time thereafter. The city filing a resolution pursuant to this subsection shall be bound thereby until such time as a resolution by the governing body of that city revoking its prior rejection of participation is filed with the commission.

(6) If the commission receives resolutions adopted prior to the expiration of the sixty-day period provided for in subsection (4) of this section evidencing the intent to negotiate from cities representing more than fifty percent of the ratepayers within the affected cities, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the rate filing until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first. The commission's certification shall be issued within eight business days after the earlier of (a) receipt of a copy of the resolutions from cities representing fifty percent or more of ratepayers within the affected cities or (b) the end of the sixty-day period provided for in subsection (4) of this section.

(7) When (a) the commission receives notice or has written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities which notice or documents either expressly reject negotiations or reject such a resolution or (b) the commission receives written notice from the jurisdictional utility expressly rejecting negotiations, the rate change review by the commission shall proceed immediately from the date when the commission makes such a determination or receives such notice.

(8) When the sixty-day period provided for in subsection (4) of this section has expired without the receipt by the commission of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities evidencing their intent to negotiate an agreed rate change review by the commission with the jurisdictional utility, the rate change shall proceed immediately from the date when the commission makes such a determination.

(9) If commission certification to pursue negotiations is received, cities adopting resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over such proposed rate change.

(10)(a) The jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates sixty days after the filing with the commission, if the commission certifies the rate filing for negotiations.

(b) If the rate filing is not certified by the commission for negotiations, the jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission.

(11) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed ninety days after the date of the rate filing, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(12) Notwithstanding any other provision of law, any information exchanged between the jurisdictional utility and cities is not a public record within the meaning of sections 84-712 to 84-712.09 and its disclosure to the commission,

its staff, the public advocate, or any other person or corporation, for any purpose, is expressly prohibited.

(13) If the cities and the jurisdictional utility reach agreement upon new rates, such agreement shall be reduced to writing, including proposed findings of fact, proposed conclusions of law, and a proposed commission order, and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed rate change enter into an agreement upon new rates and such agreement is filed with and approved by the commission, such rates shall be effective and binding upon all of the jurisdictional utility's ratepayers affected by the rate filing.

(14) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission within a reasonable time.

(15)(a) Except as provided in subdivision (c) of this subsection, if the negotiations fail to result in an agreement upon new rates, the rates requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within two hundred ten days after the date of the expiration of the negotiation period or after the date upon which the jurisdictional utility and the cities file a written agreement that the negotiations have failed and that the rate change review by the commission should proceed as provided in subsection (7) of this section.

(b) Except as provided in subdivision (c) of this subsection, if the filing is not certified for negotiations, the rate requested in the rate filing shall become final and no longer subject to refund if the commission has not taken final action within one hundred eighty days after the date of the expiration of the sixty-day period provided for in subsection (4) of this section or the date that the commission receives notice or has accumulated written documentary evidence on file from cities representing more than fifty percent of the ratepayers within the affected cities, whichever is earlier, if such notice or documents either expressly reject negotiations or reject such a resolution.

(c) The commission may extend the deadlines specified in subdivision (a) or (b) of this subsection by a period not to exceed an additional sixty days upon a finding that additional time is necessary to properly fulfill its responsibilities in the proceeding.

(16) Within thirty days after such changes have been authorized by the commission or become effective, copies of all tariffs, schedules, and classifications, and all terms or conditions of service, except those determined to be confidential under rules and regulations adopted and promulgated by the commission, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

Source: Laws 2003, LB 790, § 38; Laws 2008, LB1072, § 1.

66-1839 Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.

(1) The Municipal Rate Negotiations Revolving Loan Fund is created. The fund shall be used to make loans to cities for rate negotiations under section 66-1838 or negotiations or litigation under section 66-1867. Only one loan may

be made for each rate filing made by a jurisdictional utility within the scope of each section. Money in the Municipal Natural Gas Regulation Revolving Loan Fund that is not necessary to finance rate proceedings initiated prior to May 31, 2003, shall be transferred to the Municipal Rate Negotiations Revolving Loan Fund on May 31, 2003, and repayments of loans or other obligations owing to the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be deposited in the Municipal Rate Negotiations Revolving Loan Fund upon receipt. Any obligations against or commitments of money from the Municipal Natural Gas Regulation Revolving Loan Fund on May 31, 2003, shall be obligations or commitments of the Municipal Rate Negotiations Revolving Loan Fund.

(2) The Municipal Rate Negotiations Revolving Loan Fund shall be administered by the commission which shall adopt and promulgate rules and regulations to carry out this section. The rules and regulations shall include:

(a) Loan application procedures and forms; and

(b) Fund-use monitoring and quarterly accounting of fund use.

(3) Applicants for a loan from the fund shall provide a budget statement which specifies the proposed use of the loan proceeds. Such proceeds may only be used for the costs and expenses incurred by the city to analyze rate filings for the purposes specified in section 66-1838 or 66-1867. Such costs and expenses may include the cost of rate consultants and attorneys and any other necessary costs related to the negotiation process or litigation under section 66-1867. Disbursements from the fund shall be audited by the commission. The affected jurisdictional utility may petition the commission to initiate a proceeding to determine whether the disbursements from the fund were expended by the negotiating cities consistent with the requirements of this section.

(4) The fund shall be audited as part of the regular audit of the commission's budget, and copies of the audit shall be available to all cities and any jurisdictional utility. Audits conducted pursuant to this section are public records.

(5) 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. If the fund balance exceeds four hundred thousand dollars, the income on the money in the fund shall be credited to the permanent school fund until the balance of the Municipal Rate Negotiations Revolving Loan Fund falls below such amount.

(6) A city which receives a loan under this section shall be responsible to provide for the opportunity for all other cities engaged in the same negotiations with the same jurisdictional utility to participate in all negotiations. Such city shall not exclude any other city from the information or benefits accruing from the use of loan funds.

(7) Upon the conclusion of negotiations, regardless of the result, the loan shall be repaid by the jurisdictional utility to the commission within thirty days after the date upon which it is billed by the commission. The utility shall recover the amount paid on the loan by a special surcharge on ratepayers who are or will be affected by the rate increase request. These ratepayers may be billed on their monthly statements for a period not to exceed twelve months, and the surcharge may be shown as a separate item on the statements as a charge for rate negotiation expenses.

Source: Laws 2003, LB 790, § 39; Laws 2009, LB658, § 3.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1840 Commission; investigation expenses; assessment against jurisdictional utility; procedure.

(1) Whenever, in order to carry out the duties imposed upon it by law, the commission, in a proceeding upon its own motion, on complaint, or upon an application to it, including rate filings, deems it necessary to investigate any jurisdictional utility or make appraisals of the property of any jurisdictional utility, such utility, in case the expenses reasonably attributable to such investigation or appraisal exceed the sum of one hundred dollars, including both direct and indirect expenses incurred by the commission or its staff, shall pay such expenses which shall be assessed against such utility by the commission. Such expenses shall be assessed beginning on the date that the proceeding is filed or beginning three business days after the commission gives the utility notice of the assessment by United States mail, whichever is later. The commission shall give such utility notice and opportunity for a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. At such hearing, the utility may be heard as to the necessity of such investigation or appraisal and may show cause, if any, why such investigation or appraisal should not be made or why the costs thereof should not be assessed against such utility. The finding of the commission as to the necessity of the investigation or appraisal and the assessment of the expenses thereof shall be conclusive, except that no such utility shall be liable for payment of any such expenses incurred by the commission in connection with any proceeding before or within the jurisdiction of any federal regulatory body.

(2) The commission shall ascertain the expenses of any such investigation or appraisal and by order assess such expenses against the jurisdictional utility investigated or whose property is appraised in such proceeding and shall render a bill therefor, by United States mail, to the jurisdictional utility, either at the conclusion of the investigation or appraisal or from time to time during such investigation or appraisal. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such utility, within fifteen days after the mailing thereof, such utility shall pay to the commission the amount of the assessment for which it is billed. Such payment when made shall be remitted by the commission to the State Treasurer for credit to the Public Service Commission Regulation Fund for the use of the commission. The total amount, in any one fiscal year, for which any utility shall be assessed under this section shall not exceed the following: (a) For a jurisdictional utility that has not filed an annual report with the commission as provided in the State Natural Gas Regulation Act prior to the beginning of the commission's fiscal year, actual expenses, including direct and indirect expenses, incurred by the commission; and (b) for any other jurisdictional utility, one percent of the utility's gross operating jurisdictional revenue less gas cost derived from intrastate natural gas utility business as reflected in the last annual report filed with the commission pursuant to the act prior to the beginning of the commission's fiscal year. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

(3) The commission, in accordance with the procedures prescribed by subsection (2) of this section, may assess against an entity, other than an individual

residential ratepayer or individual agricultural ratepayer, that is not subject to assessment pursuant to subsection (1) of this section actual expenses of any services extended, filings processed, or actions certified by the commission for the entity.

Source: Laws 2003, LB 790, § 40; Laws 2006, LB 14, § 1.

66-1841 Commission; determination of total expenditures; assessment against jurisdictional utilities; limitation.

(1) The commission shall determine, within thirty days after each quarter-year for each such quarter-year, the total amount of its expenditures during such period of time. The total amount shall include the salaries of members and employees and all other lawful expenditures of the commission, including all expenditures in connection with investigations or appraisals made under the State Natural Gas Regulation Act, except that there shall not be included in such total amount of expenditures for the purpose of this section the expenditures during such period of time which are otherwise provided for by fees and assessments pursuant to the act.

(2) From the amount determined under subsection (1) of this section, the commission shall deduct (a) all amounts collected under section 66-1840 during such period of time and (b) all other funds collected with regard to jurisdictional utilities.

(3) To the remainder, after making the deductions under subsection (2) of this section, the commission shall add such amount as in its judgment may be required to satisfy any deficiency in the prior assessment period's assessment and to provide for anticipated increases in necessary expenditures for the current assessment period.

(4) The amount determined under subsections (1) through (3) of this section shall be assessed by the commission against all jurisdictional utilities and shall not exceed, during any fiscal year, the greater of one hundred dollars or each utility's proportionate share of the total amount determined under this section based upon meters served by each utility as a proportion of all meters of jurisdictional utilities. Such assessment shall be paid to the commission within fifteen days after the notice of assessment has been mailed to such utilities, which notice of assessment shall constitute demand of payment thereof.

(5) The commission shall remit all money received by or for it for the assessment imposed under this section to the State Treasurer for credit to the Public Service Commission Regulation Fund.

(6)(a) Until June 1, 2007, a jurisdictional utility may recover the amount of any assessments or charges paid to the commission pursuant to this section and section 66-1840 through a special surcharge on ratepayers which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility. The surcharge shall be shown on the statements as a charge for state regulatory assessments. The commission shall permit the utility to include in such surcharge interest upon the amount of the charges and assessments paid to the commission prior to their recovery from ratepayers. Such interest shall be at a rate not to exceed the rate established by section 45-103.

(b) On and after June 1, 2007, the commission by general rule and regulation shall authorize the recovery of the amount of any assessments or charges paid

to the commission pursuant to this section and section 66-1840 in a general rate filing or through a special surcharge which may be billed on the monthly statements for up to a twelve-month period immediately following their payment by the jurisdictional utility.

Source: Laws 2003, LB 790, § 41; Laws 2006, LB 14, § 2.

66-1842 Public Service Commission Regulation Fund; created; use; investment.

The Public Service Commission Regulation Fund is created. Transfers may be made from the Public Service Commission Regulation Fund to the General Fund at the direction of the Legislature. The commission shall remit all money received by or for it in payment of the fees or assessments imposed by the State Natural Gas Regulation Act to the State Treasurer for credit to the fund. 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.

Source: Laws 2003, LB 790, § 42.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

66-1843 Jurisdictional utility; failure to pay assessment; procedure.

If any jurisdictional utility against which an assessment has been made pursuant to the State Natural Gas Regulation Act, within fifteen days after the notice of such assessment, (1) neglects or refuses to pay the same or (2) fails to file objections to the assessment with the commission as provided in section 66-1844, the commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the commission shall mail by registered mail to the utility against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such utility fails to pay such assessment to the State Treasurer within ten days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent per annum from and after the date on which the copy of the notice was mailed by registered mail to such utility.

Source: Laws 2003, LB 790, § 43.

66-1844 Jurisdictional utility; objections to assessment; procedure.

(1) Within fifteen days after the date of the mailing of any notice of assessment under sections 66-1840 and 66-1841, the jurisdictional utility against which such assessment has been made may file with the commission objections setting out in detail the ground upon which such objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission, after notice to the objector, shall hold a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

(2) If any assessment against which objections have been filed is not paid within ten days after service of an order finding that such objections have been overruled and disallowed by the commission, the commission shall give notice of such delinquency to the State Treasurer and to the objector in the manner provided for in the State Natural Gas Regulation Act. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten days after service of the order of the commission, the commission shall notify the State Treasurer and the objector as in the case of delinquency in the payment of an original assessment. The State Treasurer shall then collect the amount of such assessment as provided in the case of an original assessment.

Source: Laws 2003, LB 790, § 44.

66-1845 Jurisdictional utility; assessment; action to recover.

Every jurisdictional utility against which an assessment is made shall pay the amount thereof and, after such payment, may under the conditions in the State Natural Gas Regulation Act, at any time within one year from the date the payment was made, sue the state in an action at law to recover the amount paid with legal interest thereon from the date of payment, upon the ground that the assessment was excessive, erroneous, unlawful, or invalid in whole or in part. If it is finally determined in such action that any part of the assessment, for which payment was made, was excessive, erroneous, unlawful, or invalid, the State Treasurer shall make a refund to the claimant as directed by the court.

Source: Laws 2003, LB 790, § 45.

66-1846 Action to recover assessment; requirements.

(1) No action for recovery of any amount paid pursuant to the State Natural Gas Regulation Act shall be maintained in any court unless objections have been filed with the commission as provided in section 66-1844. In any action for recovery of any payments made under the act, the claimant shall be entitled to raise every relevant issue of law, but the commission's findings of fact made pursuant to the act shall be prima facie evidence of the facts therein stated.

(2) The following shall be deemed to be findings of fact of the commission within the meaning of the act: (a) Determinations of fact expressed in notices of assessments given pursuant to the act; and (b) determinations of fact set out in those minutes of the commission which record the action of the commission in connection with making the assessments and passing upon objections thereto.

Source: Laws 2003, LB 790, § 46.

66-1847 Public natural gas utilities; requirements.

Natural gas utilities owned and operated by a city or a metropolitan utilities district shall establish rates and conditions of service for all residential ratepayers of each such utility in a nondiscriminatory manner.

Source: Laws 2003, LB 790, § 47.

66-1848 Competitive natural gas providers and aggregators; terms, defined.

For purposes of this section and section 66-1849:

(1) Aggregator means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services; and

(2)(a) Competitive natural gas provider means a person who takes title to natural gas and sells it for consumption by a retail end user. Competitive natural gas provider includes an affiliate of a natural gas public utility.

(b) Competitive natural gas provider does not include the following:

(i) A jurisdictional utility;

(ii) A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns; or

(iii) A natural gas public utility that is not subject to the act as provided in section 66-1803 in areas in which it is providing natural gas service in accordance with section 66-1803.

Source: Laws 2003, LB 790, § 48.

A metropolitan utilities district that intends to sell natural gas to distribution facilities it does not own falls under the certification provisions of this section and the Public Service Commission's jurisdiction. In re Application of Metropolitan Util. Dist., 270 Neb. 494, 704 N.W.2d 237 (2005).

66-1849 Competitive natural gas providers and aggregators; certification by commission; costs and expenses; allocation.

(1) The commission shall certify all competitive natural gas providers and aggregators providing natural gas services. In an application for certification, a competitive natural gas provider or aggregator shall reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The commission may establish reasonable conditions or restrictions on the certificate at the time of issuance. The commission shall adopt and promulgate rules and regulations to establish specific criteria for certification. The commission shall make a determination on an application for certification within ninety days after its submission unless the commission determines that additional time is necessary to consider the application. If the commission determines that additional time is necessary to consider the application, the commission may extend the time for making a determination for an additional sixty days.

(2) The commission may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

(3) The commission shall allocate the costs and expenses reasonably attributable to certification and dispute resolution as authorized in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and expenses of certification and dispute resolution shall be remitted to the State Treasurer for credit to the Public Service Commission Regulation Fund.

Source: Laws 2003, LB 790, § 49.

66-1850 Act; enforcement; prior law; applicability.

(1) The State Natural Gas Regulation Act shall not be enforced retroactively before May 31, 2003. A rate filing made pursuant to the provisions of the Municipal Natural Gas Regulation Act prior to such date shall be governed by

the act by its terms as in effect on the date of the filing. The enactment into law of the State Natural Gas Regulation Act shall not have the effect of releasing or waiving any right of action by the state, any body corporate and politic, municipal corporation, person, or corporation, pending on May 31, 2003, for any right which may have arisen or accrued under the Municipal Natural Gas Regulation Act.

(2) The rates, terms and conditions of service, and rate areas of a jurisdictional utility in effect on or before May 31, 2003, shall remain in effect after May 31, 2003, and shall be treated as if approved and adopted by the commission pursuant to the State Natural Gas Regulation Act.

(3) The rate areas established pursuant to the Municipal Natural Gas Regulation Act and in effect on May 31, 2003, shall be the initial rate areas in effect under the State Natural Gas Regulation Act. Each jurisdictional utility shall file with the commission a map showing the boundaries of such areas and intervening and adjacent rural territories served within such rate areas.

(4) Except as provided in subsection (5) of this section, following the filing of maps pursuant to subsection (3) of this section, a jurisdictional utility may file with the commission a revised map or maps of any affected rate areas reflecting changes in the boundaries of one or more of the initially filed rate areas and such changes shall become effective upon filing. The commission may, upon its own initiative or upon complaint, review such rate area boundaries and, following notice and hearing, reject or modify proposed changes upon the basis that the proposed changes in boundaries are unduly preferential, unjustly discriminatory, or not just and reasonable.

(5) A rate area containing a city of the primary class shall not be changed to include any other city until after June 1, 2007.

(6) The commission may waive application of the definition of high-volume ratepayer for all ratepayers (a) who prior to April 16, 2004, obtained natural gas service from a jurisdictional utility pursuant to subsection (3) of former section 19-4604, as such section existed prior to May 24, 2003, and (b) whose current consumption of natural gas would qualify such ratepayers to receive natural gas service pursuant to such former section if the section had not been repealed. All ratepayers meeting such criteria may be treated as high-volume ratepayers pursuant to the State Natural Gas Regulation Act. The authority granted pursuant to this subsection and any such waiver shall expire on June 1, 2007.

Source: Laws 2003, LB 790, § 50; Laws 2004, LB 499, § 1.

66-1851 Jurisdictional utility; customer choice or other programs; how treated.

(1) Notwithstanding any other provisions in the State Natural Gas Regulation Act, a jurisdictional utility may file with the commission rates and one or more rate schedules and other charges, and rules and regulations pertaining thereto, that enable the utility to provide service to ratepayers under customer choice and other programs offered by a utility to unbundle one or more elements of the service provided by the utility.

(2) The commission shall not eliminate or modify the terms of any customer choice or other unbundling programs in existence on May 31, 2003, or as thereafter modified by a filing made by the jurisdictional utility, except as

permitted by the act after complaint or the commission's own motion and hearing. In any rate determination made under the act, the commission shall not penalize the utility for any action prudently taken or decision prudently made under its approved bundling program, by imputing revenue at maximum rates or otherwise.

(3) The commission may not modify the provisions of a program under this section except upon complaint or the commission's own motion, wherein the commission finds, after hearing, that one or more aspects of the program are unduly preferential, unjustly discriminatory, or not just and reasonable.

Source: Laws 2003, LB 790, § 51.

66-1852 Extension of natural gas mains or other services; limitations.

(1) Except as otherwise expressly authorized in the State Natural Gas Regulation Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.

(2) The prohibition in subsection (1) of this section shall not apply in any area in which two or more jurisdictional utilities share authority to provide natural gas within the same territory under franchises issued by the same city.

(3) The prohibition in subsection (1) of this section shall not apply to the extension by a jurisdictional utility of a transmission line connecting to distribution facilities owned or operated by a jurisdictional utility, a city, or a metropolitan utilities district or to serve city-owned electric generating facilities located within the boundaries of a city within which the jurisdictional utility extending the transmission line provides natural gas service to customers.

(4)(a) The prohibition in subsection (1) of this section shall not apply to the extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district.

(b) The extension by a metropolitan utilities district of a transmission line connecting to distribution facilities owned or operated by such metropolitan utilities district shall not constitute an enlargement or expansion of its natural gas service area and shall not be considered part of its natural gas service area.

(c) The extension of a transmission line by a jurisdictional utility as provided in subsection (3) of this section shall not constitute an enlargement or expansion of the jurisdictional utility's natural gas service area and shall not be considered part of its natural gas service area if the transmission line makes its connection to distribution facilities in a county in which the natural gas service area or a portion of the natural gas service area of a metropolitan utilities district is located.

(5) The prohibition in subsection (1) of this section shall not apply to the extension by a city that owns or operates a natural gas utility of a transmission line that connects to its own distribution facilities.

(6) For purposes of this section, a transmission line means a pipeline, other than a gathering pipeline, distribution pipeline, or service line, that transports natural gas.

(7) Nothing in this section shall be construed to authorize a jurisdictional utility to extend a transmission line to a high-volume ratepayer with an existing

source and adequate supply of natural gas that is located outside the area in which that jurisdictional utility has existing natural gas utility infrastructure.

Source: Laws 2003, LB 790, § 52; Laws 2006, LB 1249, § 4; Laws 2008, LB1072, § 2.

66-1853 Certificate of public convenience; requirements.

(1) Except as provided in subsection (2) of this section, no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in this state.

(2) A jurisdictional utility transacting business in this state shall be issued a certificate of convenience based upon its natural gas service as of May 31, 2003.

(3) Every jurisdictional utility shall be required to furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by such utility.

Source: Laws 2003, LB 790, § 53.

66-1854 Cost of gas supply; effect on rate schedules; procedure.

(1) The commission shall allow jurisdictional utilities to implement and thereafter modify gas supply cost adjustment rate schedules that reflect increases or decreases in the cost of the utility's gas supply such as (a) federally regulated wholesale rates for energy delivered through interstate facilities, (b) direct costs for natural gas delivered, or (c) costs for fuel used in the manufacture of gas. Such costs may, in the discretion of the commission, include costs related to gas price volatility risk management activities, the costs of financial instruments purchased to hedge against gas price volatility, if prudent, and other relevant factors. Gas supply cost adjustment rate schedules in effect on May 31, 2003, shall continue in effect until changed pursuant to the provisions of the State Natural Gas Regulation Act. In each such proceeding the burden of proof shall be upon the utility.

(2) Unless the commission otherwise orders and except as otherwise provided in this section, no change shall be made by any jurisdictional utility in any purchased gas adjustment schedule, except after thirty days' notice to the commission and to the public as provided in this section. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect, and by publication in a newspaper of general circulation of notice to ratepayers affected by such change. The utility may propose and the commission, for good cause shown, may allow changes without requiring the thirty days' notice, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate or other charge to ratepayers, such proposed change shall be plainly indicated on the new schedule filed with the commission.

(3) The commission may modify a jurisdictional utility's gas supply cost adjustment rate schedule under procedures specified in the act for setting rates by order of the commission.

(4) Once annually, the commission may initiate public hearings, upon complaint, to determine whether the gas supply cost adjustment schedule of a jurisdictional utility reflects the costs of the utility's gas supply and whether such costs were prudently incurred and to reconcile any amounts collected from ratepayers with the actual costs of gas supplies incurred by the utility.

(5) Any refund, including interest thereon, if any, received by the jurisdictional utility with respect to services purchased under Federal Energy Regulatory Commission natural gas tariff related to increased rates paid by the utility subject to refund, and applicable to natural gas services purchased for service to Nebraska ratepayers, shall be passed along to presently served Nebraska ratepayers by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the utility, not to exceed twelve months, or by a cash refund at the option of the utility. The utility shall not be required to return such refunds to ratepayers served at competitively set or negotiated rates, or under alternative rate mechanisms, when the ratepayer is paying less than the full rate determined pursuant to the gas supply cost adjustment rate schedule, or under a customer choice or unbundling program.

(6) The provisions of this section shall not be construed to modify or otherwise restrict the Public Service Commission's authority to establish alternative rate mechanisms as authorized by the act, when such mechanisms modify a utility's recovery of gas supply costs.

Source: Laws 2003, LB 790, § 54.

66-1855 Banded rates; commission; powers.

The commission may authorize, consistent with general regulatory principles, including, but not limited to (1) banded rates with a minimum and maximum rate that allows the jurisdictional utility to offer ratepayers rates within the rate band for the purpose of attracting additional natural gas service demand or to retain such demand, (2) mechanisms for the determination of rates by negotiation, and (3) customer choice and other programs to be offered by a natural gas public utility to unbundle one or more elements of the service provided by the utility.

Source: Laws 2003, LB 790, § 55.

66-1856 Construction of new facilities; prior approval not required.

A jurisdictional utility shall not be required to obtain prior approval from the commission to begin the construction of any new plant, equipment, property, or facility that the utility determines to be necessary to provide adequate and reliable service to ratepayers.

Source: Laws 2003, LB 790, § 56.

66-1857 Rights and remedies; how construed.

The rights and remedies given by the State Natural Gas Regulation Act shall be construed as cumulative of all other laws in force in this state relating to jurisdictional utilities and shall not repeal any other remedies or rights now existing in this state for the enforcement of the duties and obligations of

jurisdictional utilities or the rights of the commission to regulate and control the same except where inconsistent with the act.

Source: Laws 2003, LB 790, § 57.

66-1858 Metropolitan utilities district; solicitations prohibited; proposals authorized; when.

Whenever any city is furnished natural gas pursuant to a franchise agreement with a jurisdictional utility, a metropolitan utilities district shall not solicit such city to enter into a franchise agreement or promote discontinuance of natural gas service with the utility unless a specific invitation to submit a proposal on such a franchise has been formally presented to the board of directors of the metropolitan utilities district. For purposes of this section, a specific invitation to submit a proposal means a resolution adopted by the governing body of the city.

Whenever a specific invitation to submit a proposal is received by the board of directors of a metropolitan utilities district, the invitation will be considered by the board at its next regularly scheduled monthly meeting.

Source: Laws 1999, LB 78, § 2; R.S.1943, (2004), § 57-1301; Laws 2006, LB 1249, § 5.

66-1859 Enlargement or extension of area; applicability of sections.

Sections 66-1858 to 66-1864 shall be applicable to a jurisdictional utility only when it is operating in a county in which there is located the natural gas service area, or portion of the natural gas service area, of a metropolitan utilities district and only with regard to matters arising within any such county. Within the limits of a municipal county, the provisions of sections 66-1858 to 66-1864 shall be applicable to the extent and in the manner provided by the Legislature as required by section 13-2802.

Source: Laws 1999, LB 78, § 3; Laws 2001, LB 142, § 52; R.S.1943, (2004), § 57-1302; Laws 2006, LB 1249, § 6.

66-1860 Enlargement or extension of area; considerations.

No jurisdictional utility or metropolitan utilities district may extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services unless it is in the public interest to do so. In determining whether or not an extension or enlargement is in the public interest, the district or the utility shall consider the following:

(1) The economic feasibility of the extension or enlargement;

(2) The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the jurisdictional utility;

(3) Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

(4) Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and

(5) Whether the extension or enlargement is applied in a nondiscriminatory manner.

Source: Laws 1999, LB 78, § 4; R.S.1943, (2004), § 57-1303; Laws 2006, LB 1249, § 7.

66-1861 Enlargement or extension of area; rebuttable presumptions.

In determining whether an enlargement or extension of a natural gas service area, natural gas mains, or natural gas services is in the public interest pursuant to section 66-1860, the following shall constitute rebuttable presumptions:

(1) Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;

(2) Any enlargement or extension by a jurisdictional utility within a city other than a city of the metropolitan class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and

(3) Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a city other than a city of the metropolitan or primary class in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to subsection (2) of section 14-2116 shall, by reason of such exercise, be conclusively determined to be in the public interest.

Source: Laws 1999, LB 78, § 5; R.S.1943, (2004), § 57-1304; Laws 2006, LB 1249, § 8.

66-1862 Duplicative gas mains or services; prohibited.

A metropolitan utilities district or jurisdictional utility shall not extend duplicative or redundant interior natural gas mains or natural gas services into a subdivision, whether residential, commercial, or industrial, which has existing natural gas utility infrastructure or which has contracted for natural gas utility infrastructure with another utility.

Source: Laws 1999, LB 78, § 6; R.S.1943, (2004), § 57-1305; Laws 2006, LB 1249, § 9.

66-1863 Enlargement or extension of area; review by Public Service Commission; when required.

(1) Except as provided in subsections (2) and (3) of this section, no jurisdictional utility or metropolitan utilities district proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services after July 14, 2006, shall undertake or pursue such extension or enlargement until the proposal has been submitted to the commission for its determination that the proposed extension or enlargement is in the public interest. Any proposal for extension or enlargement shall be filed with the commission, and the commission shall promptly make such application public in such manner as the commission deems appropriate. The commission shall schedule the matter for hearing and determination in the county where the extension or enlargement is proposed, and the matter shall be subject to the applicable procedures provided in the State Natural Gas Regulation Act and sections 75-112, 75-129, and 75-134 to 75-136. In making a determination whether a proposed extension or enlargement is in the public interest, the

commission shall consider the factors set forth in sections 66-1860 and 66-1861. Ratepayers of the jurisdictional utility or the metropolitan utilities district shall have the right to appear and present testimony before the commission on any matter submitted to the commission under sections 66-1858 to 66-1864 and shall have such testimony considered by the commission in arriving at its determination.

(2) If any metropolitan utilities district proposes to extend or enlarge its system within the corporate boundaries of the city of the metropolitan class it serves or within the boundaries of the extraterritorial zoning jurisdiction of such city, the metropolitan utilities district may pursue such extension or enlargement without the need for commission approval or the requirement to file and request permission to pursue such extension or enlargement.

(3) If no person or entity has filed with the commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further commission action.

Source: Laws 1999, LB 78, § 7; R.S.1943, (2004), § 57-1306; Laws 2006, LB 1249, § 10.

66-1864 Enlargement or extension of area; records; open to public; use.

All books, records, vouchers, papers, contracts, engineering designs, and any other data of the metropolitan utilities district relating to the public interest of an extension or enlargement of natural gas mains or natural gas services or relating to natural gas service areas, whether in written or electronic form, shall be open and made available for public inspection, investigation, comment, or protest upon reasonable request during business hours, except that such books, records, vouchers, papers, contracts, designs, and other data shall be subject to section 84-712.05. Any books, records, vouchers, papers, contracts, designs, or other data not made available to the metropolitan utilities district or jurisdictional utility with regard to a proceeding before the commission regarding matters arising pursuant to sections 66-1858 to 66-1864 shall not be considered by the commission in determining whether an enlargement or extension is in the public interest.

Source: Laws 1999, LB 78, § 8; R.S.1943, (2004), § 57-1307; Laws 2006, LB 1249, § 11.

66-1865 Jurisdictional utility; application and proposed rate schedules; filing; commission; powers.

(1) Beginning January 1, 2010, a jurisdictional utility may file an application and proposed rate schedules with the commission to establish or change infrastructure system replacement cost recovery charge rate schedules that will allow for the adjustment of the jurisdictional utility's rates and charges to provide for the recovery of costs for eligible infrastructure system replacements. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annualized infrastructure system replacement cost recovery charge revenue below the lesser of one million dollars or one-half percent of the jurisdictional utility's

base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules if such schedules would produce total annualized infrastructure system replacement cost recovery charge revenue exceeding ten percent of the jurisdictional utility's base revenue level approved by the commission in the jurisdictional utility's most recent general rate proceeding. Any infrastructure system replacement cost recovery charge rate schedules and any future changes thereto shall be calculated and implemented in accordance with the State Natural Gas Regulation Act. Infrastructure system replacement cost recovery charge revenue shall be subject to a refund based upon a finding and order of the commission to the extent provided in subsections (6) and (8) of section 66-1866 or as approved by the affected cities to the extent provided in subsection (6) and subdivision (7)(c) of section 66-1867.

(2) The commission shall not approve any infrastructure system replacement cost recovery charge rate schedules for any jurisdictional utility that has not had a general rate proceeding decided or dismissed by issuance of a commission order within the sixty months immediately preceding the application by the jurisdictional utility for an infrastructure system replacement cost recovery charge.

(3) A jurisdictional utility shall not collect an infrastructure system replacement cost recovery charge rate for a period exceeding sixty months after its initial approval unless within such sixty-month period the jurisdictional utility has filed for or is the subject of a new general rate proceeding, except that the infrastructure system replacement cost recovery charge rate may be collected until the effective date of new rate schedules established as a result of the new general rate proceeding or until the general rate proceeding is otherwise decided or dismissed by issuance of a commission order without new rates being established.

Source: Laws 2009, LB658, § 4.

66-1866 Jurisdictional utility; prior filing not subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; public advocate; duties; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was not the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit to the commission with the application proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge.

(3)(a) When an application, along with any associated proposed rate schedules and documentation, is filed pursuant to subsection (2) of this section, the public advocate shall conduct an examination of the proposed infrastructure system replacement cost recovery charge rate schedules.

(b) The public advocate shall cause an examination to be made of information regarding the jurisdictional utility to confirm that the underlying costs are in accordance with the State Natural Gas Regulation Act and to confirm proper calculation of the proposed infrastructure system replacement cost recovery charge rates and rate schedules. The commission shall require a report regarding such examination to be prepared and filed with the commission not later than sixty days after the application is filed. No other revenue requirement or ratemaking issue shall be examined in consideration of the application or associated proposed rate schedules filed pursuant to the act unless the consideration of such affects the determination of the validity of the proposed infrastructure system replacement cost recovery charge rate schedules.

(c) The commission shall hold a hearing on the application and any associated rate schedules at which the public advocate shall present his or her report and shall act as trial staff before the commission. The commission shall issue an order to become effective not later than one hundred twenty days after the application is filed, except that the commission may, for good cause, extend such period for an additional thirty days.

(d) If the commission finds that an application complies with the requirements of the act, the commission shall enter an order authorizing the jurisdictional utility to impose an infrastructure system replacement cost recovery charge rate that is sufficient to recover appropriate pretax revenue, as determined by the commission pursuant to the act.

(4) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(5) In determining the appropriate pretax revenue, the commission shall consider the following factors:

(a) The net original cost of eligible infrastructure system replacements. For purposes of this section, the net original cost means the original cost of eligible infrastructure system replacements minus associated retirements of existing infrastructure;

(b) The accumulated deferred income taxes associated with the eligible infrastructure system replacements;

(c) The accumulated depreciation associated with the eligible infrastructure system replacements;

(d) The state, federal, and local income tax or excise tax rates at the time of such determination;

(e) The jurisdictional utility's actual regulatory capital structure as determined during the most recent general rate proceeding of the jurisdictional utility;

(f) The actual cost rates for the jurisdictional utility's debt and preferred stock as determined during the most recent general rate proceeding of the jurisdictional utility;

(g) The jurisdictional utility's cost of common equity as determined during the most recent general rate proceeding of the jurisdictional utility; and

(h) The depreciation rates applicable to the eligible infrastructure system replacements at the time of the most recent general rate proceeding of the jurisdictional utility.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from the infrastructure system replacement cost recovery charge and the appropriate pretax revenue as found by the commission for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the commission for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to the act shall cease to collect such charges when new base rates and charges become effective for the jurisdictional utility following a commission order establishing customer rates in a general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the commission shall reconcile any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the revenue matches as closely as possible to the appropriate pretax revenue as found by the commission for that period.

(8) In the event the commission disallows, during a subsequent general rate proceeding, recovery of costs associated with eligible infrastructure system replacements previously included in any infrastructure system replacement cost recovery charge rate schedules, the commission shall order the jurisdictional utility to make such rate adjustments as necessary to recognize and account for any such overcollections.

(9) Nothing in this section shall be construed to limit the authority of the commission to review and consider infrastructure system replacement costs along with other costs during any general rate proceeding of any jurisdictional utility.

Source: Laws 2009, LB658, § 5.

66-1867 Jurisdictional utility; prior filing subject to negotiations; application for infrastructure system replacement cost recovery charge; duties; affected cities; powers; commission; powers; change in rate schedules.

(1) This section applies to applications for an infrastructure system replacement cost recovery charge by a jurisdictional utility whose last general rate filing was the subject of negotiations with affected cities as provided for in section 66-1838.

(2) When a jurisdictional utility governed by this section files an application with the commission seeking to establish or change any infrastructure system replacement cost recovery charge rate schedules, it shall submit proposed infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules with the application and shall provide written notice to each city that will be affected by the proposed infrastructure system replacement cost recovery charge rates simultaneously with the filing with the commission. Such notice shall identify the cities that will be affected by the filing. The jurisdictional utility shall file copies of the notice with the commission and shall file with the affected cities the information prescribed by this section with each city affected by the proposed infrastructure system replacement cost recovery charge in electronic or digital form or, upon request, in paper form.

(3) The jurisdictional utility shall file with the cities and the commission the infrastructure system replacement cost recovery charge rate schedules and supporting documentation regarding the calculation of the proposed infrastructure system replacement cost recovery charge rate schedules, including (a) a list of eligible projects, (b) a description of the projects, (c) the location of the projects, (d) the purpose of the projects, (e) the dates construction began and ended, (f) the total expenses for each project at completion, and (g) the extent to which such expenses are eligible for inclusion in the calculation of the infrastructure system replacement cost recovery charge rate.

(4)(a) Affected cities shall have a period of thirty days after the date of such filing within which to adopt a resolution evidencing their intent to negotiate an infrastructure system replacement cost recovery charge rate with the jurisdictional utility. A copy of the resolution in support of negotiations adopted by each city under this section or a copy of the resolution of the rejection of the offer of negotiations shall be provided to the commission and the jurisdictional utility within seven days after its adoption.

(b) If the commission receives resolutions adopted prior to the expiration of the thirty-day period provided for in subdivision (a) of this subsection evidencing the intent from cities representing more than fifty percent of the ratepayers within the affected cities to negotiate with the jurisdictional utility an infrastructure system replacement cost recovery charge rate, the commission shall certify the case for negotiation between such cities and the jurisdictional utility and shall take no action upon the application and filings regarding such charge until the negotiation period and any stipulated extension has expired or an agreement on rates is submitted, whichever occurs first.

(c) If the commission receives copies of resolutions from cities representing more than fifty percent of the ratepayers within the affected cities which expressly reject negotiations, the infrastructure system replacement cost recovery charge rate review shall proceed immediately from the date when the

commission makes such a determination in the manner provided for in section 66-1866.

(d) If commission certification to pursue negotiations is entered, the cities that have adopted resolutions to negotiate and the jurisdictional utility shall enter into good faith negotiations over the proposed infrastructure system replacement cost recovery charge rate.

(e) Negotiations between the cities and the jurisdictional utility shall continue for a period not to exceed thirty days after the date of the commission's certification to pursue negotiations, except that the parties may mutually agree to extend such period to a future date certain and shall provide such stipulation to the commission.

(f) If the cities and the jurisdictional utility reach agreement upon the proposed infrastructure system replacement cost recovery charge rate schedules, such agreement shall be put into writing and filed with the commission. If cities representing more than fifty percent of the ratepayers within the cities affected by the proposed infrastructure system replacement cost recovery charge rate schedules enter into an agreement upon such charges and the agreement is filed with and approved by the commission, such infrastructure system replacement cost recovery charge rate schedules shall be effective and binding upon all of the jurisdictional utility's ratepayers within the affected cities. The commission shall enter its order either approving or rejecting such infrastructure system replacement cost recovery charge rate schedules within thirty days after the date of the filing of the agreement with the commission.

(g) Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission.

(h) If the negotiations fail to result in an agreement upon any infrastructure system replacement cost recovery charge rate schedules within the time permitted by this section for such negotiations, the jurisdictional utility may formally notify the commission of this fact and the matter shall be submitted for determination by the commission as a contested proceeding with the affected cities as one party and the jurisdictional utility as the other. The affected cities and the jurisdictional utility shall submit any documents, data, or information in support of the city's or jurisdictional utility's position to the commission in a report to be filed not later than fourteen days after the commission receives notice that negotiations have failed and formally notifies the parties that it will be hearing the matter as a contested case. The commission shall hold a hearing in the case not later than thirty-five days after the receipt of the reports of both parties. In determining the appropriate pretax revenue of the jurisdictional utility, the commission shall consider the factors set out in subsection (5) of section 66-1866. A final determination by the commission shall be rendered by the commission within twenty-one days after the adjournment of the hearing.

(i) If information filed pursuant to subdivision (h) of this subsection is not considered a public record within the meaning of sections 84-712 to 84-712.09, such information may be submitted to the commission by the jurisdictional utility or affected cities for the limited purpose of consideration by the commission under this section subject to a protective order issued by the commission.

(j) Within thirty days after any infrastructure system replacement cost recovery charge rate schedules approved by the commission pursuant to this section

become effective, copies of all documents relating to such infrastructure system replacement cost recovery charge rate schedules, except those determined to be confidential under rules and regulations adopted and promulgated by the commission or that may be withheld from the public pursuant to subdivision (h) or (j) of this subsection, shall be available for public inspection in every office and facility open to the general public of the jurisdictional utility in this state.

(5) A jurisdictional utility may apply for a change in any infrastructure system replacement cost recovery charge rate schedules approved pursuant to this section no more than once in any twelve-month period. Any such application for a change shall be pursued in the manner provided for in this section.

(6)(a) The monthly infrastructure system replacement cost recovery charge rate shall be allocated among the jurisdictional utility's classes of customers in the same manner as costs for the same type of facilities were allocated among classes of customers in the jurisdictional utility's most recent general rate proceeding. An infrastructure system replacement cost recovery charge rate shall be assessed to customers as a monthly fixed charge and not based on volumetric consumption. Such monthly charge shall not increase more than fifty cents per residential customer over the base rates in effect at the time of the initial filing for any infrastructure system replacement cost recovery charge rate schedules. Thereafter, each subsequent filing shall not increase the monthly charge by more than fifty cents per residential customer over that charge in existence at the time of the most recent application for any infrastructure system replacement cost recovery charge rate schedules.

(b) At the end of each twelve-month period during which the infrastructure system replacement cost recovery charge rate schedules are in effect, the jurisdictional utility shall reconcile the differences between the revenue resulting from an infrastructure system replacement cost recovery charge and the appropriate pretax revenue for that period and shall submit the reconciliation and any proposed infrastructure system replacement cost recovery charge rate schedules adjustment to the affected cities for approval to recover or refund the difference, as appropriate, through adjustments of the infrastructure system replacement cost recovery charge rate. Review and approval of such reconciliation or adjustment shall proceed in the manner set out in the commission order on the initial application for an infrastructure system replacement cost recovery charge rate.

(7)(a) A jurisdictional utility that has implemented any infrastructure system replacement cost recovery charge rate schedules pursuant to this section shall cease to collect such charges when new base rates and charges become effective for the jurisdictional utility following a commission order establishing or approving customer rates in a subsequent general rate proceeding.

(b) In any subsequent general rate proceeding involving a jurisdictional utility which is collecting charges pursuant to any infrastructure system replacement cost recovery charge rate schedules, the new general rates shall reflect a reconciliation of any previously unreconciled infrastructure system replacement cost recovery charge revenue as necessary to ensure that the revenue matches as closely as possible to the appropriate pretax revenue for that period as determined in the general rate proceeding.

(c) If, during a subsequent general rate proceeding, the recovery of certain costs associated with eligible infrastructure system replacements are disal-

lowed, the new general rates approved shall include such adjustments as are necessary to recognize and account for any overcollections.

(8) Nothing in this section shall be construed to limit the authority of the commission or affected cities engaged in negotiations regarding a general rate filing with a jurisdictional utility to review and consider infrastructure system replacement cost recovery charge rates along with other costs during any general rate proceeding of such jurisdictional utility.

Source: Laws 2009, LB658, § 6.

CHAPTER 67
PARTNERSHIPS

Article.

Cross References

Actions by and against:
Judgment, insufficient partnership property, see section 25-316.
Partnership name, may sue and be sued by, see section 25-313.
Process, service of, see section 25-512.01.
Security for costs, requirement, see section 25-315.
Venue, see section 25-403.02.
Health insurance, group policy, partners, see section 44-760.
Indictments involving partnership property, ownership, how alleged, see section 29-1507.
Insurance of partnership interests, policy terms, see section 44-377.
Life insurance, group policy, partners, see section 44-1602 et seq.
Public Accountancy Act, see section 1-105.
Receivers, appointment in actions between partners, see section 25-1081.
Service of process, partnership appointed by court, see section 25-506.01.
Taxation, listing of personal property, see section 77-1201 et seq.
Trade name, registration requirements, see sections 87-208 to 87-220.

ARTICLE 1
GENERAL PARTNERSHIPS

Section
67-101. Repealed. Laws 2008, LB 707, § 5.
67-102. Repealed. Laws 2008, LB 707, § 5.
67-103. Repealed. Laws 2008, LB 707, § 5.
67-104. Repealed. Laws 2008, LB 707, § 5.
67-105. Repealed. Laws 2008, LB 707, § 5.
67-106. Repealed. Laws 2008, LB 707, § 5.

67-101 Repealed. Laws 2008, LB 707, § 5.

67-102 Repealed. Laws 2008, LB 707, § 5.

67-103 Repealed. Laws 2008, LB 707, § 5.

67-104 Repealed. Laws 2008, LB 707, § 5.

67-105 Repealed. Laws 2008, LB 707, § 5.

67-106 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 2
NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

Section
67-201. Repealed. Laws 1981, LB 272, § 67.
67-202. Repealed. Laws 1981, LB 272, § 67.
67-203. Repealed. Laws 1981, LB 272, § 67.
67-204. Repealed. Laws 1981, LB 272, § 67.
67-205. Repealed. Laws 1981, LB 272, § 67.
67-206. Repealed. Laws 1981, LB 272, § 67.
67-207. Repealed. Laws 1981, LB 272, § 67.
67-208. Repealed. Laws 1981, LB 272, § 67.
67-209. Repealed. Laws 1981, LB 272, § 67.
67-210. Repealed. Laws 1981, LB 272, § 67.
67-211. Repealed. Laws 1981, LB 272, § 67.
67-212. Repealed. Laws 1981, LB 272, § 67.
67-213. Repealed. Laws 1981, LB 272, § 67.
67-214. Repealed. Laws 1981, LB 272, § 67.
67-215. Repealed. Laws 1981, LB 272, § 67.
67-216. Repealed. Laws 1981, LB 272, § 67.
67-217. Repealed. Laws 1981, LB 272, § 67.
67-218. Repealed. Laws 1981, LB 272, § 67.
67-219. Repealed. Laws 1981, LB 272, § 67.
67-220. Repealed. Laws 1981, LB 272, § 67.
67-221. Repealed. Laws 1981, LB 272, § 67.
67-222. Repealed. Laws 1981, LB 272, § 67.
67-223. Repealed. Laws 1981, LB 272, § 67.
67-224. Repealed. Laws 1981, LB 272, § 67.
67-225. Repealed. Laws 1981, LB 272, § 67.
67-226. Repealed. Laws 1981, LB 272, § 67.
67-227. Repealed. Laws 1981, LB 272, § 67.
67-228. Repealed. Laws 1981, LB 272, § 67.
67-229. Repealed. Laws 1981, LB 272, § 67.
67-230. Repealed. Laws 1981, LB 272, § 67.
67-231. Repealed. Laws 1981, LB 272, § 67.
67-232. Repealed. Laws 1981, LB 272, § 67.

Section

PART I. GENERAL PROVISIONS

PART II. FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

PART III. LIMITED PARTNERS

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PART V. FINANCE

PART VI. DISTRIBUTIONS AND WITHDRAWAL

PART VII. ASSIGNMENT OF PARTNERSHIP INTERESTS

67-201 Repealed. Laws 1981, LB 272, § 67.

67-202 Repealed. Laws 1981, LB 272, § 67.

67-203 Repealed. Laws 1981, LB 272, § 67.

67-204 Repealed. Laws 1981, LB 272, § 67.

67-205 Repealed. Laws 1981, LB 272, § 67.

67-206 Repealed. Laws 1981, LB 272, § 67.

67-207 Repealed. Laws 1981, LB 272, § 67.

67-208 Repealed. Laws 1981, LB 272, § 67.

67-209 Repealed. Laws 1981, LB 272, § 67.

67-210 Repealed. Laws 1981, LB 272, § 67.

67-211 Repealed. Laws 1981, LB 272, § 67.

67-212 Repealed. Laws 1981, LB 272, § 67.

67-213 Repealed. Laws 1981, LB 272, § 67.

67-214 Repealed. Laws 1981, LB 272, § 67.

67-215 Repealed. Laws 1981, LB 272, § 67.

67-216 Repealed. Laws 1981, LB 272, § 67.

67-217 Repealed. Laws 1981, LB 272, § 67.

67-218 Repealed. Laws 1981, LB 272, § 67.

67-219 Repealed. Laws 1981, LB 272, § 67.

67-220 Repealed. Laws 1981, LB 272, § 67.

67-221 Repealed. Laws 1981, LB 272, § 67.

67-222 Repealed. Laws 1981, LB 272, § 67.

67-223 Repealed. Laws 1981, LB 272, § 67.

67-224 Repealed. Laws 1981, LB 272, § 67.

67-225 Repealed. Laws 1981, LB 272, § 67.

67-226 Repealed. Laws 1981, LB 272, § 67.

67-227 Repealed. Laws 1981, LB 272, § 67.

67-228 Repealed. Laws 1981, LB 272, § 67.

67-229 Repealed. Laws 1981, LB 272, § 67.

67-230 Repealed. Laws 1981, LB 272, § 67.

67-231 Repealed. Laws 1981, LB 272, § 67.

67-232 Repealed. Laws 1981, LB 272, § 67.

PART I

GENERAL PROVISIONS

67-233 Terms, defined.

For purposes of the Nebraska Uniform Limited Partnership Act:

(1) Certificate of limited partnership shall mean the certificate referred to in section 67-240 and the certificate as amended or restated;

(2) Contribution shall mean any cash, property, services rendered, or promissory note or other binding obligation to contribute cash or property or to perform services which a partner contributes to a limited partnership in his or her capacity as a partner;

(3) Event of withdrawal of a general partner shall mean an event that causes a person to cease to be a general partner as provided in section 67-255;

(4) Foreign limited partnership shall mean a partnership formed under the laws of any state other than this state or under the laws of any foreign country and having as partners one or more general partners and one or more limited partners;

(5) General partner shall mean a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and, if required, named as such in the certificate of limited partnership or similar instrument under which the limited partnership or foreign limited partnership is organized;

(6) Limited partner shall mean a person who has been admitted to a limited partnership as a limited partner as provided in the Nebraska Uniform Limited Partnership Act or, in the case of a foreign limited partnership, in accordance with the laws under which the limited partnership is formed;

(7) Limited partnership and domestic limited partnership shall mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners;

(8) Liquidating trustee shall mean a person, other than a general partner, but including a limited partner, carrying out the winding up of a limited partnership;

(9) Partner shall mean a limited or general partner;

(10) Partnership agreement shall mean any valid agreement, written or oral, of the partners as to the affairs of a limited partnership or foreign limited partnership and the conduct of its business;

(11) Partnership interest shall mean a partner's share of the profits and losses of a limited partnership or foreign limited partnership and the right to receive distributions of partnership assets;

(12) Person shall mean a natural person, partnership, whether general or limited and whether domestic or foreign, limited liability company, trust, estate, association, or corporation; and

(13) State shall mean a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Source: Laws 1981, LB 272, § 1; Laws 1989, LB 482, § 6; Laws 1993, LB 121, § 400.

67-234 Limited partnership name.

The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words limited partnership or limited or the abbreviations L.P. or Ltd.;

(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner, the corporate name of a corporate general partner, or the company name of a limited liability company general partner, (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner, or (iii) the use of the name of a limited partner in the name of the limited partnership is merely coincidental and not intended to mislead the public to believe that such limited partner is a general partner;

(3) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-220;

(4) Shall not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on

file with the Secretary of State pursuant to Nebraska law, except that a limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, a business entity name registered or on file with the Secretary of State pursuant to Nebraska law with the consent of the other business entity or with the transfer of such name by the other business entity, which written consent or transfer shall be filed with the Secretary of State; and

(5) May contain the following words or abbreviations of like import: Company; association; club; foundation; fund; institute; society; union; syndicate; or trust.

Source: Laws 1981, LB 272, § 2; Laws 1989, LB 482, § 7; Laws 1993, LB 121, § 401; Laws 1997, LB 44, § 10; Laws 2003, LB 464, § 7.

67-235 Reservation of name.

(a) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to organize a limited partnership under the Nebraska Uniform Limited Partnership Act and to adopt that name;

(2) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(3) Any foreign limited partnership intending to register in this state and currently using or intending to adopt that name; and

(4) Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited partnership, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(c) A fee as set forth in section 67-293 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Source: Laws 1981, LB 272, § 3; Laws 1989, LB 482, § 8.

67-236 Specified office and agent.

(a) Each limited partnership shall have and maintain in this state:

(1) An office which may but need not be a place of its business in this state; and

(2) An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.

(b) The agent for service of process may change his, her, or its street address and post office box number, if any, to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the limited partnerships represented by the agent, the street address and post office box number, if any, at which the agent has maintained his, her, or its office as agent for each of such limited partnerships, and the new street address and post office box number, if any, to which the office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office in this state of the agent for service of process for each of the limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership. Any agent filing a certificate under this section shall promptly, upon the filing, deliver a copy of such certificate to each limited partnership affected thereby.

(c) The agent of one or more limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such limited partnerships as have ratified and approved such substitution and the successor agent's address, as stated in such certificate, shall become the address of each such limited partnership's office in this state. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership.

(d) The agent of one or more limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to the certificate an affidavit of the agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of the agent was sent by certified or registered mail to each limited partnership for which the agent is resigning as agent at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request the agent was appointed for such limited partnership. After receipt of the notice of the

resignation of its agent, the limited partnership for which the agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If the limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, the certificate of such limited partnership shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 4; Laws 1989, LB 482, § 9; Laws 1990, LB 1228, § 2; Laws 1993, LB 121, § 402; Laws 2008, LB383, § 1.

67-237 Repealed. Laws 1989, LB 482, § 65.

67-237.01 Written partnership agreement; admission of limited partner; assignment of interest; signatures.

A written partnership agreement (1) may provide that a person shall be admitted as a limited partner of a limited partnership or become an assignee of a partnership interest or other rights or powers of a limited partner to the extent assigned and shall become bound by the partnership agreement (i) if such person, or a representative authorized by such person orally, in writing, or by other action such as payment for a partnership interest, executes the partnership agreement or any other writing evidencing the intent of such person to become a limited partner or assignee or (ii) without such execution, if such person, or a representative authorized by such person orally, in writing, or by other action such as payment for a partnership interest, complies with the condition for becoming a limited partner or assignee as set forth in the partnership agreement or any other writing and requests, orally, in writing, or by other action such as payment for a partnership interest, that the records of the limited partnership reflect such admission or assignment and (2) shall not be unenforceable by reason of its not having been signed by a person being admitted as a limited partner or becoming an assignee as provided in this section or by reason of its having been signed by a representative as provided in this section.

Source: Laws 1989, LB 482, § 10.

67-238 Nature of business.

A limited partnership may carry on any business that a partnership without limited partners may carry on, except for the purpose of banking or effecting insurance.

Source: Laws 1981, LB 272, § 6.

67-239 Partner; transactions with partnership.

Except as provided in the partnership agreement, a partner may lend money to, borrow money from, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.

Source: Laws 1981, LB 272, § 7; Laws 1989, LB 482, § 11.

67-239.01 Partnership; indemnification authorized.

Subject to such standards and restrictions, if any, as are set forth in its partnership agreement, a limited partnership may indemnify and hold harmless any partner or other person from and against any and all claims and demands whatsoever.

Source: Laws 1989, LB 482, § 12.

PART II

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-240 Certificate of limited partnership; contents; filing.

(a) In order to form a limited partnership, all persons who initially will be the general partners shall execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

(1) The name of the limited partnership;

(2) The address of its office and the name and street address and post office box number, if any, of the agent for service of process required to be maintained by section 67-236;

(3) The name and the business, residence, or mailing address of each general partner; and

(4) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Source: Laws 1981, LB 272, § 8; Laws 1989, LB 482, § 13; Laws 2008, LB383, § 2.

67-241 Amendments to certificate; restated certificate.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall be executed by any person who will be a general partner upon the effective date of the certificate of amendment and shall set forth:

(1) The name of the limited partnership;

(2) The date of filing the certificate; and

(3) The amendment to the certificate.

(b) Within ninety days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by any person who will be a general partner upon the effective date of the certificate of amendment and by each other general partner designated in the certificate of amendment as a new general partner:

(1) The admission of a new general partner;

(2) A general partner ceases to be a general partner as provided in section 67-255; or

(3) A change in the name of the limited partnership, a change in the address of its registered office, or a change in the name or street address or post office box number, if any, of the registered agent for service of process required to be

maintained by section 67-236 which is not reflected in a certificate filed pursuant to section 67-236.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any matter described has changed, making the certificate false in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the ninety-day period specified in subsection (b) of this section.

(f) A certificate of amendment shall be effective at the time of its filing with the Secretary of State or at any later time specified in the certificate of amendment if, in either case, there has been substantial compliance with the requirements of this section.

(g) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

(h) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 67-242:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence, or mailing address of each person winding up the limited partnership affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence, or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment.

Source: Laws 1981, LB 272, § 9; Laws 1989, LB 482, § 14; Laws 2008, LB383, § 3.

67-242 Cancellation of certificate.

A certificate of limited partnership shall be canceled upon the dissolution and the completion of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation (1) shall be executed by all general partners or, if the general partners are not winding up the limited partnership's affairs, then by all liquidating trustees, except that if the limited partners are winding up the limited partnership's affairs, a certificate of cancellation shall be signed by a majority of the limited partners, (2) shall be filed in the office of the Secretary of State, and (3) shall set forth:

(i) The name of the limited partnership;

(ii) The date of filing of its certificate of limited partnership;

(iii) The reason for filing the certificate of cancellation;

(iv) The effective date, which shall be a date certain, of cancellation if it is not to be effective upon the filing of the certificate; and

(v) Any other information the persons filing the certificate determine.

Source: Laws 1981, LB 272, § 10; Laws 1989, LB 482, § 15; Laws 1990, LB 1228, § 3.

67-243 Certificates; signature; execution.

(a) Any person may sign any certificate required by sections 67-240 to 67-248 to be filed in the office of the Secretary of State, a partnership agreement, or an amendment thereof by an attorney in fact. Powers of attorney relating to the signing of a certificate, partnership agreement, or amendment thereof by an attorney in fact need not be sworn to, verified, or acknowledged and need not be filed in the office of the Secretary of State but shall be retained by the person or persons exercising such powers of attorney.

(b) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that, to the best of the general partner's knowledge and belief, the facts stated in the certificate are true.

Source: Laws 1981, LB 272, § 11; Laws 1982, LB 589, § 2; Laws 1989, LB 482, § 16.

67-244 Certificate or agreement; execution or filing by judicial act.

(a) If a person required by sections 67-240 to 67-243 to execute or file any certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution or filing of the certificate. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute or file the certificate, it shall order the Secretary of State to execute and record an appropriate certificate.

(b) If a person required to execute a partnership agreement or amendment of an agreement fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the district court to direct the execution of the partnership agreement or amendment of the agreement. If the court finds that the partnership agreement or amendment should be executed and that any person so designated has failed or refused to do so, it shall enter an order granting appropriate relief.

Source: Laws 1981, LB 272, § 12; Laws 1989, LB 482, § 17.

67-245 Filing in office of Secretary of State; facsimile signature.

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation, of any restated certificates of limited partnership, or of any judicial decree of amendment or cancellation shall be delivered to the Secretary of State. A person who executes a certificate as an agent, attorney in fact, or fiduciary need not exhibit evidence of his or her authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he or she shall:

(1) Certify that the certificate of limited partnership, the certificate of amendment, the restated certificate of limited partnership, or the certificate of

cancellation or any judicial decree of amendment or cancellation has been filed in his or her office by endorsing upon both duplicate originals the word Filed and the date of the filing. This endorsement shall be conclusive of the date of its filing in the absence of proof of actual fraud;

(2) File one duplicate original in his or her office; and

(3) Return the other duplicate original to the person who filed it or his or her representative.

(b) Upon the later of the filing of a certificate of amendment or judicial decree of amendment in the office of the Secretary of State or the future effective date of a certificate of amendment or judicial decree of amendment, the certificate of limited partnership shall be amended as set forth in such certificate or decree, and upon the later of the filing of a certificate of cancellation or judicial decree of cancellation or upon the future effective date of a certificate of cancellation or a judicial decree of cancellation, the certificate of limited partnership shall be canceled.

(c) A fee as set forth in section 67-293 shall be paid at the time of the filing of a certificate of limited partnership, a certificate of amendment, or a certificate of cancellation.

(d) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of the Nebraska Uniform Limited Partnership Act may be a facsimile.

Source: Laws 1981, LB 272, § 13; Laws 1989, LB 482, § 18; Laws 1990, LB 1228, § 4.

67-246 Liability for false statement in certificate; general partner; failure to file; liability.

(a) If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

(1) Any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows that any arrangement or other fact described in the certificate is false in any material respect or has changed, making the statement false in any material respect, if the general partner had sufficient time to cancel or amend the certificate or to file a petition for its cancellation or amendment under section 67-244 before the statement was reasonably relied upon.

(b) No general partner shall have any liability for failing to cause the amendment or cancellation of a certificate to be filed or for failing to file a petition for its amendment or cancellation pursuant to subsection (a) of this section if the certificate of amendment, certificate of cancellation, or petition is filed within ninety days of the day when such general partner knew or should have known, to the extent provided in subsection (a) of this section, that the statement in the certificate was false in any material respect.

Source: Laws 1981, LB 272, § 14; Laws 1989, LB 482, § 19.

67-247 Filing of certificate; effect.

The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and is notice of all other facts set forth in the certificate which are required to be set forth in a certificate of limited partnership by section 67-240 and subsection (h) of section 67-241, but it is not notice of any other fact.

Source: Laws 1981, LB 272, § 15; Laws 1989, LB 482, § 20.

67-248 Delivery of certificate to limited partner.

Upon the return by the Secretary of State pursuant to section 67-245 of a certificate marked filed, the general partners shall promptly deliver or mail a copy of the certificate to each limited partner if the partnership agreement so requires.

Source: Laws 1981, LB 272, § 16; Laws 1989, LB 482, § 21.

67-248.01 Restated certificate.

(a) A limited partnership may, whenever desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect as a result of there having been filed with the Secretary of State one or more certificates or other instruments pursuant to sections 67-236 and 67-240 to 67-248, and it may at the same time further amend its certificate of limited partnership by adopting a restated certificate of limited partnership.

(b) If the restated certificate of limited partnership merely restates and integrates but does not further amend the initial certificate of limited partnership as amended or supplemented pursuant to sections 67-236 and 67-240 to 67-248, it shall be specifically designated in its heading as a Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed as provided in section 67-241 and filed with the Secretary of State as provided in section 67-245. If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership as amended or supplemented, it shall be specifically designated in its heading as an Amended and Restated Certificate of Limited Partnership together with such other words as the partnership may deem appropriate and shall be executed by at least one general partner and by each other general partner designated in the amended and restated certificate of limited partnership as a new general partner and filed as provided in section 67-245.

(c) A restated certificate of limited partnership shall state, either in its heading or in an introductory paragraph, the limited partnership's present name, the name under which it was originally filed if it has been changed, the date of filing of its original certificate of limited partnership with the Secretary of State, and the future effective date, which shall be a date certain, of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If it only restates and integrates and does not further amend the certificate of limited partnership as amended or supplemented and if there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(d) Upon the filing of the restated certificate of limited partnership with the Secretary of State or upon the future effective date of a restated certificate of limited partnership as provided for in the certificate, the initial certificate of

limited partnership as amended or supplemented shall be superseded. The restated certificate of limited partnership, including any further amendments or changes made thereby, shall be the certificate of limited partnership of the limited partnership, but the original effective date of formation shall remain unchanged.

(e) Any amendment or change effected in connection with the restatement and integration of the certificate of limited partnership shall be subject to any other provision of the Nebraska Uniform Limited Partnership Act which would apply if a separate certificate of amendment were filed to effect such amendment or change.

Source: Laws 1989, LB 482, § 22; Laws 1990, LB 1228, § 5.

67-248.02 Merger or consolidation; domestic or foreign partnerships, limited partnerships, limited liability companies, or corporations; procedure.

(a) One or more domestic or foreign partnerships or limited partnerships may merge or consolidate with one or more domestic or foreign partnerships or limited partnerships. Sections 67-446 to 67-453 shall govern the merger or consolidation.

(b) Pursuant to an agreement, one or more domestic or foreign limited partnerships, limited liability companies, or corporations may merge into or consolidate with one or more domestic or foreign limited partnerships, limited liability companies, or corporations. If the resulting entity is a domestic corporation, the Business Corporation Act shall govern the merger or consolidation. If the surviving or resulting entity is a corporation, the merger or consolidation shall be subject to sections 21-20,128 to 21-20,134. If the surviving or resulting entity is not a domestic corporation or a limited liability company, the board of directors of each domestic corporation party to such merger or consolidation shall, by resolution adopted by each such board, approve a plan of merger or plan of consolidation setting forth information substantially similar to that required by sections 21-20,128 to 21-20,134. If the surviving or resulting entity is a limited liability company, the Limited Liability Company Act shall govern the merger or consolidation. Unless otherwise provided in the partnership agreement, a plan of merger or plan of consolidation shall be approved by each domestic limited partnership which is to merge or consolidate (1) by all general partners and (2) by limited partners or, if there is more than one class or group of limited partners, then by limited partners of each class or group of limited partners, in either case, who own more than fifty percent of the then current percentage or other interest in the profits of the domestic limited partnership owned by all of the limited partners or by the limited partners in each class or group, as appropriate. Notwithstanding prior approval, an agreement or plan of merger or agreement or plan of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement or plan of merger or agreement or plan of consolidation.

(c) If the surviving or resulting entity of a merger or consolidation pursuant to subsection (b) of this section is not a domestic limited partnership, limited liability company, or corporation following a merger or consolidation of one or more domestic limited partnerships, limited liability companies, or corporations and one or more foreign limited partnerships, limited liability companies, or corporations, the surviving or resulting entity shall comply with sections

21-20,128 to 21-20,134 and, for each such domestic limited partnership, a certificate shall be executed and filed in the office of the Secretary of State by the surviving or resulting limited partnership, limited liability company, or corporation stating that the surviving or resulting limited partnership, limited liability company, or corporation agrees that it may be served with process within or outside this state in any proceeding in the courts of this state for the enforcement of any obligation of such former domestic limited partnership.

(d) A merger or consolidation pursuant to subsection (b) of this section to which a domestic corporation is a party shall become effective as provided in sections 21-20,128 to 21-20,134. A merger or consolidation to which a domestic limited liability company is a party shall become effective as provided in sections 21-2647 to 21-2653. Any other merger or consolidation provided for in the Nebraska Uniform Limited Partnership Act shall become effective as provided in the agreement or plan of merger or consolidation. When such merger or consolidation has become effective, the terms of sections 21-20,128 to 21-20,134 shall apply if the surviving or resulting entity is a corporation, the terms of section 21-2651 shall apply if the surviving or resulting entity is a limited liability company, and the following provisions shall apply if the surviving or resulting entity is a limited partnership:

(1) The several limited partnerships, limited liability companies, or corporations which are parties to the merger or consolidation agreement shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation agreement;

(2) The separate existence of all limited partnerships, limited liability companies, and corporations which are parties to the merger or consolidation agreement, except the surviving or new limited partnership, shall cease;

(3) If the surviving or new limited partnership is a domestic limited partnership, it shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a limited partnership organized under the Nebraska Uniform Limited Partnership Act;

(4) The surviving or new limited partnership shall possess all the rights, privileges, immunities, and powers, of a public as well as of a private nature, of each of the merging or consolidating limited partnerships and, subject to the Nebraska Uniform Limited Partnership Act, each of the merging or consolidating corporations. All property, real, personal, and mixed, all debts due on whatever account, all other things and causes of actions, and all and every other interest belonging to or due to any of the limited partnerships, limited liability companies, and corporations as merged or consolidated shall be taken and deemed to be transferred to and vested in the surviving or new limited partnership without further act and deed and shall thereafter be the property of the surviving or new limited partnership as they were of any of such merging or consolidating entities. The title to any real property or any interest in such property vested in any of such merging or consolidating entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(5) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships, limited liability companies, or corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited

partnerships, limited liability companies, or corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new limited partnership may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such limited partnerships, limited liability companies, or corporations shall be impaired by such merger or consolidation; and

(6) The equity securities of the corporation or corporations, limited liability company or companies, and limited partnership or limited partnerships party to the merger or consolidation that are, under the terms of the merger or consolidation, to be converted or exchanged shall cease to exist, and the holders of such equity securities shall thereafter be entitled only to the cash, property, or securities into which they shall have been converted in accordance with the terms of the merger or consolidation, subject to any rights under sections 21-20,137 to 21-20,150 or the Limited Liability Company Act.

Source: Laws 1989, LB 482, § 23; Laws 1990, LB 1228, § 6; Laws 1994, LB 884, § 84; Laws 1995, LB 109, § 227; Laws 1997, LB 523, § 69.

Cross References

Business Corporation Act, see section 21-2001.
Limited Liability Company Act, see section 21-2601.

PART III

LIMITED PARTNERS

67-249 Admission of additional limited partners.

(a) In connection with the formation of a limited partnership, a person acquiring a partnership interest as a limited partner is admitted as a limited partner of the limited partnership on the later to occur of:

(1) The date the original certificate of limited partnership is filed; or

(2) The time provided in the partnership agreement or, if no such time is provided in the agreement, when the person's admission is reflected in the records of the limited partnership.

(b) After the formation of a limited partnership, a person may be admitted as an additional limited partner:

(1) In the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners and when the person's admission is reflected in the records of the limited partnership; and

(2) In the case of an assignee of a partnership interest, as provided in section 67-274.

Source: Laws 1981, LB 272, § 17; Laws 1989, LB 482, § 24.

67-250 Partnership agreement; classes or groups of limited partners; voting rights specified.

(a) A partnership agreement may provide for classes or groups of limited partners having such relative rights, powers, and duties as provided in the partnership agreement and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups

of limited partners having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes or groups of limited partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any limited partner or class or group of limited partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) Subject to section 67-251, the partnership agreement may grant to all or a specified class or group of the limited partners the right to vote on a per capita or other basis separately or with all or any class or group of the limited partners or the general partners upon any matter.

(c) A partnership agreement which grants a right to vote to any class or group of limited partners may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any limited partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Source: Laws 1981, LB 272, § 18; Laws 1989, LB 482, § 25.

67-251 Limited partner; liability to third parties.

(a) Except as provided in subsection (d) of this section, a limited partner is not liable for the obligations of a limited partnership unless he or she is also a general partner or, in addition to the exercise of his or her rights and powers as a limited partner, he or she participates in the control of the business. However, if the limited partner participates in the control of the business, he or she is liable only to persons who transact business with the limited partnership with actual knowledge of his or her participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner. An assignee of a partnership interest who is not admitted as an additional limited partner shall not be liable for the obligations of a limited partnership.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) of this section solely by virtue of possessing or exercising one or more of the following powers:

(1) The power to be an independent contractor for or to transact business with the limited partnership, including the power to be a contractor for or an agent or employee of the limited partnership or of a general partner, or to be an officer, director, or equity security holder of a general partner which is a corporation, or to be a contractor for or an agent, employee, or member of a general partner which is a limited liability company, or to be an officer, partner, or equity security holder of a general partner which is a partnership, or to be a fiduciary or beneficiary of an estate or trust which is a general partner, or any combination of these roles, whether solely or jointly with others and irrespective of whether that general partner is the sole general partner of the limited partnership or is a general partner of one or more limited partnerships;

(2) The power to consult with and advise a general partner with respect to any matter concerning the business of the limited partnership;

(3) The power to act as surety, guarantor, or endorser for the limited partnership or a general partner, to guaranty or assume one or more specific obligations of the limited partnership or a general partner, to borrow money from the limited partnership or a general partner, to lend money to the limited partnership or a general partner, or to provide collateral for the limited partnership;

(4) The power to propose, approve, or disapprove by voting, by number, financial interest, class, or group or as otherwise provided in the partnership agreement, or otherwise vote on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership or an election to continue the limited partnership or an election to continue the business of the limited partnership;

(ii) The sale, exchange, lease, mortgage, assignment, pledge, or other transfer of or granting a security interest in any asset or assets of the limited partnership;

(iii) The incurrence, renewal, refinancing, or payment or other discharge of indebtedness by the limited partnership;

(iv) A change in the nature of the business;

(v) The removal, admission, or retention of a general partner;

(vi) The removal, admission, or retention of a limited partner;

(vii) A transaction or other matter involving an actual or potential conflict of interest;

(viii) An amendment to the partnership agreement or certificate of limited partnership;

(ix) The merger or consolidation of a limited partnership;

(x) In respect of a limited partnership which is registered as an investment company under the federal Investment Company Act of 1940, as amended, any matter required by the federal Investment Company Act of 1940, as amended, or the rules and regulations of the Securities and Exchange Commission thereunder, to be approved by the holders of beneficial interests in an investment company, including the electing of directors or trustees of the investment company, the approving or terminating of investment advisory or underwriting contracts, and the approving of auditors;

(xi) The indemnification of any partner or other person; or

(xii) Such other matters as are stated in the partnership agreement or in any other agreement or writing as being subject to the approval or disapproval of limited partners;

(5) The power to call, request, attend, or participate at a meeting of the partners or the limited partners;

(6) The power to wind up a limited partnership pursuant to section 67-278;

(7) The power to take any action required or permitted by law to bring, pursue, settle, or otherwise terminate a derivative action in the right of the limited partnership;

(8) The power to serve on a committee of the limited partnership or the limited partners; or

(9) The power to exercise any right or power granted or permitted to limited partners under the Nebraska Uniform Limited Partnership Act and not specifically enumerated in this subsection.

(c) The enumeration in subsection (b) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him or her in the control of the business of the limited partnership.

(d) A limited partner who knowingly permits his or her name to be used in the name of the limited partnership, except under circumstances permitted by subdivision (2) of section 67-234, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

(e) This section shall not create any rights or powers of limited partners. Such rights and powers may be created only by a certificate of limited partnership, a partnership agreement, or any other agreement or writing or by the Nebraska Uniform Limited Partnership Act.

Source: Laws 1981, LB 272, § 19; Laws 1982, LB 589, § 3; Laws 1989, LB 482, § 26; Laws 1993, LB 121, § 403; Laws 1994, LB 884, § 85.

67-252 Persons erroneously believing themselves limited partners; liability.

(a) Except as provided in subsection (b) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he or she has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if within a reasonable time, not less than thirty days, after ascertaining the mistake he or she:

(1) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(2) Takes the necessary action to withdraw from the enterprise.

(b) A person who makes a contribution of the kind described in subsection (a) of this section is liable as a general partner to any third party who transacts business with the enterprise prior to the occurrence of either of the events referred to in such subsection if (1) such person knew or should have known either that no certificate has been filed or that the certificate inaccurately refers to him or her as a general partner and (2) the third party actually believed in good faith that such person was a general partner at the time of the transaction, acted in reasonable reliance on such belief, and extended credit to the enterprise in reasonable reliance on the credit of such person.

Source: Laws 1981, LB 272, § 20; Laws 1989, LB 482, § 27.

67-253 Limited partner; rights; general partner; rights; records.

(a) Each limited partner has the right, subject to such reasonable conditions, including conditions governing what information and documents are to be furnished, at what time and location, and at whose expense, as may be set forth in the limited partnership agreement or otherwise established by the general partners, to obtain from the general partners from time to time upon reasonable demand for any purpose reasonably related to the limited partner's interest

as a limited partner (1) true and full information regarding the status of the business and financial condition of the limited partnership, (2) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year, (3) a current list of the full name and last-known business, residence, or mailing address of each partner, (4) a copy of the partnership agreement and certificate of limited partnership and all certificates of amendment thereto and executed copies of any powers of attorney pursuant to which the partnership agreement and any certificate and all amendments thereto have been executed to the extent such powers of attorney are in the possession of one or more of the general partners, (5) true and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each partner and which each partner has agreed to contribute in the future and the date on which each became a partner, and (6) other information regarding the affairs of the limited partnership as is just and reasonable.

(b) A general partner shall have the right to keep confidential from limited partners for such period of time as the general partner deems reasonable any information which the general partner reasonably believes to be in the nature of trade secrets or other information the disclosure of which the general partner in good faith believes is not in the best interest of the limited partnership or could damage the limited partnership or its business or which the limited partnership is required by law or by agreement with a third party to keep confidential.

(c) A limited partnership may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(d) Any demand under this section shall be in writing and shall state the purpose of such demand.

Source: Laws 1981, LB 272, § 21; Laws 1982, LB 589, § 4; Laws 1989, LB 482, § 28.

PART IV

GENERAL PARTNERS

67-254 Admission of additional general partners.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted as provided in the partnership agreement or, if the partnership agreement does not provide for the admission of additional general partners, with the written consent of all partners.

Source: Laws 1981, LB 272, § 22; Laws 1982, LB 589, § 5; Laws 1989, LB 482, § 29.

67-255 General partner; status; termination; when.

Except as approved by the written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in section 67-264;

(2) The general partner ceases to be a general partner of the limited partnership as provided in section 67-272;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in the partnership agreement, the general partner: (i) Makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent or has an order for relief in any bankruptcy or insolvency proceeding entered against the general partner; (iv) files a petition or answer seeking for the general partner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, rule, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the general partner in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties;

(5) Unless otherwise provided in the partnership agreement, one hundred twenty days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, rule, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of the general partner's properties, the appointment is not vacated or stayed or, within ninety days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

(i) His or her death; or

(ii) The entry of an order by a court of competent jurisdiction adjudicating him or her incompetent to manage his or her person or his or her estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter and the expiration of ninety days after the date of notice to the corporation of revocation without a reinstatement of its charter;

(10) In the case of a general partner that is a limited liability company, the filing of the articles of dissolution, or its equivalent, for the limited liability company or the forfeiture of its certificate and the expiration of one year after notice of forfeiture without revival and reinstatement; or

(11) In the case of a general partner that is an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

Source: Laws 1981, LB 272, § 23; Laws 1989, LB 482, § 30; Laws 1993, LB 121, § 404.

67-256 General partners; powers and liabilities.

(a) Except as otherwise provided in the Nebraska Uniform Limited Partnership Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as otherwise provided in the Nebraska Uniform Limited Partnership Act, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners. Except as otherwise provided in the act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

Source: Laws 1981, LB 272, § 24; Laws 1989, LB 482, § 31.

67-257 Contributions by a general partner; powers and liabilities.

A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the rights and powers, and is subject to the restrictions, of a limited partner to the extent of his or her participation in the partnership as a limited partner.

Source: Laws 1981, LB 272, § 25; Laws 1989, LB 482, § 32.

67-258 Partnership agreement; classes or groups of general partners; voting rights specified.

(a) A partnership agreement may provide for classes or groups of general partners having such relative rights, powers, and duties as provided in the partnership agreement and may make provision for the future creation in the manner provided in the partnership agreement of additional classes or groups of general partners having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes or groups of general partners. A partnership agreement may provide for the taking of an action, including the amendment of the partnership agreement, without the vote or approval of any general partner or class or group of general partners, including an action to create under the provisions of the partnership agreement a class or group of partnership interests that was not previously outstanding.

(b) The partnership agreement may grant to all or certain identified general partners or a specified class or group of the general partners the right to vote, on a per capita or any other basis, separately or with all or any class or group of the limited partners or the general partners, on any matter.

(c) A partnership agreement which grants a right to vote to any class or group of general partners may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any general partners, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in

person or by proxy, or any other matter with respect to the exercise of any such right to vote.

Source: Laws 1981, LB 272, § 26; Laws 1989, LB 482, § 33.

PART V

FINANCE

67-259 Form of contribution.

The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Source: Laws 1981, LB 272, § 27.

67-260 Liability for contributions.

(a) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services even if he or she is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he or she is obligated at the option of the limited partnership to contribute cash equal to that portion of the agreed value, as stated in the records of the limited partnership, of the contribution that has not been made. Such option shall be in addition to and not in lieu of any other rights, including the right to specific performance, that the limited partnership may have against such partner under the partnership agreement or applicable law.

(b) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of the Nebraska Uniform Limited Partnership Act may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the entering into of the partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of the act.

(c) A partnership agreement may provide that the interest of any partner who fails to make any contribution that he or she is obligated to make shall be subject to specified penalties for or specified consequences of such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the limited partnership, subordinating his or her partnership interest to that of nondefaulting partners, a forced sale of his or her partnership interest, forfeiture of his or her partnership interest, the lending by other partners of the amount necessary to meet his or her commitment, a fixing of the value of his or her partnership interest by appraisal or by formula and redemption or sale of his or her partnership interest at such value, or any other penalty or consequence.

(d) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner. A conditional obligation of a partner to make a contribution or return money or

other property to a limited partnership may not be enforced unless the conditions to the obligation have been satisfied or waived as to or by such partner. Conditional obligations include contributions payable upon a discretionary call of a limited partnership or a general partner prior to the time the call occurs.

Source: Laws 1981, LB 272, § 28; Laws 1989, LB 482, § 34.

67-261 Profits and losses; allocation.

The profits and losses of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

Source: Laws 1981, LB 272, § 29; Laws 1989, LB 482, § 35.

67-262 Distributions of assets.

Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes or groups of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the agreed value, as stated in the records of the limited partnership, of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned.

Source: Laws 1981, LB 272, § 30; Laws 1989, LB 482, § 36.

PART VI

DISTRIBUTIONS AND WITHDRAWAL

67-263 Distributions before withdrawal and dissolution.

Except as otherwise provided in sections 67-263 to 67-270, a partner is entitled to receive distributions from a limited partnership before his or her withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement.

Source: Laws 1981, LB 272, § 31; Laws 1989, LB 482, § 37.

67-264 Withdrawal of general partner.

A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement, including to the extent stated in the partnership agreement a forfeiture of the withdrawing general partner's partnership interest, and may offset the damages against the amount otherwise distributable to him or her in addition to any remedies available under applicable law.

Source: Laws 1981, LB 272, § 32; Laws 1989, LB 482, § 38.

67-265 Withdrawal of limited partner.

A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in the partnership agreement and in accordance with the partnership agreement. A partnership agreement may provide that a limited partner may not withdraw from a limited partnership or assign a partnership interest in a limited partnership prior to the dissolution and winding up of the limited partnership. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may or may not withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his or her address as set forth in the certificate of limited partnership filed in the office of the Secretary of State.

Source: Laws 1981, LB 272, § 33; Laws 1989, LB 482, § 39.

67-266 Distribution upon withdrawal.

Except as provided in sections 67-263 to 67-270, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he or she is entitled under the partnership agreement and, if not otherwise provided in the agreement, he or she is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her interest in the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership.

Source: Laws 1981, LB 272, § 34.

67-267 Distribution in kind; limitation.

Except as provided in the partnership agreement, a partner, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him or her exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited partnership.

Source: Laws 1981, LB 272, § 35; Laws 1989, LB 482, § 40.

67-268 Right to distribution; remedies; record date.

At the time a partner becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. A partnership agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited partnership.

Source: Laws 1981, LB 272, § 36; Laws 1989, LB 482, § 41.

67-269 Limitations on distributions.

A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specific property of the limited partnership, exceed the

fair value of the partnership assets, except that the fair value of property that is subject to a liability for which recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

Source: Laws 1981, LB 272, § 37; Laws 1989, LB 482, § 42.

67-270 Unlawful distribution; liability.

(a) A limited partner who receives a distribution in violation of section 67-269 and who knew at the time of the distribution that the distribution violated such section shall be liable to the limited partnership for the amount of the distribution. A limited partner who receives a distribution in violation of such section and who did not know at the time of the distribution that the distribution violated such section shall not be liable for the amount of the distribution. Subject to subsection (b) of this section, this subsection shall not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of a distribution.

(b) Unless otherwise agreed, a limited partner who receives a distribution from a limited partnership shall have no liability under the Nebraska Uniform Limited Partnership Act or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution.

Source: Laws 1981, LB 272, § 38; Laws 1989, LB 482, § 43.

PART VII

ASSIGNMENT OF PARTNERSHIP INTERESTS

67-271 Partnership interest; personal property; interest in property.

A partnership interest is personal property. A partner has no interest in specific limited partnership property.

Source: Laws 1981, LB 272, § 39; Laws 1989, LB 482, § 44.

67-272 Assignment of partnership interest.

(a) Except as provided in the partnership agreement: (1) A partnership interest is assignable in whole or in part; (2) an assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner; (3) an assignment entitles the assignee to share in such profits and losses and to receive such distribution or distributions and such allocation of income, gain, loss, deduction, credit, or similar item to which the assignor would be entitled to the extent assigned; and (4) a partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all his or her partnership interest and the admission of the assignee to the partnership in accordance with section 67-274.

(b) The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates.

(c) Unless otherwise provided in a partnership agreement and except to the extent assumed by agreement, until an assignee of a partnership interest

becomes a partner, the assignee shall have no liability as a partner solely as a result of the assignment.

Source: Laws 1981, LB 272, § 40; Laws 1989, LB 482, § 45.

67-273 Rights of judgment creditor of a partner.

On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. The Nebraska Uniform Limited Partnership Act does not deprive any partner of the benefit of any exemption laws applicable to his or her partnership interest.

Source: Laws 1981, LB 272, § 41; Laws 1989, LB 482, § 46.

67-274 Assignee becoming limited partner; rights and liabilities.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) the partnership agreement so provides or (2) all other partners consent. An assignee of a partnership interest becomes a limited partner at the time provided in and upon compliance with the partnership agreement or, if the partnership agreement does not so provide, when all other partners consent to such person's admission as a limited partner and such person's admission as a limited partner is reflected in the records of the limited partnership.

(b) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and the Nebraska Uniform Limited Partnership Act. An assignee who becomes a limited partner also is liable for the obligations of his or her assignor to make contributions as provided in section 67-260 but is not liable for the obligations of his or her assignor under section 67-270. However, the assignee is not obligated for liabilities unknown to the assignee at the time he or she became a limited partner and which could not be ascertained from the partnership agreement.

(c) Whether or not an assignee of a partnership interest becomes a limited partner, the assignor is not released from his or her liability to the limited partnership under section 67-260 unless otherwise provided in the partnership agreement.

Source: Laws 1981, LB 272, § 42; Laws 1989, LB 482, § 47.

67-275 Partner's executor or legal representative; exercise of powers.

If a partner who is an individual dies or a court of competent jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her property, the partner's executor, administrator, guardian, conservator, personal representative, or other legal representative may exercise all the partner's rights for the purpose of settling his or her estate or administering his or her property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, limited liability company, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

Source: Laws 1981, LB 272, § 43; Laws 1993, LB 121, § 405.

PART VIII

DISSOLUTION

67-276 Dissolution; when.

A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the time or upon the happening of events specified in the partnership agreement;

(2) Written consent to dissolution of all partners;

(3) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if (i) all partners have previously consented in the partnership agreement or otherwise to have a specific person designated as a general partner or (ii) within one hundred eighty days after the withdrawal, all partners other than the withdrawn general partner agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired; or

(4) Entry of a decree of judicial dissolution under section 67-277.

Source: Laws 1981, LB 272, § 44; Laws 1989, LB 482, § 48.

67-277 Judicial dissolution.

On application by or for a partner the district court may decree dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

Source: Laws 1981, LB 272, § 45.

67-278 Dissolution; right to wind up partnership affairs; powers.

(a) Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the limited partners or a person approved by the limited partners or, if there is more than one class or group of limited partners, then by each class or group of limited partners, but in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of the limited partnership owned by all of the limited partners or by the limited partners in each class or group as appropriate, may wind up the limited partnership's affairs; but the district court may wind up the limited partnership's affairs upon application of any partner or his or her legal representative or assignee and in connection with winding up such affairs may appoint a liquidating trustee.

(b) Upon dissolution of a limited partnership and until the filing of a certificate of cancellation as provided in section 67-242, the persons winding up the limited partnership's affairs may, in the name of and for and on behalf of the limited partnership, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited partnership's business, dispose of and convey the limited partnership's property, discharge the limited

partnership's liabilities, and distribute to the partners any remaining assets of the limited partnership, all without affecting the liability of the limited partners.

Source: Laws 1981, LB 272, § 46; Laws 1989, LB 482, § 49.

67-279 Dissolution; distribution of assets.

(a) Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership, whether by payment or by the making of reasonable provision for payment thereof, other than liabilities for distributions to partners under section 67-263 or 67-266;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 67-263 or 67-266; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interest, in the proportions in which the partners share in distributions.

(b) A limited partnership which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited partnership and all claims and obligations which are known to the limited partnership but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a partnership agreement, any remaining assets shall be distributed as provided in the Nebraska Uniform Limited Partnership Act. Any liquidating trustee winding up a limited partnership's affairs who has complied with this section shall not be personally liable to the claimants of the dissolved limited partnership by reason of such person's actions in winding up the limited partnership.

Source: Laws 1981, LB 272, § 47; Laws 1989, LB 482, § 50.

PART IX

FOREIGN LIMITED PARTNERSHIPS

67-280 Foreign limited partnership; law governing.

Subject to the Constitution of Nebraska, (1) the laws of the state or foreign country under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

Source: Laws 1981, LB 272, § 48; Laws 1989, LB 482, § 51.

67-281 Foreign limited partnership; registration; contents.

(a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application

for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state or country and date of its formation;

(3) A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (4) of this subsection, if an agent has been appointed but the agent's authority has been revoked, or if an agent has been appointed but cannot be found or served with the exercise of reasonable diligence;

(4) The name and street address and post office box number, if any, of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent must be an individual resident of this state, a domestic corporation, a foreign corporation having a place of business in and authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company having a place of business in and authorized to do business in this state;

(5) The address of the office required to be maintained in the state or country of its organization by the laws of that state or country or, if not so required, of the principal office of the foreign limited partnership; and

(6) The name and business, residence, or mailing address of each of the general partners.

(b) A foreign limited partnership or a partnership, limited liability company, or corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than this state shall not be deemed to be doing business in this state solely by reason of its being a partner in a domestic limited partnership.

Source: Laws 1981, LB 272, § 49; Laws 1983, LB 447, § 80; Laws 1989, LB 482, § 52; Laws 1993, LB 121, § 406; Laws 2008, LB383, § 4.

67-282 Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, he or she shall:

(1) Endorse on the application the word Filed, and the month, day, and year of the filing thereof;

(2) File in his or her office a duplicate original of the application; and

(3) Issue a certificate of registration to transact business in this state.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his or her representative.

Source: Laws 1981, LB 272, § 50.

67-283 Foreign limited partnership; name; agent.

(a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under

any name which is deceptively similar to, upon the records in the office of the Secretary of State, the name of any domestic or foreign corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation, limited liability company, or limited partnership or with the transfer of such name by the other corporation, limited liability company, or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its street address and post office box number, if any, for service of process to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the street address and post office box number, if any, at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new street address and post office box number, if any, to which his, her, or its office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Source: Laws 1981, LB 272, § 51; Laws 1989, LB 482, § 53; Laws 1990, LB 1228, § 7; Laws 1993, LB 121, § 407; Laws 2003, LB 464, § 8; Laws 2008, LB383, § 5.

67-284 Application for registration; amendments.

If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed making the application false in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

Source: Laws 1981, LB 272, § 52; Laws 1989, LB 482, § 54.

67-285 Cancellation of registration; effect.

A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner together with a fee as set forth in section 67-293. A cancellation does not terminate the authority of the Secretary of State to accept service of process for the foreign limited partnership with respect to causes of action arising out of the transaction of business in this state.

Source: Laws 1981, LB 272, § 53; Laws 1983, LB 447, § 81; Laws 1989, LB 482, § 55.

67-286 Transaction of business without registration; effect.

(a) A foreign limited partnership transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(b) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or the right of any other party to the contract to maintain any action, suit, or

proceeding on the contract or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(c) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(d) Transaction of business in this state without registration by a foreign limited partnership shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the partnership in any action arising out of its activity in this state.

Source: Laws 1981, LB 272, § 54; Laws 1983, LB 447, § 82; Laws 1989, LB 482, § 56.

67-286.01 Foreign limited partnerships; sections applicable.

Sections 67-243 and 67-246 shall be applicable to foreign limited partnerships as if they were domestic limited partnerships.

Source: Laws 1989, LB 482, § 57.

67-287 Action by Attorney General.

The Attorney General may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of sections 67-280 to 67-286.

Source: Laws 1981, LB 272, § 55.

PART X

DERIVATIVE ACTIONS

67-288 Limited partner; assignee; right of action.

A limited partner or an assignee of a limited partner may bring an action in the name of a limited partnership to recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed.

Source: Laws 1981, LB 272, § 56; Laws 1989, LB 482, § 58.

67-289 Derivative action; proper plaintiff.

In a derivative action, the plaintiff must be a partner or an assignee of a partner at the time of bringing the action and (1) must have been a partner at the time of the transaction of which he or she complains, (2) his or her status as a partner must have devolved upon him or her by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction, or (3) his or her status as an assignee of a partner must have devolved upon him or her pursuant to the terms of the assignment from a person who was a partner or an assignee of a partner at the time of the transaction.

Source: Laws 1981, LB 272, § 57; Laws 1989, LB 482, § 59.

67-290 Derivative action; complaint; requirements.

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

Source: Laws 1981, LB 272, § 58.

67-291 Derivative action; expenses; attorney's fees.

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him or her to remit to the limited partnership the remainder of those proceeds received by him or her.

Source: Laws 1981, LB 272, § 59.

PART XI

MISCELLANEOUS

67-292 Repealed. Laws 1989, LB 482, § 65.

67-293 Filing fees; disposition.

The filing fee for all filings pursuant to the Nebraska Uniform Limited Partnership Act, including amendments and name reservation, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of limited partnership pursuant to section 67-240 and for filing an application for registration as a foreign limited partnership pursuant to section 67-281 shall be two hundred dollars plus such recording fees. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and by him or her remitted to the State Treasurer. The State Treasurer shall credit fifty percent of such fees to the General Fund and fifty percent of such fees to the Corporation Cash Fund.

Source: Laws 1981, LB 272, § 61; Laws 1983, LB 617, § 12; Laws 1989, LB 482, § 60; Laws 1990, LB 1228, § 8; Laws 1994, LB 1004, § 6; Laws 1994, LB 1066, § 59; Laws 2003, LB 357, § 10.

67-294 Uniform Partnership Act of 1998; applicability.

In any case not provided for in the Nebraska Uniform Limited Partnership Act, the Uniform Partnership Act of 1998 shall govern.

Source: Laws 1981, LB 272, § 62; Laws 1989, LB 482, § 61; Laws 1997, LB 523, § 70; Laws 2008, LB707, § 1.

Cross References

Uniform Partnership Act of 1998, see section 67-401.

67-295 Act, how construed.

The Nebraska Uniform Limited Partnership Act shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1981, LB 272, § 63; Laws 1989, LB 482, § 62.

67-296 Act, how cited.

Sections 67-233 to 67-296 shall be known and may be cited as the Nebraska Uniform Limited Partnership Act.

Source: Laws 1981, LB 272, § 64; Laws 1989, LB 482, § 63.

67-297 Repealed. Laws 1989, LB 482, § 65.

ARTICLE 3

UNIFORM PARTNERSHIP ACT

PART I. PRELIMINARY PROVISIONS

Section
67-301. Repealed. Laws 2008, LB 707, § 5.
67-302. Repealed. Laws 2008, LB 707, § 5.
67-303. Repealed. Laws 2008, LB 707, § 5.
67-304. Repealed. Laws 2008, LB 707, § 5.
67-305. Repealed. Laws 2008, LB 707, § 5.

PART II. NATURE OF A PARTNERSHIP

67-306. Repealed. Laws 2008, LB 707, § 5.
67-307. Repealed. Laws 2008, LB 707, § 5.
67-308. Repealed. Laws 2008, LB 707, § 5.

PART III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

67-309. Repealed. Laws 2008, LB 707, § 5.
67-310. Repealed. Laws 2008, LB 707, § 5.
67-311. Repealed. Laws 2008, LB 707, § 5.
67-312. Repealed. Laws 2008, LB 707, § 5.
67-313. Repealed. Laws 2008, LB 707, § 5.
67-314. Repealed. Laws 2008, LB 707, § 5.
67-315. Repealed. Laws 2008, LB 707, § 5.
67-316. Repealed. Laws 2008, LB 707, § 5.
67-317. Repealed. Laws 2008, LB 707, § 5.

PART IV. RELATIONS OF PARTNERS TO ONE ANOTHER

67-318. Repealed. Laws 2008, LB 707, § 5.
67-319. Repealed. Laws 2008, LB 707, § 5.
67-320. Repealed. Laws 2008, LB 707, § 5.
67-321. Repealed. Laws 2008, LB 707, § 5.
67-322. Repealed. Laws 2008, LB 707, § 5.
67-323. Repealed. Laws 2008, LB 707, § 5.

PART V. PROPERTY RIGHTS OF A PARTNER

67-324. Repealed. Laws 2008, LB 707, § 5.
67-325. Repealed. Laws 2008, LB 707, § 5.
67-326. Repealed. Laws 2008, LB 707, § 5.
67-327. Repealed. Laws 2008, LB 707, § 5.
67-328. Repealed. Laws 2008, LB 707, § 5.

PART VI. DISSOLUTION AND WINDING UP

67-329. Repealed. Laws 2008, LB 707, § 5.
67-330. Repealed. Laws 2008, LB 707, § 5.
67-331. Repealed. Laws 2008, LB 707, § 5.
67-332. Repealed. Laws 2008, LB 707, § 5.
67-333. Repealed. Laws 2008, LB 707, § 5.
67-334. Repealed. Laws 2008, LB 707, § 5.
67-335. Repealed. Laws 2008, LB 707, § 5.
67-336. Repealed. Laws 2008, LB 707, § 5.
67-337. Repealed. Laws 2008, LB 707, § 5.

Section
67-338. Repealed. Laws 2008, LB 707, § 5.
67-339. Repealed. Laws 2008, LB 707, § 5.
67-340. Repealed. Laws 2008, LB 707, § 5.
67-341. Repealed. Laws 2008, LB 707, § 5.
67-342. Repealed. Laws 2008, LB 707, § 5.
67-343. Repealed. Laws 2008, LB 707, § 5.

PART VII. REGISTERED LIMITED LIABILITY PARTNERSHIP AND FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

67-344. Repealed. Laws 2008, LB 707, § 5.
67-345. Repealed. Laws 2008, LB 707, § 5.
67-346. Repealed. Laws 2008, LB 707, § 5.

PART I

PRELIMINARY PROVISIONS

67-301 Repealed. Laws 2008, LB 707, § 5.

67-302 Repealed. Laws 2008, LB 707, § 5.

67-303 Repealed. Laws 2008, LB 707, § 5.

67-304 Repealed. Laws 2008, LB 707, § 5.

67-305 Repealed. Laws 2008, LB 707, § 5.

PART II

NATURE OF A PARTNERSHIP

67-306 Repealed. Laws 2008, LB 707, § 5.

67-307 Repealed. Laws 2008, LB 707, § 5.

67-308 Repealed. Laws 2008, LB 707, § 5.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP

67-309 Repealed. Laws 2008, LB 707, § 5.

67-310 Repealed. Laws 2008, LB 707, § 5.

67-311 Repealed. Laws 2008, LB 707, § 5.

67-312 Repealed. Laws 2008, LB 707, § 5.

67-313 Repealed. Laws 2008, LB 707, § 5.

67-314 Repealed. Laws 2008, LB 707, § 5.

67-315 Repealed. Laws 2008, LB 707, § 5.

67-316 Repealed. Laws 2008, LB 707, § 5.

67-317 Repealed. Laws 2008, LB 707, § 5.

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

67-318 Repealed. Laws 2008, LB 707, § 5.

67-319 Repealed. Laws 2008, LB 707, § 5.

67-320 Repealed. Laws 2008, LB 707, § 5.

67-321 Repealed. Laws 2008, LB 707, § 5.

67-322 Repealed. Laws 2008, LB 707, § 5.

67-323 Repealed. Laws 2008, LB 707, § 5.

PART V

PROPERTY RIGHTS OF A PARTNER

67-324 Repealed. Laws 2008, LB 707, § 5.

67-325 Repealed. Laws 2008, LB 707, § 5.

67-326 Repealed. Laws 2008, LB 707, § 5.

67-327 Repealed. Laws 2008, LB 707, § 5.

67-328 Repealed. Laws 2008, LB 707, § 5.

PART VI

DISSOLUTION AND WINDING UP

67-329 Repealed. Laws 2008, LB 707, § 5.

67-330 Repealed. Laws 2008, LB 707, § 5.

67-331 Repealed. Laws 2008, LB 707, § 5.

67-332 Repealed. Laws 2008, LB 707, § 5.

67-333 Repealed. Laws 2008, LB 707, § 5.

67-334 Repealed. Laws 2008, LB 707, § 5.

67-335 Repealed. Laws 2008, LB 707, § 5.

67-336 Repealed. Laws 2008, LB 707, § 5.

67-337 Repealed. Laws 2008, LB 707, § 5.

67-338 Repealed. Laws 2008, LB 707, § 5.

67-339 Repealed. Laws 2008, LB 707, § 5.

67-340 Repealed. Laws 2008, LB 707, § 5.

67-341 Repealed. Laws 2008, LB 707, § 5.

67-342 Repealed. Laws 2008, LB 707, § 5.

67-343 Repealed. Laws 2008, LB 707, § 5.

PART VII

REGISTERED LIMITED LIABILITY PARTNERSHIP AND FOREIGN REGISTERED LIMITED LIABILITY PARTNERSHIP

67-344 Repealed. Laws 2008, LB 707, § 5.

67-345 Repealed. Laws 2008, LB 707, § 5.

67-346 Repealed. Laws 2008, LB 707, § 5.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

PART I. GENERAL PROVISIONS

Section
67-401. Act, how cited.
67-402. Terms, defined.
67-403. Knowledge and notice.
67-404. Effect of partnership agreement; nonwaivable provisions.
67-405. Supplemental principles of law.
67-406. Execution, filing, and recording of statements.
67-407. Governing law.
67-408. Partnership subject to amendment or repeal of act.

PART II. NATURE OF PARTNERSHIP

67-409. Partnership as entity; limited liability partnership; treatment.
67-410. Formation of partnership.
67-411. Partnership property.
67-412. When property is partnership property.

PART III. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

67-413. Partner agent of partnership.
67-414. Transfer of partnership property.
67-415. Statement of partnership authority.
67-416. Statement of denial.
67-417. Partnership liable for partner's actionable conduct.
67-418. Partner's liability.
67-419. Actions by and against partnership and partners.
67-420. Liability of purported partner.

PART IV. RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

67-421. Partner's rights and duties.
67-422. Distributions in kind.
67-423. Partner's rights and duties with respect to information.
67-424. General standards of partner's conduct.
67-425. Actions by partnership and partners.
67-426. Continuation of partnership beyond definite term or particular undertaking.

PART V. TRANSFEREES AND CREDITORS OF PARTNER

67-427. Partner not co-owner of partnership property.
67-428. Partner's transferable interest in partnership.
67-429. Transfer of partner's transferable interest.

Section

PART I

GENERAL PROVISIONS

67-401 Act, how cited.

Sections 67-401 to 67-467 shall be known and may be cited as the Uniform Partnership Act of 1998.

Source: Laws 1997, LB 523, § 1.

67-402 Terms, defined.

For purposes of the Uniform Partnership Act of 1998:

(1) Business includes every trade, occupation, and profession;

(2) Debtor in bankruptcy means a person who is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency;

(3) Distribution means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee;

(4) Foreign limited liability partnership means a partnership that:

(a) Is formed under laws other than the laws of this state; and

(b) Has the status of a limited liability partnership under those laws;

(5) Limited liability partnership means a partnership that has filed a statement of qualification under section 67-454 and does not have a similar statement in effect in any other jurisdiction;

(6) Partnership means an association of two or more persons to carry on as co-owners a business for profit formed under section 67-410, predecessor law, or comparable law of another jurisdiction;

(7) Partnership agreement means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;

(8) Partnership at will means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking;

(9) Partnership interest or partner's interest in the partnership means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights;

(10) Person means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(11) Property means all property, real, personal, or mixed, tangible or intangible, or any interest therein;

(12) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;

(13) Statement means a statement of partnership authority under section 67-415, a statement of denial under section 67-416, a statement of dissociation under section 67-437, a statement of dissolution under section 67-443, a statement of merger under section 67-452, a statement of qualification under section 67-454, a statement of foreign qualification under section 67-458, or an amendment or cancellation of any of the foregoing; and

(14) Transfer includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

Source: Laws 1997, LB 523, § 2.

67-403 Knowledge and notice.

(1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) Knows of it;

(b) Has received a notification of it; or

(c) Has reason to know it exists from all of the facts known to the person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(4) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as otherwise provided in subsection (6) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Source: Laws 1997, LB 523, § 3.

67-404 Effect of partnership agreement; nonwaivable provisions.

(1) Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, the Uniform Partnership Act of 1998 governs relations among the partners and between the partners and the partnership.

(2) The partnership agreement may not:

(a) Vary the rights and duties under section 67-406 except to eliminate the duty to provide copies of statements to all of the partners;

(b) Unreasonably restrict the right of access to books and records under subsection (2) of section 67-423;

(c) Eliminate the duty of loyalty under subsection (2) of section 67-424 or subdivision (2)(c) of section 67-433, but:

(i) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(ii) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(d) Unreasonably reduce the duty of care under subsection (3) of section 67-424 or subdivision (2)(c) of section 67-433;

(e) Eliminate the obligation of good faith and fair dealing under subsection (4) of section 67-424, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(f) Vary the power to dissociate as a partner under subsection (1) of section 67-432, except to require the notice under subdivision (1) of section 67-431 to be in writing;

(g) Vary the right of a court to expel a partner in the events specified in subdivision (5) of section 67-431;

(h) Vary the requirement to wind up the partnership business in cases specified in subdivision (4), (5), or (6) of section 67-439;

(i) Vary the law applicable to a limited liability partnership under subsection (2) of section 67-407; or

(j) Restrict rights of third parties under the act.

Source: Laws 1997, LB 523, § 4.

67-405 Supplemental principles of law.

(1) Unless displaced by particular provisions of the Uniform Partnership Act of 1998, the principles of law and equity supplement the act.

(2) If an obligation to pay interest arises under the act and the rate is not specified, the rate is that specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature.

Source: Laws 1997, LB 523, § 5.

67-406 Execution, filing, and recording of statements.

(1) A statement may be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the office of the Secretary of State. Either filing has the effect provided in the Uniform Partnership Act of 1998 with respect to partnership property located in or transactions that occur in this state.

(2) For transfers of real property, a certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the office of the register of deeds has the effect provided for recorded statements in the act. A recorded statement that is not a certified copy of a statement filed in the office

of the Secretary of State does not have the effect provided for recorded statements in the act.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by the act. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(4) A person authorized by the act to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The Secretary of State may collect a fee for filing or providing a certified copy of a statement as provided in section 67-462. The register of deeds may collect a fee for recording a statement as provided in section 33-109.

Source: Laws 1997, LB 523, § 6.

67-407 Governing law.

(1) Except as otherwise provided in subsection (2) of this section, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(2) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Source: Laws 1997, LB 523, § 7.

67-408 Partnership subject to amendment or repeal of act.

A partnership governed by the Uniform Partnership Act of 1998 is subject to any amendment to or repeal of the act.

Source: Laws 1997, LB 523, § 8.

PART II

NATURE OF PARTNERSHIP

67-409 Partnership as entity; limited liability partnership; treatment.

(1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership is a syndicate for purposes of Article XII, section 8, of the Constitution of Nebraska, except that a registered limited liability partnership in which the partners are members of a family, or a trust created for the benefit of a member of that family, related to one another within the fourth degree of kindred according to the rules of civil law, or their spouses, at least one of whom is a person residing on or actively engaged in the day-to-day labor and management of the farm or ranch and none of whom are nonresident aliens, is not a syndicate for purposes of Article XII, section 8, of

the Constitution of Nebraska. A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification under section 67-454.

Source: Laws 1997, LB 523, § 9.

67-410 Formation of partnership.

(1) Except as otherwise provided in subsection (2) of this section, the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(2) An association formed under a statute other than the Uniform Partnership Act of 1998, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under the act.

(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property;

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived; and

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) Of a debt by installments or otherwise;

(ii) For services as an independent contractor or of wages or other compensation to an employee;

(iii) Of rent;

(iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) For the sale of the goodwill of a business or other property by installments or otherwise.

Source: Laws 1997, LB 523, § 10.

67-411 Partnership property.

Property acquired by a partnership is property of the partnership and not of the partners individually.

Source: Laws 1997, LB 523, § 11.

67-412 When property is partnership property.

(1) Property is partnership property if acquired in the name of:

(a) The partnership; or

(b) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) The partnership in its name; or

(b) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Source: Laws 1997, LB 523, § 12.

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

67-413 Partner agent of partnership.

Subject to the effect of a statement of partnership authority under section 67-415:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority; and

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Source: Laws 1997, LB 523, § 13.

67-414 Transfer of partnership property.

(1) Partnership property may be transferred as follows:

(a) Subject to the effect of a statement of partnership authority under section 67-415, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name;

(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity

as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; or

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under section 67-413 and:

(a) As to a subsequent transferee who gave value for property transferred under subdivisions (1)(a) and (1)(b) of this section, proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) As to a transferee who gave value for property transferred under subdivision (1)(c) of this section, proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subsection (2) of this section, from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Source: Laws 1997, LB 523, § 14.

67-415 Statement of partnership authority.

(1) A partnership may file a statement of partnership authority, which:

(a) Must include:

(i) The name of the partnership;

(ii) The street address of its chief executive office and of one office in this state, if there is one;

(iii) The names and mailing addresses of all of the partners or the name and street address and post office box number, if any, of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to subsection (3) of section 67-406 and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.

(4) Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority; and

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the register of deeds is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the register of deeds. The recording in the office of the register of deeds of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office of the register of deeds.

(6) Except as otherwise provided in subsections (4) and (5) of this section and sections 67-437 and 67-443, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

Source: Laws 1997, LB 523, § 15; Laws 2008, LB383, § 6.

67-416 Statement of denial.

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection (2) of section 67-415 may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections (4) and (5) of section 67-415.

Source: Laws 1997, LB 523, § 16.

67-417 Partnership liable for partner's actionable conduct.

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Source: Laws 1997, LB 523, § 17.

67-418 Partner's liability.

(1) Except as otherwise provided in subsections (2) and (3) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(3) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under subsection (2) of section 67-454.

Source: Laws 1997, LB 523, § 18.

67-419 Actions by and against partnership and partners.

(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, to the extent not inconsistent with section 67-418, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under section 67-418 and:

(a) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The partnership is a debtor in bankruptcy;

(c) The partner has agreed that the creditor need not exhaust partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under section 67-420.

Source: Laws 1997, LB 523, § 19.

67-420 Liability of purported partner.

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in subsections (1) and (2) of this section, persons who are not partners as to each other are not liable as partners to other persons.

Source: Laws 1997, LB 523, § 20.

PART IV

RELATIONS OF PARTNERS TO EACH OTHER AND TO PARTNERSHIP

67-421 Partner's rights and duties.

(1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under section 67-413.

Source: Laws 1997, LB 523, § 21.

67-422 Distributions in kind.

A partner has no right to receive, and may not be required to accept, a distribution in kind.

Source: Laws 1997, LB 523, § 22.

67-423 Partner's rights and duties with respect to information.

(1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or the Uniform Partnership Act of 1998; and

(b) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Source: Laws 1997, LB 523, § 23.

67-424 General standards of partner's conduct.

(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under the Uniform Partnership Act of 1998 or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under the act or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

Source: Laws 1997, LB 523, § 24.

67-425 Actions by partnership and partners.

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(a) Enforce the partner's rights under the partnership agreement;

(b) Enforce the partner's rights under the Uniform Partnership Act of 1998, including:

(i) The partner's rights under section 67-421, 67-423, or 67-424;

(ii) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to section 67-434 or enforce any other right under sections 67-431 to 67-433 or 67-434 to 67-438; or

(iii) The partner's right to compel a dissolution and winding up of the partnership business under section 67-439 or enforce any other right under sections 67-439 to 67-445; or

(c) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Source: Laws 1997, LB 523, § 25.

67-426 Continuation of partnership beyond definite term or particular undertaking.

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Source: Laws 1997, LB 523, § 26.

PART V

TRANSFEREES AND CREDITORS OF PARTNER

67-427 Partner not co-owner of partnership property.

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Source: Laws 1997, LB 523, § 27.

67-428 Partner's transferable interest in partnership.

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

Source: Laws 1997, LB 523, § 28.

67-429 Transfer of partner's transferable interest.

(1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(c) Does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(c) To seek under subdivision (6) of section 67-439 a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Source: Laws 1997, LB 523, § 29.

67-430 Partner's transferable interest subject to charging order.

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than partnership property, by one or more of the other partners; or

(c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) The Uniform Partnership Act of 1998 does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Source: Laws 1997, LB 523, § 30.

PART VI

PARTNER'S DISSOCIATION

67-431 Events causing partner's dissociation.

A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) An event agreed to in the partnership agreement as causing the partner's dissociation;

(3) The partner's expulsion pursuant to the partnership agreement;

(4) The partner's expulsion by the unanimous vote of the other partners if:

(a) It is unlawful to carry on the partnership business with that partner;

(b) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(c) Within ninety days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) A partnership that is a partner has been dissolved and its business is being wound up;

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) The partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 67-424; or

(c) The partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) The partner's:

(a) Becoming a debtor in bankruptcy;

(b) Executing an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) Failing, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a partner who is an individual:

(a) The partner's death;

(b) The appointment of a guardian or general conservator for the partner; or

(c) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Source: Laws 1997, LB 523, § 31.

67-432 Partner's power to dissociate; wrongful dissociation.

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to subdivision (1) of section 67-431.

(2) A partner's dissociation is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) The partner withdraws by express will, unless the withdrawal follows within ninety days after another partner's dissociation by death or otherwise under subdivisions (6) through (10) of section 67-431 or wrongful dissociation under this subsection;

(ii) The partner is expelled by judicial determination under subdivision (5) of section 67-431;

(iii) The partner is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in

addition to any other obligation of the partner to the partnership or to the other partners.

Source: Laws 1997, LB 523, § 32.

67-433 Effect of partner's dissociation.

(1) If a partner's dissociation results in a dissolution and winding up of the partnership business, sections 67-439 to 67-445 apply; otherwise, sections 67-434 to 67-438 apply.

(2) Upon a partner's dissociation:

(a) The partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 67-441;

(b) The partner's duty of loyalty under subdivision (2)(c) of section 67-424 terminates; and

(c) The partner's duty of loyalty under subdivisions (2)(a) and (2)(b) of section 67-424 and duty of care under subsection (3) of section 67-424 continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 67-441.

Source: Laws 1997, LB 523, § 33.

PART VII

PARTNER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

67-434 Purchase of dissociated partner's interest.

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under section 67-439, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2) of this section.

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subsection (2) of section 67-445 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under subsection (2) of section 67-432, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under section 67-435.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within one hundred twenty days after a written demand for payment,

the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3) of this section.

(6) If a deferred payment is authorized under subsection (8) of this section, the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3) of this section, stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) of this section must be accompanied by the following:

(a) A statement of partnership assets and liabilities as of the date of dissociation;

(b) The latest available partnership balance sheet and income statement, if any;

(c) An explanation of how the estimated amount of the payment was calculated; and

(d) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within one hundred twenty days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3) of this section, or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to subdivision (2)(b)(ii) of section 67-425, to determine the buyout price of that partner's interest, any offsets under subsection (3) of this section, or other terms of the obligation to purchase. The action must be commenced within one hundred twenty days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3) of this section, and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8) of this section, the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subsection (7) of this section.

Source: Laws 1997, LB 523, § 34.

67-435 Dissociated partner's power to bind and liability to partnership.

(1) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under sections 67-446 to 67-453, is bound by an act of the dissociated partner which would have bound the partnership under section 67-413 before dissociation only if at the time of entering into the transaction the other party:

(a) Reasonably believed that the dissociated partner was then a partner;

(b) Did not have notice of the partner's dissociation; and

(c) Is not deemed to have had knowledge under subsection (5) of section 67-415 or notice under subsection (3) of section 67-437.

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subsection (1) of this section.

Source: Laws 1997, LB 523, § 35.

67-436 Dissociated partner's liability to other persons.

(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subsection (2) of this section.

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under sections 67-446 to 67-453, within two years after the partner's dissociation, only if the partner is liable for the obligation under section 67-418 and at the time of entering into the transaction the other party:

(a) Reasonably believed that the dissociated partner was then a partner;

(b) Did not have notice of the partner's dissociation; and

(c) Is not deemed to have had knowledge under subsection (5) of section 67-415 or notice under subsection (3) of section 67-437.

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Source: Laws 1997, LB 523, § 36.

67-437 Statement of dissociation.

(1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subsections (4) and (5) of section 67-415.

(3) For the purposes of subdivision (1)(c) of section 67-435 and subdivision (2)(c) of section 67-436, a person not a partner is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

Source: Laws 1997, LB 523, § 37.

67-438 Continued use of partnership name.

Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Source: Laws 1997, LB 523, § 38.

PART VIII

WINDING UP PARTNERSHIP BUSINESS

67-439 Events causing dissolution and winding up of partnership business.

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subdivisions (2) through (10) of section 67-431, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) In a partnership for a definite term or particular undertaking:

(a) Within ninety days after a partner's dissociation by death or otherwise under subdivisions (6) through (10) of section 67-431 or wrongful dissociation under subsection (2) of section 67-432, the express will of at least a majority of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to subdivision (2)(b)(i) of section 67-432 constitutes the expression of that partner's will to wind up the partnership business;

(b) The express will of all of the partners to wind up the partnership business; or

(c) The expiration of the term or the completion of the undertaking;

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) On application by a partner, a judicial determination that:

(a) The economic purpose of the partnership is likely to be unreasonably frustrated;

(b) Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(a) After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Source: Laws 1997, LB 523, § 39.

67-440 Partnership continues after dissolution.

(1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) The rights of a third party accruing under subdivision (1) of section 67-442 or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

Source: Laws 1997, LB 523, § 40.

67-441 Right to wind up partnership business.

(1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court in the county where the chief executive office is or was last located or the district court of Lancaster County, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to section 67-445, settle disputes by mediation or arbitration, and perform other necessary acts.

Source: Laws 1997, LB 523, § 41.

67-442 Partner's power to bind partnership after dissolution.

Subject to section 67-443, a partnership is bound by a partner's act after dissolution that:

(1) Is appropriate for winding up the partnership business; or

(2) Would have bound the partnership under section 67-413 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Source: Laws 1997, LB 523, § 42.

67-443 Statement of dissolution.

(1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of subsection (4) of section 67-415 and is a limitation on authority for the purposes of subsection (5) of section 67-415.

(3) For the purposes of sections 67-413 and 67-442, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution ninety days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in subsections (4) and (5) of section 67-415 in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Source: Laws 1997, LB 523, § 43.

67-444 Partner's liability to other partners after dissolution.

(1) Except as otherwise provided in subsection (2) of this section and section 67-418, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under section 67-442.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under subdivision (2) of section 67-442 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Source: Laws 1997, LB 523, § 44.

67-445 Settlement of accounts and contributions among partners.

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partner-

ship an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 67-418.

(3) If a partner fails to contribute the full amount required under subsection (2) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under section 67-418. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under section 67-418.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under section 67-418.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Source: Laws 1997, LB 523, § 45.

PART IX

CONVERSIONS AND MERGERS

67-446 Terms, defined.

For purposes of sections 67-446 to 67-453:

(1) General partner means a partner in a partnership and a general partner in a limited partnership;

(2) Limited partner means a limited partner in a limited partnership;

(3) Limited partnership means a limited partnership created under the Nebraska Uniform Limited Partnership Act, predecessor law, or comparable law of another jurisdiction; and

(4) Partner includes both a general partner and a limited partner.

Source: Laws 1997, LB 523, § 46.

Cross References

Nebraska Uniform Limited Partnership Act, see section 67-296.

67-447 Conversion of partnership to limited partnership.

(1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) A statement that the partnership was converted to a limited partnership from a partnership;

(b) Its former name; and

(c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Nebraska Uniform Limited Partnership Act.

Source: Laws 1997, LB 523, § 47.

Cross References

Nebraska Uniform Limited Partnership Act, see section 67-296.

67-448 Conversion of limited partnership to partnership.

(1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 67-418, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Source: Laws 1997, LB 523, § 48.

67-449 Effect of conversion; entity unchanged.

(1) A partnership or limited partnership that has been converted pursuant to sections 67-446 to 67-453 is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) All obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

Source: Laws 1997, LB 523, § 49.

67-450 Merger of partnerships.

(1) Pursuant to a plan of merger approved as provided in subsection (3) of this section, a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) The name of each partnership or limited partnership that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) The terms and conditions of the merger;

(e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or in part; and

(f) The street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and

(b) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the later of:

(a) The approval of the plan of merger by all parties to the merger, as provided in subsection (3) of this section;

(b) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) Any effective date specified in the plan of merger.

Source: Laws 1997, LB 523, § 50.

67-451 Effect of merger.

(1) When a merger takes effect:

(a) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;

(b) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.

(2) The Secretary of State of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) All obligations of a party to the merger for which the partner was personally liable before the merger;

(b) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and

(c) Except as otherwise provided in section 67-418, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in section 67-445 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under section 67-434 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under section 67-435 by an act of a general partner dissociated under this subsection, and the partner is liable under section 67-436 for transactions entered into by the surviving entity after the merger takes effect.

Source: Laws 1997, LB 523, § 51.

67-452 Statement of merger.

(1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) The name of each partnership or limited partnership that is a party to the merger;

(b) The name of the surviving entity into which the other partnerships or limited partnership were merged;

(c) The street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) Whether the surviving entity is a partnership or a limited partnership.

(3) Except as otherwise provided in subsection (4) of this section, for the purposes of section 67-414, property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of section 67-414, real property of the surviving partnership or limited partnership which before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office of the register of deeds.

(5) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subsection (3) of section 67-406, stating the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by subsection (2) of this section, operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4) of this section.

Source: Laws 1997, LB 523, § 52.

67-453 Nonexclusive.

Sections 67-446 to 67-453 are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Source: Laws 1997, LB 523, § 53.

PART X

LIMITED LIABILITY PARTNERSHIP

67-454 Statement of qualification; limited liability partnership engaged in practice of law; requirements.

(1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State. The statement must contain:

(a) The name of the partnership;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process;

(d) A statement that the partnership elects to be a limited liability partnership; and

(e) A deferred effective date, if any.

(4) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(5) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(6) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(9) Any limited liability partnership engaging in the practice of law in this state shall file with the Secretary of State, along with its statement of qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 54; Laws 2004, LB 16, § 6; Laws 2008, LB383, § 7.

67-455 Name.

(1) The name of a limited liability partnership shall:

(a) End with ''registered limited liability partnership'', ''limited liability partnership'', ''R.L.L.P.'', ''RLLP'', ''L.L.P.'', or ''LLP'';

(b) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, a trade name registered in this state pursuant to sections 87-208 to 87-220; and

(c) Not be the same as or deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law.

(2) A limited liability partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law with the written consent of the other business entity

or with the transfer of the name by the other business entity. Written consent to the use of the name or written consent to the transfer of the name shall be filed with the Secretary of State.

Source: Laws 1997, LB 523, § 55; Laws 2003, LB 464, § 9.

67-456 Annual report; certificate of authority.

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

(a) The name of the partnership and the effective date of the revocation; and

(b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's

status as a limited liability partnership continues as if the revocation had never occurred.

Source: Laws 1997, LB 523, § 56; Laws 2004, LB 16, § 7; Laws 2008, LB383, § 8.

PART XI

FOREIGN LIMITED LIABILITY PARTNERSHIP

67-457 Law governing foreign limited liability partnership.

(1) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(2) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(3) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

Source: Laws 1997, LB 523, § 57.

67-458 Statement of foreign qualification; foreign limited liability partnership engaged in practice of law; requirements.

(1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(a) The name of the foreign limited liability partnership which (i) satisfies the requirements of the state or other jurisdiction under whose law it is formed, (ii) ends with ''registered limited liability partnership'', ''limited liability partnership'', ''R.L.L.P.'', ''RLLP'', ''L.L.P.'', ''LLP'', or similar words or abbreviations as required by the jurisdiction under whose law it is formed, and (iii) complies with the requirements of a domestic limited liability partnership as provided in subdivisions (1)(b) and (c) and subsection (2) of section 67-455;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(c) If there is no office of the partnership in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process; and

(d) A deferred effective date, if any.

(2) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(5) Any foreign limited liability partnership engaged in the practice of law in this state shall file with the Secretary of State, along with its statement of foreign qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the foreign limited liability partnership with its annual report required by section 67-456.

Source: Laws 1997, LB 523, § 58; Laws 2004, LB 16, § 8; Laws 2008, LB383, § 9.

67-459 Effect of failure to qualify.

(1) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(2) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(4) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, the Secretary of State is its agent for service of process with respect to a right of action arising out of the transaction of business in this state.

Source: Laws 1997, LB 523, § 59.

67-460 Activities not constituting transacting business.

(1) Activities of a foreign limited liability partnership which do not constitute transacting business for purposes of sections 67-457 to 67-461 include:

(a) Maintaining, defending, or settling an action or proceeding;

(b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) Maintaining bank accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(h) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and

(j) Transacting business in interstate commerce.

(2) For purposes of sections 67-457 to 67-461, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (1) of this section, constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this state.

Source: Laws 1997, LB 523, § 60.

67-461 Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of sections 67-457 to 67-461.

Source: Laws 1997, LB 523, § 61.

PART XII

MISCELLANEOUS PROVISIONS

67-462 Fees.

The filing fee for filing a statement of partnership authority pursuant to section 67-415, a statement of qualification pursuant to section 67-454, or a statement of foreign qualification pursuant to section 67-458 is two hundred dollars plus the recording fees specified in subdivision (4) of section 33-101. The filing fee for all other filings by partnerships or limited liability partnerships pursuant to the Uniform Partnership Act of 1998 is ten dollars plus recording fees. A fee of one dollar per page shall be paid for a certified copy of any document on file pursuant to the act. The filing fees pursuant to the act shall be paid to the Secretary of State and remitted to the State Treasurer. The State Treasurer shall credit fifty percent of the fees to the General Fund and fifty percent of the fees to the Corporation Cash Fund.

Source: Laws 1997, LB 523, § 62.

67-463 Uniformity of application and construction.

The Uniform Partnership Act of 1998 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1997, LB 523, § 63.

67-464 Partnerships; applicability of act.

On and after January 1, 2001, the Uniform Partnership Act of 1998 governs all partnerships.

Source: Laws 1997, LB 523, § 64; Laws 2008, LB707, § 2.

67-465 Limited liability partnership; applicability of act.

After January 1, 2001, the Uniform Partnership Act of 1998 governs all limited liability partnerships.

Source: Laws 1997, LB 523, § 65; Laws 2008, LB707, § 3.

67-466 Repealed. Laws 2008, LB 707, § 5.

67-467 Savings clause.

The Uniform Partnership Act of 1998 does not affect an action or proceeding commenced or right accrued before the act becomes operative.

Source: Laws 1997, LB 523, § 67.

CHAPTER 68
PUBLIC ASSISTANCE

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Cross References

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ARTICLE 1

MISCELLANEOUS PROVISIONS

Cross References

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68-157. Repealed. Laws 1996, LB 1155, § 121.

68-101 Repealed. Laws 1969, c. 532, § 2.

68-102 Repealed. Laws 1969, c. 532, § 2.

68-103 Repealed. Laws 1983, LB 604, § 32.

68-104 Department of Health and Human Services; overseer of poor; county board; assistance; powers and duties.

The Department of Health and Human Services shall be the overseer of the poor and shall be vested with the entire and exclusive superintendence of the poor in this state, except that the county board of each county shall furnish such medical service as may be required for the poor of the county who are not eligible for other medical assistance programs and general assistance for the poor of the county. Any person who is or becomes ineligible for other medical assistance programs due to his or her own actions or inactions shall also be ineligible for medical services from the county.

The county board of each county shall administer the medical assistance provided pursuant to this section. A county board may enter into an agreement with the Department of Health and Human Services which allows the department to aid in the administration of such medical assistance program. In providing medical and hospital care for the poor, the county board shall make use of any existing facilities, including tax-supported hospitals and charitable clinics so far as the same may be available, and shall use the financial eligibility criteria established for the standard of need developed by the county pursuant to section 68-126.

A county board may transfer funds designated for public assistance to the Department of Health and Human Services for purposes of payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements pursuant to subdivision (2)(c) of section 68-910.

Source: R.S.1866, c. 40, § 4, p. 275; Laws 1875, § 1, p. 89; R.S.1913, § 5798; Laws 1915, c. 20, § 1, p. 80; Laws 1919, c. 128, § 1, p. 302; C.S.1922, § 5143; C.S.1929, § 68-104; Laws 1937, c. 150, § 1, p. 574; C.S.Supp.,1941, § 68-104; R.S.1943, § 68-104; Laws 1947, c. 218, § 1, p. 705; Laws 1982, LB 522, § 20; Laws 1982,

LB 602, § 1; Laws 1983, LB 604, § 19; Laws 1984, LB 886, § 1; Laws 1995, LB 455, § 3; Laws 1996, LB 1044, § 285; Laws 2006, LB 1248, § 67; Laws 2007, LB292, § 1.

Cross References

For powers of health district in counties over 200,000 population, see section 71-1623.
General assistance, see sections 68-131 to 68-148.
Health services, maximum payments and standards established, see section 68-126.
Township counties, county board has charge of care of the poor, see section 23-248.

1. Medical services
2. Miscellaneous

1. Medical services

A county may be liable for the reasonable value of necessary hospital services furnished to poor persons when the county board, after receiving notice of the situation, neglects or refuses to make any arrangements for the care of the person. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

A hospital which furnishes hospital services to a poor person without a prior authorization by the county board acts at its peril with respect to reimbursement from county funds. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

County board by statute has been made overseer of the poor and the county board has mandatory duty to provide for poor persons whether or not they are residents of the county. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

County is not liable for hospital expense unless authorized by county board even though emergency existed. Mary Lanning Memorial Hospital v. Clay County, 170 Neb. 61, 101 N.W.2d 510 (1960).

Physician must ascertain at his peril the power of county officers to bind the county for payment of his services by county in treating poor persons. Neill v. Dakota County, 140 Neb. 26, 299 N.W. 294 (1941).

The county board of each county is vested with entire and exclusive superintendence of the poor, with authority to employ a county physician. Miller v. Banner County, 135 Neb. 549, 283 N.W. 206 (1939).

It is the duty of a county board to provide the necessary medical services for a pauper patient within own county. Burnham v. Lincoln County, 128 Neb. 47, 257 N.W. 491 (1934).

A physician not hired by county may not recover for emergency services to a poor person where there is a duly appointed county physician to care for poor, ready, willing and able to serve but not consulted. Sayre v. Madison County, 127 Neb. 200, 254 N.W. 874 (1934).

A contract by a county board to pay a specified sum to one who will undertake to provide all medical services for the poor within the county is invalid. Hustead v. Richardson County, 104 Neb. 27, 175 N.W. 648 (1919).

Physician who is paid for treating inmates of county poor farm and county jail may recover from county for services and expenses and quarantining and suppressing epidemic. Plumb v. York County, 95 Neb. 655, 146 N.W. 938 (1914).

County board may either employ a physician by the year to furnish medical services to paupers, or it may employ a physician to attend each case as it arises. Red Willow County v. Davis, 49 Neb. 796, 69 N.W. 138 (1896).

County is not liable for medical attendance rendered to nonresident pauper without order from board. Hamilton County v. Meyers, 23 Neb. 718, 37 N.W. 623 (1888).

If county physician refuses to attend, county is liable to other physicians employed. Gage County v. Fulton, 16 Neb. 5, 19 N.W. 781 (1884).

2. Miscellaneous

Duty of county board to support poor is subject to limitation upon the expenditures of the county. State ex rel. Boxberger v. Burns, 132 Neb. 31, 270 N.W. 656 (1937).

In counties under township organization in which a poorhouse has not been established, burden of supporting poor in respective townships devolves upon such townships. Custer Township v. Board of Supervisors of Antelope County, 103 Neb. 128, 170 N.W. 600 (1919).

68-105 Repealed. Laws 1983, LB 604, § 32.

68-106 Repealed. Laws 1982, LB 522, § 46.

68-107 Repealed. Laws 1982, LB 522, § 46.

68-108 Repealed. Laws 1982, LB 522, § 46.

68-109 Repealed. Laws 1983, LB 604, § 32.

68-110 Repealed. Laws 1983, LB 604, § 32.

68-111 Repealed. Laws 1982, LB 522, § 46.

68-112 Repealed. Laws 1982, LB 522, § 46.

68-113 Repealed. Laws 1982, LB 522, § 46.

68-114 Nonresident poor persons; temporary aid; relief when legal residence not determined.

Whenever any nonresident shall fall sick in any county in this state, not having money or property to pay his or her board, or whenever any poor person not having a legal settlement in the county is found in distress, without friends or money, so that he or she is likely to suffer, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary; and if any such person shall die, the county board shall provide all necessary means for a decent burial of such person. If such poor person, applying for or receiving relief, belongs to another state, the county board may furnish such person, in addition to necessary temporary aid, transportation and the requisite expenses incurred thereby, and may return such poor person to the state in which he or she has legal settlement; *Provided*, that the claim by the poor person of a legal settlement shall be verified by the county board, and assurance be given the board that such poor person will be received and given care in the place of his or her legal settlement. If any such poor person shall be found applying for relief in any county, and the county board of such county shall be unable to ascertain and establish the last place of legal residence of such person, the county board shall proceed in its discretion to provide for such poor person in the same manner as other poor persons are directed to be provided for.

Source: R.S.1866, c. 40, § 14, p. 277; R.S.1913, § 5808; Laws 1915, c. 20, § 1, p. 81; C.S.1922, § 5153; C.S.1929, § 68-114; Laws 1933, c. 118, § 8, p. 482; C.S.Supp.,1941, § 68-114; R.S.1943, § 68-114; Laws 1982, LB 602, § 2.

Cross References

For powers of health district in counties over 200,000 population, see section 71-1623.

A county may be liable for the reasonable value of necessary hospital services furnished to poor persons when the county board, after receiving notice of the situation, neglects or refuses to make any arrangements for the care of the person. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

A hospital which furnishes hospital services to a poor person without a prior authorization by the county board acts at its peril with respect to reimbursement from county funds. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

County board by statute has been made overseer of the poor and the county board has mandatory duty to provide for poor persons whether or not they are residents of the county. Creighton-Omaha Regional Health Care Corp. v. Douglas County, 202 Neb. 686, 277 N.W.2d 64 (1979).

Approval of county board is required to impose liability for hospital services furnished to a nonresident. Mary Lanning Memorial Hospital v. Clay County, 170 Neb. 61, 101 N.W.2d 510 (1960).

Where there is a duly appointed county physician to care for the poor, a physician, not hired by the county, cannot recover for services rendered to a nonresident poor person in an emergency. Sayre v. Madison County, 127 Neb. 200, 254 N.W. 874 (1934).

Duty of overseer of poor in precinct where such person shall be, is to furnish such assistance as he shall deem necessary, medical, or otherwise. Meyers v. Furnas County, 93 Neb. 313, 140 N.W. 633 (1913).

A poor person becoming disabled in a county other than his residence is entitled to relief from county in which found, which county has right of reimbursement from county of pauper's residence. Rock County v. Holt County, 78 Neb. 616, 111 N.W. 366 (1907).

A township is not liable for medical services rendered to a nonresident pauper. Gilligan v. Town of Grattan, 63 Neb. 242, 88 N.W. 477 (1901).

County is not liable for voluntary medical attendance to nonresident pauper. Hamilton County v. Meyers, 23 Neb. 718, 37 N.W. 623 (1888).

68-115 Legal settlement, defined; exclusions; minors; termination.

(1) The term legal settlement for all public assistance programs shall be taken and considered to mean as follows:

Every person, except those hereinafter mentioned, who has resided one year continuously in any county, shall be deemed to have a legal settlement in such county.

Every person who has resided one year continuously within the state, but not in any one county shall have a legal settlement in the county in which he or she has resided six months continuously.

(2) The time during which a person has been an inmate of any public or private charitable or penal institution, or has received care at public expense in any type of care home, nursing home, or board and room facility licensed as such and caring for more than one patient or guest, and each month during which he or she has received relief from private charity or the poor fund of any county shall be excluded in determining the time of residence hereunder, as referred to in subsection (1) of this section.

(3) Every minor who is not emancipated and settled in his or her own right shall have the same legal settlement as the parent with whom he or she has resided.

(4) A legal settlement in this state shall be terminated and lost by (a) acquiring a new one in another state or by (b) voluntary and uninterrupted absence from this state for the period of one year with intent to abandon residence in Nebraska.

Source: R.S.1866, c. 40, § 15, p. 277; R.S.1913, § 5809; C.S.1922, § 5154; C.S.1929, § 68-115; Laws 1933, c. 118, § 9, p. 483; C.S.Supp.,1941, § 68-115; R.S.1943, § 68-115; Laws 1953, c. 229, § 1, p. 800; Laws 1961, c. 327, § 1, p. 1034; Laws 1975, LB 165, § 1; Laws 1982, LB 522, § 24; Laws 1982, LB 602, § 3; Laws 1983, LB 604, § 20.

The county where pauper has legal settlement is the county of ultimate liability for his maintenance and care. Miller v. Banner County, 135 Neb. 549, 283 N.W. 206 (1939).

Absence of unemancipated minor child from home of parents does not affect his settlement. Miller v. Banner County, 127 Neb. 690, 256 N.W. 639 (1934), affirming 127 Neb. 1, 254 N.W. 669 (1934).

One's residence is where he has his established home and to which, when absent, he intends to return. State ex rel. Vale v. School Dist. of City of Superior, 55 Neb. 317, 75 N.W. 855 (1898).

68-116 Repealed. Laws 1982, LB 522, § 46.

68-117 Repealed. Laws 1951, c. 212, § 1.

68-118 Repealed. Laws 1951, c. 212, § 1.

68-119 Repealed. Laws 1951, c. 212, § 1.

68-120 Repealed. Laws 1951, c. 212, § 1.

68-121 Repealed. Laws 1951, c. 212, § 1.

68-122 Repealed. Laws 1951, c. 212, § 1.

68-123 Repealed. Laws 1951, c. 212, § 1.

68-124 Repealed. Laws 1951, c. 212, § 1.

68-125 Repealed. Laws 1951, c. 212, § 1.

68-126 Health services; maximum payments; rules and regulations; standard of need for medical services; established.

The Department of Health and Human Services shall adopt and promulgate rules and regulations establishing maximum payments for all health services furnished to recipients of public assistance. Each county shall, not later than December 31, 1984, establish a standard of need for medical services furnished, pursuant to section 68-104, by the counties to indigent persons who are not

eligible for other medical assistance programs. This standard shall not exceed the Office of Management and Budget income poverty guidelines.

Source: Laws 1963, c. 384, § 1, p. 1229; Laws 1982, LB 522, § 25; Laws 1982, LB 602, § 4; Laws 1984, LB 886, § 2; Laws 1996, LB 1044, § 286; Laws 2007, LB296, § 236.

68-127 Repealed. Laws 1984, LB 904, § 11.

68-128 Emergency assistance; families with children.

From such funds as may be appropriated for such purpose, the Department of Health and Human Services shall provide emergency assistance benefits on behalf of families who have children.

Source: Laws 1973, LB 477, § 1; Laws 1989, LB 362, § 4; Laws 1996, LB 1044, § 287.

68-129 Public assistance; computation of available resources; exclusions.

The Department of Health and Human Services shall, by rule and regulation, when determining need for public assistance on the basis of available resources, exclude from the definition of available resources of an applicant for assistance either the funds deposited in an irrevocable trust fund created pursuant to section 12-1106 or up to four thousand dollars, increased annually as provided in this section, of the amount paid for a policy of insurance the proceeds of which are specifically and irrevocably designated, assigned, or pledged for the payment of the applicant's burial expenses. The Department of Health and Human Services shall increase such amount annually on September 1 beginning with the year 2006 by the percentage change in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics at the close of the twelve-month period ending on August 31 of such year. This section shall not preclude the eligibility for assistance of an applicant who has purchased such a policy of insurance prior to July 9, 1988, unless such applicant is subject to subdivision (3) of section 68-1002.

Source: Laws 1982, LB 314, § 1; Laws 1986, LB 643, § 22; Laws 1988, LB 1010, § 1; Laws 1996, LB 1044, § 288; Laws 2006, LB 85, § 2; Laws 2007, LB296, § 237.

68-130 Counties; maintain office and service facilities.

Counties shall maintain, at no additional cost to the Department of Health and Human Services, office and service facilities used for the administration of the public assistance programs as such facilities existed on April 1, 1983.

Source: Laws 1982, LB 604, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238.

68-131 Poor person; support by county; when eligible.

When any poor person does not have a spouse, parent, or stepparent supporting him or her or is not eligible for other general assistance programs, the poor person shall receive such relief, referred to as general assistance for purposes of sections 68-131 to 68-148, out of the treasury of the county in which he or she has legal settlement at the time of applying for assistance, in the manner provided in sections 68-131 to 68-148. Any person who is or becomes ineligible for other general assistance programs due to his or her own

actions or inactions shall also be ineligible for general assistance from the county.

Source: Laws 1983, LB 604, § 1; Laws 1995, LB 455, § 4.

68-132 County board; duties.

The county board of each county shall be the overseer of the poor and shall be vested with the superintendence of the poor in such county. It shall be the duty of the county board to provide general assistance to all poor persons (1) who meet the requirements contained in section 68-131 and who are eligible for general assistance pursuant to standards established by the county board as required by section 68-133 or (2) who are eligible for and participate in a program established pursuant to section 68-152. Such general assistance shall be in amounts established by the county board as required by section 68-133 and shall be adequate to insure maintenance of minimum health and decency.

Source: Laws 1983, LB 604, § 2; Laws 1990, LB 422, § 6.

68-133 County; adopt standards; requirements.

Each county shall, not later than July 1, 1984, adopt written standards of eligibility and assistance for general assistance to poor persons. Such standards shall:

(1) Provide that all individuals desiring to make application for general assistance shall have opportunity to do so and that general assistance shall be furnished to all eligible individuals:

(a) Within seven days after the submission of the application if the need is short-term; and

(b) Within thirty days after the submission of the application if the need is continuous;

(2) Provide a schedule of goods and services necessary for the maintenance of minimum decency and health for families of various sizes, including single persons. Such schedule shall include, but not be limited to, food, housing, utilities, clothing, medical expenses, burial expenses, laundry, transportation, housing supplies, personal care, and such other goods and services as the county board shall deem necessary to insure the maintenance of minimum health and decency;

(3) Provide a schedule setting forth the amount of money needed to obtain those goods and services referred to in subdivision (2) of this section;

(4) Provide a schedule setting forth the amount of money to be paid to families and individuals who are in need of those goods and services when:

(a) That need is continuous; and

(b) That need is short-term;

(5) Provide a schedule of the income and assets which shall be considered as being available to a family or individual and which shall guarantee that only such income and assets as are in the immediate possession and control of the family or person shall be considered as available;

(6) Include a definition of poor persons which will insure that all families and individuals whose available income and assets, as set forth pursuant to subdivision (5) of this section, are less than those determined to be necessary pursuant

to subdivisions (2) and (3) of this section will be eligible to receive general assistance; and

(7) Designate whether the county board or a class of employees in the county shall hold and conduct the hearings of aggrieved persons as required by sections 68-139 to 68-141.

Source: Laws 1983, LB 604, § 3.

The Nebraska general assistance statutes obligate each county to provide to all income-eligible persons, whether or not they are residents of that county, the minimum level of care which the county has undertaken pursuant to subsection (2) of this section. Salts v. Lancaster Cty., 269 Neb. 948, 697 N.W.2d 289 (2005).

68-134 Standards; review; filing; availability.

The standards established pursuant to section 68-133 and all amendments to such standards shall be reviewed by the county on a biennial basis to insure that such standards reflect changes in living standards and costs-of-living. A copy of all standards and amendments to such standards shall be filed with the Department of Health and Human Services within thirty days after their adoption by the county. Upon request of a county board, the Department of Health and Human Services shall assist the board in developing standards or amendments. Each county shall make a copy of its standards and amendments available for public inspection during normal business hours.

Source: Laws 1983, LB 604, § 4; Laws 1996, LB 1044, § 290.

68-135 Standards; hearing and notice.

No county shall adopt standards or amendments to such standards pursuant to section 68-133 or 68-134 without first holding a public hearing to permit discussion and the presentation of testimony or evidence by interested persons. Notice of such hearing shall be published not more than twenty days nor less than ten days prior to the hearing in a newspaper in general circulation throughout the county.

Source: Laws 1983, LB 604, § 5.

68-136 Failure to adopt or review standards; judicial review.

A county board's failure to adopt standards or to review standards as required by sections 68-131 to 68-148 may be reviewed by the district court of the county in an action in mandamus.

Source: Laws 1983, LB 604, § 6.

68-137 Repayment; when required.

No county shall require a person to make repayment or any other form of compensation for general assistance provided to such person pursuant to sections 68-131 to 68-148 if such general assistance was not obtained through misrepresentation or fraud, except that a county may require reimbursement for interim general assistance granted pending a determination of an applicant's eligibility for any supplemental security income program or other program of categorical assistance or pending the issuance of a lost or stolen categorical warrant.

Source: Laws 1983, LB 604, § 7; Laws 1984, LB 886, § 3.

68-138 Assistance; denial; termination; reduction; notice; hearing.

Any person whose application for assistance, made pursuant to section 68-104 or sections 68-131 to 68-148, is denied or whose continuing assistance is terminated or reduced shall, at the time of the denial, termination, or reduction, be given a written notice of the specific reasons for such denial, termination, or reduction. Such notice shall also inform the person of the right to a hearing to review the denial, termination, or reduction and the procedures for requesting such hearing.

Source: Laws 1983, LB 604, § 8; Laws 1984, LB 886, § 4.

68-139 Hearing before county board or hearing examiner; when allowed.

Any person whose claim for general assistance or medical services (1) has not been acted upon within the time established by section 68-133, (2) has been denied, (3) has not been granted in full, (4) has been reduced or terminated, or (5) has been suspended for failure to participate in a program established pursuant to section 68-152 may request a hearing on such action or inaction before the county board or, if the county board so delegates as allowed by section 68-133, before an employee of the county.

Source: Laws 1983, LB 604, § 9; Laws 1984, LB 886, § 5; Laws 1990, LB 422, § 7.

68-140 Hearing; rights of person requesting.

A person requesting a hearing pursuant to section 68-139 shall have the following rights:

(1) To examine the county file pertaining to his or her case prior to and during the hearing;

(2) To be represented in the proceedings by a lawyer, friend, relative, or anyone else he or she may select;

(3) To present evidence; and

(4) To confront and cross-examine witnesses.

Source: Laws 1983, LB 604, § 10; Laws 1984, LB 886, § 6.

68-141 Hearing; procedure.

The county board or hearing examiner, as the case may be, shall use the following procedure for all hearings:

(1) Tape-record the hearing;

(2) Make a decision within thirty days following the hearing;

(3) Make the decision based upon the evidence adduced and the law;

(4) Provide the claimant a written copy of the decision setting forth findings and conclusions; and

(5) Preserve the tape of the hearing and all exhibits offered at the hearing for not less than sixty days following entry of the hearing decision.

Source: Laws 1983, LB 604, § 11.

68-142 Judicial review; procedure.

(1) Any person aggrieved by a decision rendered pursuant to sections 68-139 to 68-141 may obtain a review of such decision in the district court of the county.

(2) Proceedings for review shall be instituted by filing a petition in the district court of the county where the decision was rendered within thirty days after service of the decision on the claimant. The county shall be made a party to the proceedings for review and summons shall be served as in other actions against a county. The court may permit other interested parties to intervene.

(3) Within fifteen days after service of summons upon the county or within such further time as the court for good cause shown may allow, the county shall prepare and transmit to the court a certified transcript of the proceedings had before it, which transcript shall include the county's standards and all amendments regarding eligibility and assistance for general assistance, the transcribed hearing record, all exhibits offered at the hearing, and the final decision sought to be reversed, vacated, or modified.

(4) The review shall be conducted by the court without a jury on the record of the county.

(5) The court may affirm the decision, remand the case for further proceedings, or reverse or modify the decision if any substantial rights of the petitioner may have been prejudiced because the decision is:

(a) In violation of constitutional provisions;

(b) In excess of the statutory authority or jurisdiction of the county;

(c) Made upon unlawful procedure;

(d) Unsupported by competent, material, and substantial evidence in view of the entire record as made on review; or

(e) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

Source: Laws 1983, LB 604, § 12.

68-143 Poor person; where chargeable.

Any person becoming chargeable as a poor person in this state shall be chargeable as such in the county in which he or she has established a legal settlement as defined in section 68-115.

Source: Laws 1983, LB 604, § 13.

68-144 Poor person; duties of county where found and county of legal settlement.

If any person shall become chargeable in any county in which he or she has not established a legal settlement at the time of applying for aid, he or she shall be duly taken care of by the proper authority of the county where he or she may be found. It shall be the duty of the clerk of the county board to send a notice by mail to the clerk of the county board of the county in which such poor person has a legal settlement that such person has become chargeable as a poor person, and requesting the authorities of such county to promptly remove such poor person and to pay the expense accrued in taking care of him or her.

Source: Laws 1983, LB 604, § 14.

68-145 Poor person; county where found; action to recover costs; when authorized.

If a poor person, by reason of sickness or disease, or by neglect of the authorities of the county in which he or she has a legal settlement, or for any

other sufficient cause, cannot be removed, then the county taking charge of such individual may sue for, and recover from the county to which such individual belongs, the amount expended for and in behalf of such poor person and in taking care of such person.

Source: Laws 1983, LB 604, § 15.

68-146 Nonresident poor person; general assistance; legal settlement verified; assurances.

Whenever any poor person without a legal settlement in this state shall become sick in any county in this state, not having income and assets available to pay for medical services, or whenever any poor person without a legal settlement in this state is found in distress in any county in this state and is without income and assets to preclude suffering, it shall be the duty of the county board to furnish such temporary assistance to such person as it shall deem necessary. If any such person shall die, the county board shall provide all necessary means for a decent burial of such person. If such poor person has a legal settlement in another state, the county board may furnish such person, in addition to temporary assistance, transportation and the requisite expenses incurred thereby and may return such poor person to the state in which he or she has legal settlement. The representation by a poor person of a legal settlement shall be verified by the county board and assurance shall be given the board that such poor person will be received and given care in the place of his or her legal settlement. If any poor person without a legal settlement in this state shall apply for general assistance in any county in which he or she is situated, the county board may proceed at its discretion to provide for such poor person in the same manner as it would provide for a poor person with legal settlement in the county.

Source: Laws 1983, LB 604, § 16.

68-147 County, when liable.

Even though a poor person may be eligible for general assistance, the county board shall have no liability to such person until the county board or the person to whom it has delegated responsibility for administration of general assistance shall have passed upon a written application for assistance or shall have failed to act upon the written application within the appropriate time prescribed in section 68-133. If a poor person is incapable, for any cause, of completing a written application for assistance, it may be completed by another acting in the interest of such poor person.

Source: Laws 1983, LB 604, § 17.

68-148 General assistance; not alienable; exception.

No general assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment, or any other legal process, except that a county may pay general assistance directly to any person, corporation, or other legal entity providing goods or services, as described in section 68-133, to the poor person.

Source: Laws 1983, LB 604, § 18.

68-149 Reimbursement to county; when; procedure.

The county shall be reimbursed for any medical assistance or health services by the spouse, father, or mother of any recipient if they or any of them are of sufficient ability. A proceeding may be instituted in any court of competent jurisdiction in this state against such relative for reimbursement of medical care or health services made to or on behalf of a recipient at any time prior to the expiration of one year after the date of the last assistance payment. Suit shall be instituted in the name of the county.

Source: Laws 1984, LB 886, § 7.

68-150 Application; right of subrogation.

An application for county general assistance or for county health services shall give a right of subrogation to the county furnishing such aid. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the county as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1984, LB 886, § 8; Laws 1988, LB 419, § 12; Laws 1989, LB 362, § 5; Laws 2006, LB 1248, § 68.

68-151 Employable recipients; legislative findings.

The Legislature hereby finds and declares that the increase in the number of recipients of county general assistance funds by employable recipients is a cause of great concern among county governments. County officials realize that a part of the recent increase in recipients was caused by the recent economic recession, especially in the rural areas of the state. Recognizing such increase and some of its causes, county officials wish to establish a program designed to encourage employable recipients to enroll in county-approved vocational, rehabilitation, or job training programs or to require employable recipients to perform community service in exchange for county general assistance. The establishment of such a program will result in more persons leading productive lives, less unemployment, and savings for the taxpayers of the state.

Source: Laws 1990, LB 422, § 1; Laws 1991, LB 227, § 1.

68-152 Employable recipients; programs authorized.

A county may develop, establish, and implement vocational, rehabilitation, job training, and community service programs for employable recipients.

Source: Laws 1990, LB 422, § 2; Laws 1991, LB 227, § 2.

68-153 Employable recipients; terms, defined.

For purposes of sections 68-151 to 68-156:

(1) Community service shall mean labor performed for a governmental agency, nonprofit corporation, or health care corporation;

(2) Employable recipient shall mean any individual who is eighteen years of age or older, who is receiving county general assistance pursuant to sections 68-131 to 68-148, who is not engaged in full-time employment or satisfactorily participating in a county-approved vocational, rehabilitation, job training, or community service program, and who is not rendered unable to work by illness or significant and substantial mental or physical incapacitation to the degree

and of the duration that the illness or incapacitation prevents the person from performing designated vocational, rehabilitation, job training, or community service activities;

(3) Full-time employment shall mean being employed at least twenty-five hours per week and receiving wages, tips, and other compensation which meet the applicable federal minimum wage requirements; and

(4) Job training program shall mean vocational training in technical job skills and equivalent knowledge.

Source: Laws 1990, LB 422, § 3; Laws 1991, LB 227, § 3.

68-154 Employable recipients; rules and regulations.

Any county which establishes a vocational, rehabilitation, job training, or community service program shall adopt and promulgate written rules and regulations to ensure fair and equitable treatment of employable recipients of general assistance.

Source: Laws 1990, LB 422, § 4; Laws 1991, LB 227, § 4.

68-154.01 Employable recipient; community service required; exception.

(1) Any individual applying for general assistance who has completed a county-approved vocational, rehabilitation, or job training program within two years prior to the date of such application or who refuses or fails to participate in such a program may be required to participate in a county-approved community service program. Any employable recipient who has completed such a vocational, rehabilitation, or job training program and continues to be unemployed for a period of three calendar months from the date of completing such program may be required to participate in such a community service program.

(2) No individual who is a single parent and has legal custody of his or her child under six years of age shall be required to perform community service. No individual shall be required to participate in a county-approved community service program unless he or she has first been given the opportunity to participate in a county-approved vocational, rehabilitation, or job training program.

(3) The maximum number of hours of community service required of each employable recipient shall be determined by dividing the amount of his or her general assistance received in the calendar month by the federal minimum hourly wage. No individual shall be required to perform community service for more than eight hours in any one day or more than sixteen hours in one week.

(4) No individual required to perform community service pursuant to this section shall be denied general assistance for failure to participate in a county-approved community service program through no fault of his or her own.

Source: Laws 1991, LB 227, § 5.

68-154.02 Employable recipient; community service; costs; paid by county.

The cost of transportation of participants to community service projects, supervision, and necessary equipment shall be paid by the county.

Source: Laws 1991, LB 227, § 6.

68-154.03 Employable recipient; community service; participation; how construed.

Participation in a county-approved community service program shall not be construed as employment for purposes of Chapter 48. No employable recipient participating in such a community service program shall be deemed an employee of the county for purposes of the County Employees Retirement Act or for any other purpose.

Source: Laws 1991, LB 227, § 7.

Cross References

County Employees Retirement Act, see section 23-2331.

68-155 Employable recipients; ineligible; when; notice; appeal.

Any employable recipient who fails or refuses to participate in a county-approved vocational, rehabilitation, job training, or community service program shall be ineligible for continued general assistance for a period of three calendar months, except that any employable recipient denied general assistance pursuant to this section shall receive written notice of his or her ineligibility and shall have thirty days from the date of receipt of the written notice to appeal such decision. All such appeals shall be governed by sections 68-139 to 68-142.

Source: Laws 1990, LB 422, § 5; Laws 1991, LB 227, § 8.

68-156 Employable recipients; community service program; report.

Any county utilizing a community service program for employable recipients as outlined in sections 68-151 to 68-155 shall file an annual written report which shall include the number of persons placed through the community service program, the numbers of hours of experience provided, the duration and location of each placement including the name and address of the business or agency accepting the placement, and the specific skills learned in the placement.

The report shall be filed with the Department of Health and Human Services by October 1 of each year for the fiscal year ending the preceding June 30.

Source: Laws 1991, LB 227, § 9; Laws 1996, LB 1044, § 291; Laws 2005, LB 301, § 1.

68-157 Repealed. Laws 1996, LB 1155, § 121.

ARTICLE 2
OLD AGE ASSISTANCE

Section
68-201. Repealed. Laws 1953, c. 237, § 11.
68-202. Repealed. Laws 1965, c. 395, § 27.
68-203. Repealed. Laws 1965, c. 395, § 27.
68-204. Repealed. Laws 1965, c. 395, § 27.
68-205. Repealed. Laws 1965, c. 395, § 27.
68-206. Repealed. Laws 1965, c. 395, § 27.
68-206.01. Repealed. Laws 1963, c. 340, § 1.
68-206.02. Repealed. Laws 1965, c. 395, § 27.
68-207. Repealed. Laws 1961, c. 328, § 1.

Section
68-208. Repealed. Laws 1965, c. 395, § 27.
68-209. Repealed. Laws 1965, c. 395, § 27.
68-210. Repealed. Laws 1965, c. 395, § 27.
68-211. Repealed. Laws 1965, c. 395, § 27.
68-212. Repealed. Laws 1965, c. 395, § 27.
68-213. Repealed. Laws 1965, c. 395, § 27.
68-214. Repealed. Laws 1996, LB 1155, § 121.
68-215. Repealed. Laws 1971, LB 130, § 2.
68-215.01. Repealed. Laws 1971, LB 130, § 2.
68-215.02. Repealed. Laws 1971, LB 130, § 2.
68-215.03. Repealed. Laws 1971, LB 130, § 2.
68-215.04. Repealed. Laws 1965, c. 395, § 27.
68-215.05. Repealed. Laws 1971, LB 130, § 2.
68-215.06. Repealed. Laws 1971, LB 130, § 2.
68-215.07. Repealed. Laws 1971, LB 130, § 2.
68-215.08. Repealed. Laws 1971, LB 130, § 2.
68-215.09. Repealed. Laws 1965, c. 395, § 27.
68-215.10. Repealed. Laws 1971, LB 130, § 2.
68-215.11. Repealed. Laws 1971, LB 130, § 2.
68-215.12. Repealed. Laws 1971, LB 130, § 2.
68-215.13. Repealed. Laws 1971, LB 130, § 2.
68-215.14. Repealed. Laws 1987, LB 3, § 3.
68-216. Transferred to section 68-1001.02.
68-217. Repealed. Laws 1965, c. 395, § 27.
68-218. Repealed. Laws 1982, LB 522, § 46.
68-219. Repealed. Laws 1965, c. 395, § 27.
68-220. Repealed. Laws 1965, c. 395, § 27.
68-221. Repealed. Laws 1965, c. 395, § 27.
68-222. Repealed. Laws 1965, c. 395, § 27.
68-223. Repealed. Laws 1965, c. 395, § 27.
68-224. Repealed. Laws 1965, c. 395, § 27.
68-225. Repealed. Laws 1965, c. 395, § 27.
68-226. Repealed. Laws 1965, c. 395, § 27.
68-227. Repealed. Laws 1965, c. 395, § 27.
68-228. Repealed. Laws 1965, c. 395, § 27.
68-229. Repealed. Laws 1965, c. 395, § 27.
68-230. Repealed. Laws 1959, c. 372, § 2.

68-201 Repealed. Laws 1953, c. 237, § 11.

68-202 Repealed. Laws 1965, c. 395, § 27.

68-203 Repealed. Laws 1965, c. 395, § 27.

68-204 Repealed. Laws 1965, c. 395, § 27.

68-205 Repealed. Laws 1965, c. 395, § 27.

68-206 Repealed. Laws 1965, c. 395, § 27.

68-206.01 Repealed. Laws 1963, c. 340, § 1.

68-206.02 Repealed. Laws 1965, c. 395, § 27.

68-207 Repealed. Laws 1961, c. 328, § 1.

68-208 Repealed. Laws 1965, c. 395, § 27.

68-209 Repealed. Laws 1965, c. 395, § 27.

68-210 Repealed. Laws 1965, c. 395, § 27.

68-211 Repealed. Laws 1965, c. 395, § 27.

68-212 Repealed. Laws 1965, c. 395, § 27.

68-213 Repealed. Laws 1965, c. 395, § 27.

68-214 Repealed. Laws 1996, LB 1155, § 121.

68-215 Repealed. Laws 1971, LB 130, § 2.

68-215.01 Repealed. Laws 1971, LB 130, § 2.

68-215.02 Repealed. Laws 1971, LB 130, § 2.

68-215.03 Repealed. Laws 1971, LB 130, § 2.

68-215.04 Repealed. Laws 1965, c. 395, § 27.

68-215.05 Repealed. Laws 1971, LB 130, § 2.

68-215.06 Repealed. Laws 1971, LB 130, § 2.

68-215.07 Repealed. Laws 1971, LB 130, § 2.

68-215.08 Repealed. Laws 1971, LB 130, § 2.

68-215.09 Repealed. Laws 1965, c. 395, § 27.

68-215.10 Repealed. Laws 1971, LB 130, § 2.

68-215.11 Repealed. Laws 1971, LB 130, § 2.

68-215.12 Repealed. Laws 1971, LB 130, § 2.

68-215.13 Repealed. Laws 1971, LB 130, § 2.

68-215.14 Repealed. Laws 1987, LB 3, § 3.

68-216 Transferred to section 68-1001.02.

68-217 Repealed. Laws 1965, c. 395, § 27.

68-218 Repealed. Laws 1982, LB 522, § 46.

68-219 Repealed. Laws 1965, c. 395, § 27.

68-220 Repealed. Laws 1965, c. 395, § 27.

68-221 Repealed. Laws 1965, c. 395, § 27.

68-222 Repealed. Laws 1965, c. 395, § 27.

68-223 Repealed. Laws 1965, c. 395, § 27.

68-224 Repealed. Laws 1965, c. 395, § 27.

68-225 Repealed. Laws 1965, c. 395, § 27.

68-226 Repealed. Laws 1965, c. 395, § 27.

68-227 Repealed. Laws 1965, c. 395, § 27.

68-228 Repealed. Laws 1965, c. 395, § 27.

68-229 Repealed. Laws 1965, c. 395, § 27.

68-230 Repealed. Laws 1959, c. 372, § 2.

ARTICLE 3
STATE ASSISTANCE FUND

Section
68-301. State Assistance Fund; created; investment.
68-302. Repealed. Laws 1965, c. 399, § 4.
68-303. Repealed. Laws 1953, c. 237, § 11.
68-304. Repealed. Laws 1953, c. 237, § 11.
68-305. Repealed. Laws 1953, c. 237, § 11.
68-306. Repealed. Laws 1953, c. 237, § 11.
68-307. Repealed. Laws 1965, c. 399, § 4.
68-308. Repealed. Laws 1965, c. 399, § 4.
68-309. Department of Health and Human Services; sole state agency for administration of welfare programs.
68-310. Repealed. Laws 1965, c. 399, § 4.
68-310.01. Repealed. Laws 1982, LB 522, § 46.
68-310.02. Repealed. Laws 1982, LB 522, § 46.
68-311. Repealed. Laws 1965, c. 399, § 4.
68-312. Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.
68-313. Records and information; use and disclosure; limitations.
68-313.01. Records and information; access by the Legislature and state and county officials; open to public; limitation.
68-314. Violations; penalty.
68-315. Repealed. Laws 1965, c. 399, § 4.
68-316. Repealed. Laws 1953, c. 237, § 11.
68-317. Repealed. Laws 1965, c. 399, § 4.
68-318. Repealed. Laws 1965, c. 399, § 4.
68-319. Repealed. Laws 1965, c. 399, § 4.
68-320. Repealed. Laws 1965, c. 399, § 4.
68-321. Repealed. Laws 1965, c. 399, § 4.
68-322. Repealed. Laws 1965, c. 399, § 4.
68-322.01. Repealed. Laws 1977, LB 312, § 9.
68-323. Repealed. Laws 1965, c. 399, § 4.
68-324. Repealed. Laws 1953, c. 237, § 11.
68-325. Repealed. Laws 1965, c. 399, § 4.
68-326. Transferred to section 68-702.01.
68-327. Repealed. Laws 1961, c. 415, § 38.
68-328. Assistance; application; furnish with reasonable promptness.
68-329. Repealed. Laws 1982, LB 522, § 46.

68-301 State Assistance Fund; created; investment.

A fund to be known as the State Assistance Fund is created and established in the treasury of the State of Nebraska. Such fund shall consist of all money appropriated to it by the Legislature, allocated by the government of the United States, or donated or allocated from other sources. 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.

Source: Laws 1935, Spec. Sess., c. 20, § 1, p. 134; Laws 1937, c. 188, § 1, p. 747; Laws 1939, c. 121, § 1, p. 509; Laws 1941, c. 174, § 1, p.

682; C.S.Supp.,1941, § 68-317; R.S.1943, § 68-301; Laws 1947, c. 144, § 15, p. 400; Laws 1959, c. 311, § 1, p. 1151; Laws 1965, c. 399, § 1, p. 1280; Laws 1969, c. 584, § 63, p. 2384; Laws 1995, LB 7, § 65.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

This section provided for allocation of certain taxes and funds to the State Assistance Fund, and was not intended as a continuing appropriation. Rein v. Johnson, 149 Neb. 67, 30 N.W.2d 548 (1947).

68-302 Repealed. Laws 1965, c. 399, § 4.

68-303 Repealed. Laws 1953, c. 237, § 11.

68-304 Repealed. Laws 1953, c. 237, § 11.

68-305 Repealed. Laws 1953, c. 237, § 11.

68-306 Repealed. Laws 1953, c. 237, § 11.

68-307 Repealed. Laws 1965, c. 399, § 4.

68-308 Repealed. Laws 1965, c. 399, § 4.

68-309 Department of Health and Human Services; sole state agency for administration of welfare programs.

The Department of Health and Human Services shall be the sole agency of the State of Nebraska to administer the State Assistance Fund for assistance to the aged, blind, or disabled, aid to dependent children, medical assistance, medically handicapped children's services, child welfare services, and such other assistance and services as may be made available to the State of Nebraska by the government of the United States.

Source: Laws 1935, Spec. Sess., c. 20, § 7, p. 136; C.S.Supp.,1941, § 68-323; R.S.1943, § 68-309; Laws 1951, c. 216, § 1, p. 780; Laws 1963, c. 388, § 2, p. 1238; Laws 1965, c. 399, § 2, p. 1280; Laws 1982, LB 522, § 28; Laws 1985, LB 249, § 2; Laws 1996, LB 1044, § 294; Laws 2007, LB296, § 239.

68-310 Repealed. Laws 1965, c. 399, § 4.

68-310.01 Repealed. Laws 1982, LB 522, § 46.

68-310.02 Repealed. Laws 1982, LB 522, § 46.

68-311 Repealed. Laws 1965, c. 399, § 4.

68-312 Department of Health and Human Services; rules and regulations; records and other communications; use by other agency or department.

The Department of Health and Human Services has the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and communications of the state. The use of such records, papers, files, and communications by any other agency or

department of government to which they may be furnished shall be limited to the purposes for which they are furnished.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-312; Laws 1982, LB 522, § 29; Laws 1996, LB 1044, § 295; Laws 2007, LB296, § 240.

68-313 Records and information; use and disclosure; limitations.

It shall be unlawful, except as permitted by section 68-313.01 and except for purposes directly connected with the administration of general assistance, medically handicapped children's services, medical assistance, assistance to the aged, blind, or disabled, or aid to dependent children, and in accordance with the rules and regulations of the Department of Health and Human Services, for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of, any list of or names of, any information concerning, or persons applying for or receiving such aid or assistance, directly or indirectly derived from the records, papers, files, or communications of the state, or subdivisions or agencies thereof, or acquired in the course of the performance of official duties.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1985, LB 249, § 3; Laws 1996, LB 1044, § 296; Laws 2007, LB296, § 241.

Read together, this section and section 68-313.01 prohibit the use of welfare-related information as evidence against a welfare applicant in a criminal trial not directly connected with the administration of general assistance. State v. Owen, 1 Neb. App. 1060, 510 N.W.2d 503 (1993).

68-313.01 Records and information; access by the Legislature and state and county officials; open to public; limitation.

Members of the Nebraska Legislature and all state and county officials of this state shall have free access at all times to all records and information in connection with the aid and assistance referred to in section 68-313. The public shall have free access to all information concerning lists of names and amounts of payments which appear on any financial records, except that no lists shall be used for commercial or political purposes.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-313; Laws 1953, c. 234, § 1(1), p. 813; Laws 1982, LB 522, § 30; Laws 1983, LB 604, § 22.

Read together, section 68-313 and this section prohibit the use of welfare-related information as evidence against a welfare applicant in a criminal trial not directly connected with the administration of general assistance. State v. Owen, 1 Neb. App. 1060, 510 N.W.2d 503 (1993).

68-314 Violations; penalty.

Any person who knowingly violates the provisions of section 68-313 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1941, c. 174, § 3, p. 684; C.S.Supp.,1941, § 68-340; R.S. 1943, § 68-314; Laws 1977, LB 39, § 126.

68-315 Repealed. Laws 1965, c. 399, § 4.

68-316 Repealed. Laws 1953, c. 237, § 11.

68-317 Repealed. Laws 1965, c. 399, § 4.

68-318 Repealed. Laws 1965, c. 399, § 4.

68-319 Repealed. Laws 1965, c. 399, § 4.

68-320 Repealed. Laws 1965, c. 399, § 4.

68-321 Repealed. Laws 1965, c. 399, § 4.

68-322 Repealed. Laws 1965, c. 399, § 4.

68-322.01 Repealed. Laws 1977, LB 312, § 9.

68-323 Repealed. Laws 1965, c. 399, § 4.

68-324 Repealed. Laws 1953, c. 237, § 11.

68-325 Repealed. Laws 1965, c. 399, § 4.

68-326 Transferred to section 68-702.01.

68-327 Repealed. Laws 1961, c. 415, § 38.

68-328 Assistance; application; furnish with reasonable promptness.

All individuals desiring to make an application for any type of public assistance shall have an opportunity to do so, and public assistance shall be furnished with reasonable promptness to all eligible individuals.

Source: Laws 1951, c. 210, § 1, p. 772; Laws 1965, c. 399, § 3, p. 1281.

68-329 Repealed. Laws 1982, LB 522, § 46.

ARTICLE 4
BLIND ASSISTANCE

Section
68-401. Repealed. Laws 1953, c. 237, § 11.
68-402. Repealed. Laws 1965, c. 395, § 27.
68-403. Repealed. Laws 1965, c. 395, § 27.
68-404. Repealed. Laws 1965, c. 395, § 27.
68-404.01. Repealed. Laws 1965, c. 395, § 27.
68-405. Repealed. Laws 1965, c. 395, § 27.
68-406. Repealed. Laws 1965, c. 395, § 27.
68-407. Repealed. Laws 1965, c. 395, § 27.
68-408. Repealed. Laws 1965, c. 395, § 27.
68-409. Repealed. Laws 1965, c. 395, § 27.
68-410. Repealed. Laws 1965, c. 395, § 27.
68-411. Repealed. Laws 1965, c. 395, § 27.
68-412. Repealed. Laws 1965, c. 395, § 27.
68-413. Repealed. Laws 1965, c. 395, § 27.
68-414. Repealed. Laws 1965, c. 395, § 27.
68-415. Repealed. Laws 1965, c. 395, § 27.
68-416. Repealed. Laws 1965, c. 395, § 27.
68-417. Repealed. Laws 1965, c. 395, § 27.
68-418. Repealed. Laws 1965, c. 395, § 27.
68-419. Repealed. Laws 1965, c. 395, § 27.
68-420. Repealed. Laws 1965, c. 395, § 27.
68-421. Repealed. Laws 1965, c. 395, § 27.
68-422. Repealed. Laws 1965, c. 395, § 27.

68-401 Repealed. Laws 1953, c. 237, § 11.

68-402 Repealed. Laws 1965, c. 395, § 27.

68-403 Repealed. Laws 1965, c. 395, § 27.

68-404 Repealed. Laws 1965, c. 395, § 27.

68-404.01 Repealed. Laws 1965, c. 395, § 27.

68-405 Repealed. Laws 1965, c. 395, § 27.

68-406 Repealed. Laws 1965, c. 395, § 27.

68-407 Repealed. Laws 1965, c. 395, § 27.

68-408 Repealed. Laws 1965, c. 395, § 27.

68-409 Repealed. Laws 1965, c. 395, § 27.

68-410 Repealed. Laws 1965, c. 395, § 27.

68-411 Repealed. Laws 1965, c. 395, § 27.

68-412 Repealed. Laws 1965, c. 395, § 27.

68-413 Repealed. Laws 1965, c. 395, § 27.

68-414 Repealed. Laws 1965, c. 395, § 27.

68-415 Repealed. Laws 1965, c. 395, § 27.

68-416 Repealed. Laws 1965, c. 395, § 27.

68-417 Repealed. Laws 1965, c. 395, § 27.

68-418 Repealed. Laws 1965, c. 395, § 27.

68-419 Repealed. Laws 1965, c. 395, § 27.

68-420 Repealed. Laws 1965, c. 395, § 27.

68-421 Repealed. Laws 1965, c. 395, § 27.

68-422 Repealed. Laws 1965, c. 395, § 27.

68-423 Repealed. Laws 1965, c. 395, § 27.

ARTICLE 5

BOARDING HOME FOR THE AGED AND INFIRM

68-501 Repealed. Laws 1949, c. 193, § 9.

68-502 Repealed. Laws 1949, c. 193, § 9.

68-503 Repealed. Laws 1949, c. 193, § 9.

68-504 Repealed. Laws 1949, c. 193, § 9.

68-505 Repealed. Laws 1949, c. 193, § 9.

68-506 Repealed. Laws 1949, c. 193, § 9.

68-507 Repealed. Laws 1949, c. 193, § 9.

68-508 Repealed. Laws 1953, c. 250, § 2.

68-509 Repealed. Laws 1953, c. 250, § 2.

68-510 Repealed. Laws 1953, c. 250, § 2.

68-511 Repealed. Laws 1953, c. 250, § 2.

68-512 Repealed. Laws 1953, c. 250, § 2.

68-513 Repealed. Laws 1953, c. 250, § 2.

68-514 Repealed. Laws 1953, c. 250, § 2.

68-515 Repealed. Laws 1955, c. 263, § 1.

ARTICLE 6

SOCIAL SECURITY

Cross References

Effect upon retirement systems and pension plans:
Cities of the first and second classes and villages, pension plans, see section 19-3501.
Class V school district employees' retirement system, see section 79-9,113 et seq.
County Employees Retirement Act, see section 23-2326.
Judges' retirement system, see section 24-710.
Metropolitan utilities district retirement plans, see section 14-2111.
Natural resources districts pension plan, see section 2-3228.
School retirement system, see section 79-958.
State employees retirement system, see section 84-1328.

Section
68-605. Contributions by state employees; amount.
68-606. Contribution by state employees; collection.
68-607. Contribution by state employees; adjustments.
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68-611. Coverage by political subdivisions; delinquent payments; penalty; collection.
68-612. Contribution Distributive Fund; created; use; investment.
68-613. Social Security Cash Fund; created; use; investment.
68-614. Repealed. Laws 2000, LB 1216, § 31.
68-615. Repealed. Laws 2000, LB 1216, § 31.
68-616. Repealed. Laws 1987, LB 3, § 3.
68-617. Repealed. Laws 2000, LB 1216, § 31.
68-618. Repealed. Laws 2000, LB 1216, § 31.
68-619. Repealed. Laws 1961, c. 284, § 1.
68-620. Cities and villages; special levy; addition to levy limitations; contribution to state agency.
68-620.01. Transferred to section 18-1221.
68-621. Terms, defined.
68-622. Referendum; persons eligible to vote; Governor; powers.
68-623. Referendum; how conducted.
68-624. Referendum; completion; certification; notice; contents.
68-625. Referendum; state agency; prepare plan; modification of state agreement.
68-626. Referendum; state agency; forms; make available; aid political subdivisions.
68-627. Referendum; supervision.
68-628. Repealed. Laws 1988, LB 802, § 41.
68-629. Referendum; Governor; appointment of agency to conduct; cost; payment.
68-630. Political subdivisions; delinquency in payment; manner of collection.
68-631. Metropolitan utilities district; social security; employees; separate group; referendum; effect.
68-632. Repealed. Laws 1982, LB 592, § 2.
68-633. Repealed. Laws 1986, LB 878, § 2.

68-601 Social security; policy.

(1) In order to extend to the employees of the state and its political subdivisions and to the dependents and survivors of such employees the basic protection accorded to others by the old age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the Legislature, subject to the limitations of sections 68-601 to 68-613 and 68-621 to 68-630, that such steps be taken as to provide such protection to employees of the State of Nebraska and its political subdivisions on as broad a basis as is permitted under the act.

(2) In conformity with the policy of the Congress of the United States of America, it is hereby declared to be the policy of the State of Nebraska that the protection afforded employees in positions covered by retirement systems on the date the state agreement is made applicable to service performed in such positions or receiving periodic benefits under such retirement systems at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative or executive action taken in anticipation or in consequence thereof and that the benefits provided by the Social Security Act and made available to employees of the State of Nebraska and of political subdivisions thereof or instrumentalities jointly created by the state and any other state

or states, who are or may be members of a retirement system, shall be supplementary to the benefits provided by such retirement system.

Source: Laws 1951, c. 297, § 1, p. 977; Laws 1955, c. 264, § 1, p. 812; Laws 1990, LB 820, § 1; Laws 2000, LB 1216, § 8.

A member of a county mental health board, appointed pursuant to statute, is an ''officer of the state or a political subdivision thereof'' and, as such, is an employee of the State of Nebraska for the purposes of the Social Security Act. Sullivan v. Hajny, 210 Neb. 481, 315 N.W.2d 443 (1982).

68-602 Terms, defined.

For purposes of sections 68-601 to 68-613 and 68-621 to 68-630, unless the context otherwise requires:

(1) Wages shall mean all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that wages shall not include that part of such remuneration which, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of the act;

(2) Employment shall mean any service performed by an employee in the employ of the State of Nebraska or any political subdivision thereof for such employer except (a) service which, in the absence of an agreement entered into under sections 68-601 to 68-613 and 68-621 to 68-630, would constitute employment as defined in the Social Security Act or (b) service which under the act may not be included in an agreement between the state and the Secretary of Health and Human Services entered into under sections 68-601 to 68-613 and 68-621 to 68-630. Service which under the act may be included in an agreement only upon certification by the Governor in accordance with section 218(d)(3) of the act shall be included in the term employment if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624;

(3) Employee shall include an officer of the state or a political subdivision thereof;

(4) State agency shall mean the Director of Administrative Services;

(5) Secretary of Health and Human Services shall include any individual to whom the Secretary of Health and Human Services has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the Federal Security Administrator and any individual to whom such administrator had delegated any such function;

(6) Political subdivision shall include an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, but only if such instrumentality is a juristic entity which is essentially legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to such juristic entity employees of the state or subdivision;

(7) Social Security Act shall mean the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat. 620, officially cited as the Social Security Act, including regulations and requirements issued pursuant thereto, as such act has been amended or recodified to December 25, 1969, and may from time to time hereafter be amended or recodified; and

(8) Federal Insurance Contributions Act shall mean Chapter 21, subchapters A, B, and C of the Internal Revenue Code, and the term employee tax shall mean the tax imposed by section 3101 of such code.

Source: Laws 1951, c. 297, § 2, p. 978; Laws 1955, c. 264, § 2, p. 813; Laws 1969, c. 536, § 1, p. 2181; Laws 1977, LB 194, § 1; Laws 1984, LB 933, § 2; Laws 1990, LB 820, § 2; Laws 1995, LB 574, § 57; Laws 2000, LB 1216, § 9.

A member of a county mental health board, appointed pursuant to statute, is an ''officer of the state or a political subdivision thereof'' and, as such, is an employee of the State of Nebraska for the purposes of the Social Security Act. Sullivan v. Hajny, 210 Neb. 481, 315 N.W.2d 443 (1982).

68-603 Agreement with federal government; state agency; approval of Governor.

The state agency, with the approval of the Governor, is hereby authorized to enter, on behalf of the State of Nebraska, into an agreement with the Secretary of Health and Human Services, consistent with the terms and provisions of sections 68-601 to 68-613 and 68-621 to 68-630, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision thereof with respect to services specified in such agreement which constitute employment. The state agency, with the approval of the Governor, is further authorized to enter, on behalf of the State of Nebraska, into such modifications and amendments to such agreement with the Secretary of Health and Human Services as shall be consistent with the terms and provisions of sections 68-601 to 68-613 and 68-621 to 68-630 if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to the State of Nebraska or any political subdivision thereof or to any employee of the State of Nebraska or any political subdivision thereof provided by the Social Security Act, the Federal Insurance Contributions Act, or the employee tax. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and Secretary of Health and Human Services shall agree upon, but, except as may be otherwise required by or under the Social Security Act as to the services to be covered, such agreement shall provide in effect that:

(1) Benefits will be provided for employees whose services are covered by the agreement and their dependents and survivors on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(2) The state will pay to the Secretary of the Treasury of the United States, at such time or times as may be prescribed under the Social Security Act, contributions with respect to wages equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of the Federal Insurance Contributions Act;

(3) Such agreement shall be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year in which such agreement is entered into or in which the modification of the agreement making it applicable to such services is entered into, except that if a political subdivision made reports and payments for social security coverage of its employees to the Internal Revenue

Service under the Federal Insurance Contributions Act in the mistaken belief that such action provided coverage for the employees, such agreement shall be effective as of the first day of the first calendar quarter for which such reports were erroneously filed;

(4) All services which constitute employment and are performed in the employ of the state by employees of the state shall be covered by the agreement;

(5) All services which constitute employment, are performed in the employ of a political subdivision of the state, and are covered by a plan which is in conformity with the terms of the agreement and has been approved by the state agency under sections 68-608 to 68-611 shall be covered by the agreement;

(6) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals to whom section 218(c)(3)(c) of the Social Security Act is applicable and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; and

(7) As modified, the agreement shall include all services described in either subdivision (4) or (5) of this section or both of such subdivisions and performed by individuals in positions covered by a retirement system with respect to which the Governor has issued a certificate to the Secretary of Health and Human Services pursuant to subsection (2) of section 68-624.

Source: Laws 1951, c. 297, § 3(1), p. 979; Laws 1955, c. 264, § 3, p. 814; Laws 1969, c. 536, § 2, p. 2183; Laws 1979, LB 576, § 1; Laws 1984, LB 933, § 3; Laws 1990, LB 820, § 3; Laws 2000, LB 1216, § 10.

68-604 Agreement with federal government; instrumentality jointly created with other state.

Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (1) to enter into an agreement with the Secretary of Health and Human Services whereby the benefits of the federal old age and survivors' insurance system shall be extended to employees of such instrumentality, (2) to require its employees to pay, and for that purpose to deduct from their wages, contributions equal to the amounts which they would be required to pay under section 68-605 if they were covered by an agreement made pursuant to section 68-603, and (3) to make payments to the Secretary of the Treasury of the United States in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such an agreement shall, to the extent practicable, be consistent with the terms and provisions of section 68-603 and other provisions of sections 68-601 to 68-613 and 68-621 to 68-630.

Source: Laws 1951, c. 297, § 3(2), p. 980; Laws 1955, c. 264, § 4, p. 816; Laws 1984, LB 933, § 4; Laws 1990, LB 820, § 4; Laws 2000, LB 1216, § 11.

68-605 Contributions by state employees; amount.

Every employee of the state whose services are covered by an agreement entered into under sections 68-603 and 68-604 shall be required to pay for the period of such coverage, contributions, with respect to wages, as defined in

section 68-602, equal to the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employee's retention in the service of the state, or his or her entry upon such service, after the enactment of sections 68-601 to 68-613, and sections 68-621 to 68-630.

Source: Laws 1951, c. 297, § 4(1), p. 980; Laws 1955, c. 264, § 5, p. 817; Laws 1987, LB 3, § 1; Laws 2000, LB 1216, § 12.

68-606 Contribution by state employees; collection.

The contribution imposed by section 68-605 shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

Source: Laws 1951, c. 297, § 4(2), p. 981.

68-607 Contribution by state employees; adjustments.

If more or less than the correct amount of the contribution imposed by section 68-605 is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe.

Source: Laws 1951, c. 297, § 4(3), p. 981.

68-608 Coverage by political subdivisions; plan; modification; approval by state agency.

Unless otherwise provided for by sections 68-601 to 68-613 and 68-621 to 68-630, each political subdivision of the state is hereby authorized to submit for approval by the state agency a plan for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision and is hereby further authorized to submit for approval by the state agency any modification or amendment to any then existing plan if such modification or amendment is necessary or desirable to secure the benefits and exemptions allowable to such political subdivisions thereof or to any employee of the political subdivision in conformity with Title II of the act. Each such plan and any amendment thereof shall be approved by the state agency if it finds that such plan or such plan as amended is in conformity with such requirements as are provided in regulations of the state agency, except that no such plan shall be approved unless: (1) It is in conformity with the requirements of the act and with the agreement entered into under sections 68-603 and 68-604; (2) it provides that all services which constitute employment and are performed in the employ of the political subdivision by employees thereof will be covered by the plan; (3) it specifies the source or sources from which the funds necessary to make the payments required by subsection (1) of section 68-610 and by section 68-611 are expected to be derived and contains reasonable assurance that such sources will be adequate for such purpose; (4) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan; (5) it provides that the political subdivision will make such reports in such form and containing such information as the state agency may from time to time require and will

comply with such provisions as the state agency or the Secretary of Health and Human Services may from time to time find necessary to assure the correctness and verification of such reports; and (6) it authorizes the state agency to terminate the plan in its entirety, in the discretion of the state agency, if it finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the act.

Source: Laws 1951, c. 297, § 5(1), p. 981; Laws 1955, c. 264, § 6, p. 817; Laws 1969, c. 536, § 3, p. 2184; Laws 1984, LB 933, § 5; Laws 1990, LB 820, § 5; Laws 2000, LB 1216, § 13.

68-609 Coverage by political subdivisions; refusal, amendment, or termination of plan; notice; hearing.

The state agency shall not finally refuse to approve a plan submitted by a political subdivision under section 68-608, nor any proposed amendment to such plan, and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby, nor with respect to the employees of such a political subdivision who are members of a retirement system, until such political subdivision has proposed and adopted a method that is acceptable to the members concerned of protecting the retirement rights and expectancies of such members.

Source: Laws 1951, c. 297, § 5(2), p. 982; Laws 1955, c. 264, § 7, p. 818; Laws 1969, c. 536, § 4, p. 2186.

68-610 Coverage by political subdivisions; amount; payment.

(1) Each political subdivision as to which a plan has been approved under sections 68-608 to 68-611 or prepared under section 68-625 shall be required to pay for the period of such coverage, contributions in the amounts and at the rates specified in the applicable agreement entered into by the state agency under sections 68-603 and 68-604.

(2) Each political subdivision required to make payments under section 68-609 is authorized, in consideration of the employee's retention in or entry upon employment after enactment of sections 68-601 to 68-613 and 68-621 to 68-630, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his or her wages not exceeding the amount of tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of the act and to deduct the amount of such contribution from his or her wages as and when paid. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

Source: Laws 1951, c. 297, § 5(3), p. 982; Laws 1955, c. 264, § 8, p. 819; Laws 1990, LB 820, § 6; Laws 2000, LB 1216, § 14.

68-611 Coverage by political subdivisions; delinquent payments; penalty; collection.

Delinquent payments due under subsection (1) of section 68-610, plus one-half the amount of the delinquent payment, may be recovered by action in a court of competent jurisdiction against the political subdivision liable therefor

or may, at the request of the state agency, be deducted from any other money payable to such subdivision by any department or agency of the state.

Source: Laws 1951, c. 297, § 5(4), p. 983; Laws 1953, c. 236, § 1, p. 816.

68-612 Contribution Distributive Fund; created; use; investment.

(1) The Contribution Distributive Fund is created. Such fund shall consist of and there shall be deposited in such fund: (a) All contributions, interest, and penalties collected under sections 68-605 to 68-611; (b) all money appropriated to the fund under sections 68-601 to 68-613; (c) any property or securities and earnings thereof acquired through the use of money belonging to the fund; (d) interest earned upon any money in the fund; (e) all sums recovered upon the bond of the Accounting Administrator or otherwise for losses sustained by the fund; and (f) all other money received for the fund from any other source.

(2) The fund shall be used and administered exclusively for the purpose of sections 68-601 to 68-613 and 68-621 to 68-630. Withdrawals from the fund shall be made solely for: (a) Payment of amounts required to be paid to the Secretary of the Treasury of the United States pursuant to an agreement entered into under sections 68-603 and 68-604; (b) payment of refunds provided for in section 68-607; (c) refunds of overpayments not otherwise adjustable made by a political subdivision or instrumentality; and (d) transfers to the General Fund. The fund shall be administered by the Accounting Administrator. 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. Subject to sections 68-601 to 68-613, the state agency shall be vested with full power, authority, and jurisdiction over the fund, including all money and property or securities belonging to the fund, and may perform any and all acts whether or not specifically designated which are necessary to the administration thereof and are consistent with such sections. The State Treasurer shall transfer the cash and investment balance existing in the fund on March 31, 2000, to the General Fund within five days after March 31, 2000.

This section shall terminate six days after March 31, 2000.

Source: Laws 1951, c. 297, § 6(1), p. 983; Laws 1969, c. 584, § 64, p. 2384; Laws 1990, LB 820, § 7; Laws 1994, LB 1066, § 60; Laws 2000, LB 1216, § 15.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-613 Social Security Cash Fund; created; use; investment.

The Social Security Cash Fund is created. The fund shall only be used for payment of administrative expenses of the accounting division of the Department of Administrative Services. The fund shall be administered by the Accounting Administrator. 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. The State Treasurer shall transfer the cash and investment balance existing in the fund on March 31, 2000, to the General Fund within five days after March 31, 2000.

This section shall terminate six days after March 31, 2000.

Source: Laws 1951, c. 297, § 6(2), p. 983; Laws 1955, c. 264, § 9, p. 819; Laws 1979, LB 576, § 2; Laws 1981, LB 156, § 1; Laws 1984, LB 933, § 6; Laws 1989, LB 469, § 1; Laws 1994, LB 1066, § 61; Laws 2000, LB 1216, § 16.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-614 Repealed. Laws 2000, LB 1216, § 31.

68-615 Repealed. Laws 2000, LB 1216, § 31.

68-616 Repealed. Laws 1987, LB 3, § 3.

68-617 Repealed. Laws 2000, LB 1216, § 31.

68-618 Repealed. Laws 2000, LB 1216, § 31.

68-619 Repealed. Laws 1961, c. 284, § 1.

68-620 Cities and villages; special levy; addition to levy limitations; contribution to state agency.

Notwithstanding any tax levy limitations contained in any other law or city home rule charter, when any city or village of this state elects to accept the provisions of sections 68-601 to 68-613 and 68-621 to 68-630 relating to old age and survivors insurance and enters into a written agreement with the state agency as provided in such sections, the city or village shall levy a tax, in addition to all other taxes, in order to defray the cost of such city or village in meeting the obligations arising by reason of such written agreement, and the revenue raised by such special levy shall be used for no other purpose.

Source: Laws 1951, c. 296, § 1, p. 976; Laws 1955, c. 264, § 14, p. 821; Laws 1971, LB 667, § 1; Laws 1979, LB 187, § 181; Laws 1990, LB 820, § 10; Laws 2000, LB 1216, § 17.

68-620.01 Transferred to section 18-1221.

68-621 Terms, defined.

(1) A referendum group, as referred to in sections 68-621 to 68-630, shall consist of the employees of the state, a single political subdivision of this state, or any instrumentality jointly created by this state and any other state or states, the employees of which are or may be members of a retirement system covering such employees, except that: (a) The employees of the University of Nebraska shall constitute a referendum group; (b) the employees of a Class V school district shall constitute a referendum group; (c) all employees of the State of Nebraska who are or may be members of the School Retirement System of the State of Nebraska, including employees of institutions operated by the Board of Trustees of the Nebraska State Colleges, employees of institutions operated by the Department of Correctional Services and the Department of Health and Human Services, and employees subordinate to the State Board of Education, shall constitute a referendum group; and (d) all employees of school districts of the State of Nebraska, county superintendents, and county school administra-

tors, who are or may be members of the School Retirement System of the State of Nebraska, shall constitute a single referendum group.

(2) The managing authority of a political subdivision or educational institution shall be the board, committee, or council having general authority over a political subdivision, university, college, or school district whose employees constitute or are included in a referendum group; the managing authority of the state shall be the Governor; and insofar as sections 68-601 to 68-613 and 68-621 to 68-630 may be applicable to county superintendents and county school administrators, managing authority shall mean the board of county commissioners or county supervisors of the county in which the county superintendent was elected or with which the county school administrator contracted.

(3) Eligible employees, as referred to in sections 68-621 to 68-630, shall mean those employees of the state or any political subdivision thereof who at or during the time of voting in a referendum as herein provided are in positions covered by a retirement system, are members of such retirement system, and were in such positions at the time of giving of the notice of such referendum, as herein required, except that no such employee shall be considered an eligible employee if at the time of such voting such employee is in a position to which the state agreement applies or if such employee is in service in a police officer or firefighter position.

(4) State agreement, as referred to in sections 68-621 to 68-630, shall mean the agreement between the State of Nebraska and the designated officer of the United States of America entered into pursuant to section 68-603.

Source: Laws 1955, c. 264, § 15, p. 821; Laws 1969, c. 537, § 1, p. 2187; Laws 1973, LB 563, § 6; Laws 1988, LB 802, § 6; Laws 1996, LB 1044, § 297; Laws 1999, LB 272, § 20; Laws 2000, LB 1216, § 18.

68-622 Referendum; persons eligible to vote; Governor; powers.

(1) All employees of the State of Nebraska or any political subdivision thereof or any instrumentality jointly created by this state and any other state or states who have heretofore been excluded from receiving or qualifying for benefits under Title II of the Social Security Act because of membership in a retirement system may, when sections 68-621 to 68-630 have been complied with, vote at a referendum upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement, except that if such a referendum has been conducted and certified in accordance with section 218(d)(3) of the Social Security Act, as amended in 1954, prior to May 18, 1955, then no further referendum shall be required, but this shall not prohibit the conducting of such further referendum.

(2) The Governor may authorize a referendum and designate any agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under sections 68-601 to 68-613 and 68-621 to 68-630.

Source: Laws 1955, c. 264, § 16, p. 822; Laws 1990, LB 820, § 11; Laws 2000, LB 1216, § 19.

68-623 Referendum; how conducted.

Such referendum shall comply with the conditions set out in section 218(d)(3) of the Social Security Act, and: (1) It shall be by secret written ballot upon the question of whether service in positions covered by such retirement system should be excluded from or included under the state agreement; (2) an opportunity to vote in such referendum shall be given, and shall be limited, to eligible employees; (3) not less than ninety days' notice of such referendum shall be given to all such employees; and (4) such referendum shall be conducted under the supervision of the Governor, or an agency or individual designated by him.

Source: Laws 1955, c. 264, § 17, p. 823.

68-624 Referendum; completion; certification; notice; contents.

(1) Upon completion of such referendum, the agency or individual designated by the Governor to supervise such referendum shall certify the result thereof to the Governor and shall further provide the Governor with such proof as the Governor may require that the conduct of the referendum met the requirements set forth in section 68-623.

(2) Upon receipt of the certificate mentioned in subsection (1) of this section and the additional proof submitted therewith, the Governor shall, if the result of such referendum is favorable to the inclusion of service covered by the retirement system in question under the state agreement, prepare and submit to the Secretary of Health and Human Services the certificate required by section 218(d)(3) of the Social Security Act and shall further notify the state agency forthwith of the result of such referendum, whether such result is favorable or unfavorable to such inclusion.

(3) The state agency shall, within seven days after the receipt of notice of the result of any such referendum as provided for in subsection (2) of this section, give notice thereof to each managing authority, as defined in subsection (2) of section 68-621, whose employees, or some of whose employees, are included in the referendum group, as defined in subsection (1) of section 68-621, participating in such referendum. Such notice shall include a designation of the employees subordinate to such managing authority affected by such referendum and shall be given to such managing authorities by prepaid United States mail by either registered or certified letter addressed to such managing authority with a return receipt requested.

Source: Laws 1955, c. 264, § 18, p. 823; Laws 1957, c. 242, § 50, p. 861; Laws 1984, LB 933, § 7.

68-625 Referendum; state agency; prepare plan; modification of state agreement.

If, upon referendum, a majority of the eligible employees included in a referendum group which is defined in section 68-621 vote in favor of including service in positions included in such group under the state agreement, the state agency shall, within ninety days after the mailing of notice of the result of such referendum, prepare a plan for extending the benefits of Title II of the Social Security Act to such employees. Such plan shall meet the requirements of section 68-608 and shall inform the managing authority or authorities whose employees are included in such group of the provisions of such plan. Upon completion of such plan, the state agency shall apply for a modification of the

state agreement to make it applicable to services performed by the employees of the state or of such political subdivision or educational institution eligible for inclusion under such agreement. The state agency may prepare such applications for modification to cover one or more such plans as it deems advisable, except that the state agency shall not delay application for such modification more than six months after the preparation of any plan as set forth in this section. The state agency may require any such managing authority to furnish any information necessary for the preparation of such plan by the state agency.

Source: Laws 1955, c. 264, § 19, p. 824; Laws 1988, LB 802, § 7.

68-626 Referendum; state agency; forms; make available; aid political subdivisions.

The state agency shall prepare and make available for the use of the state, its political subdivisions, and instrumentalities of the state and any other state or states, forms of notices, ballots, and any other forms necessary for the conduct of the referendum provided for in sections 68-621 to 68-630, and shall aid in the completion and preparation of such instruments by the officers of referendum groups and shall provide advice and assistance to officers of the state, political subdivisions thereof, and instrumentalities of the state and other states jointly, relative to the preparation for and conduct of such referendums, and relative to the preparation and submission of plans for the extension of benefits under Title II of the Social Security Act to the employees thereof.

Source: Laws 1955, c. 264, § 20, p. 825.

68-627 Referendum; supervision.

The Governor or some agency or individual designated by him or her shall, at such time or times and places and in such manner as the Governor or such agency or individual shall determine, conduct and supervise referendums as provided by sections 68-621 to 68-630 among the eligible employees included in the referendum groups referred to in section 68-621.

Source: Laws 1955, c. 264, § 21, p. 825; Laws 1988, LB 802, § 8.

68-628 Repealed. Laws 1988, LB 802, § 41.

68-629 Referendum; Governor; appointment of agency to conduct; cost; payment.

Upon written request made by the managing authority of any referendum group, other than those referendum groups mentioned in section 68-621, and delivered to the Governor, the Governor, shall, within fifteen days after the receipt of such request, appoint the managing authority, or such other agency or individual, as he may designate, to conduct a referendum as provided by the provisions of sections 68-621 to 68-630 among the eligible employees included in such referendum group within four months of the date of such appointment. The cost of such a referendum shall be paid by the managing authority making the request.

Source: Laws 1955, c. 264, § 23, p. 826.

68-630 Political subdivisions; delinquency in payment; manner of collection.

In addition to other remedies provided for the collection or recovery of delinquent payments due under section 68-610, the state agency may, in the

event of any such delinquency, notify the county treasurer of the appropriate county to withhold payment to the delinquent political subdivision of any funds in the hands of such county treasurer to which such delinquent political subdivision would otherwise be entitled. The notice referred to shall be sent to the county treasurer by certified or registered mail, and a copy of such notice shall be sent by ordinary mail to the secretary of the delinquent political subdivision. The county treasurer shall thereafter withhold payments in the manner provided in this section until notified by the state agency that the delinquency has been corrected.

Source: Laws 1955, c. 264, § 24, p. 826; Laws 1987, LB 93, § 17.

68-631 Metropolitan utilities district; social security; employees; separate group; referendum; effect.

Sections 68-601 to 68-613 and any amendments thereto shall, except as otherwise provided in this section, be applicable to metropolitan utilities districts and employees and appointees of metropolitan utilities districts. The state agency contemplated in such sections is authorized to enter, on behalf of the State of Nebraska, into an agreement with any authorized agent of the United States Government for the purpose of extending the benefits of the Federal Old Age and Survivors' Insurance system, as amended by Public Law 761, approved September 1, 1954, to the appointees and employees of each metropolitan utilities district, and all of the appointees and employees covered by a contributory retirement plan are hereby declared to be a separate group for the purposes of referendum and subsequent coverage. Metropolitan utilities districts are hereby declared to be political subdivisions as defined in section 68-602, and the Governor is authorized to appoint the board of directors of any metropolitan utilities district as the agency designated by him or her to supervise any referendum required to be conducted under the Social Security Act and is authorized to make any certifications required by the act to be made to the Secretary of Health and Human Services.

Source: Laws 1955, c. 25, § 2, p. 118; Laws 1984, LB 933, § 8; Laws 1990, LB 820, § 12; Laws 2000, LB 1216, § 20.

68-632 Repealed. Laws 1982, LB 592, § 2.

68-633 Repealed. Laws 1986, LB 878, § 2.

ARTICLE 7

DEPARTMENT DUTIES

Section
68-701. Repealed. Laws 1996, LB 1044, § 985.
68-701.01. Repealed. Laws 1996, LB 1044, § 985.
68-701.02. Repealed. Laws 1996, LB 1044, § 985.
68-701.03. Repealed. Laws 1993, LB 109, § 1.
68-702. Repealed. Laws 1961, c. 415, § 38.
68-702.01. Repealed. Laws 1990, LB 1067, § 2.
68-702.02. Repealed. Laws 1990, LB 1067, § 2.
68-702.03. Repealed. Laws 1990, LB 1067, § 2.
68-702.04. Repealed. Laws 1967, c. 253, § 4.
68-703. Repealed. Laws 1996, LB 1044, § 985.
68-703.01. Department of Health and Human Services; federal funds; expenditures; authorized.

Section
68-704. Repealed. Laws 2000, LB 889, § 1.
68-705. Repealed. Laws 1982, LB 522, § 46.
68-706. Repealed. Laws 1982, LB 522, § 46.
68-707. Repealed. Laws 1982, LB 522, § 46.
68-708. Repealed. Laws 1982, LB 522, § 46.
68-709. Repealed. Laws 1982, LB 522, § 46.
68-709.01. Repealed. Laws 1981, LB 497, § 1.
68-710. Repealed. Laws 1982, LB 592, § 2.
68-711. Repealed. Laws 1982, LB 592, § 2.
68-712. Repealed. Laws 1982, LB 592, § 2.
68-713. Repealed. Laws 1982, LB 592, § 2.
68-714. Repealed. Laws 1982, LB 592, § 2.
68-715. Repealed. Laws 1982, LB 592, § 2.
68-716. Department of Health and Human Services; medical assistance; right of subrogation.
68-717. Department of Health and Human Services; assume responsibility for public assistance programs.
68-718. Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.
68-719. Certain vendor payments prohibited.
68-720. Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.
68-721. Repealed. Laws 1996, LB 1155, § 121.
68-722. Repealed. Laws 1990, LB 820, § 13.
68-723. Repealed. Laws 1996, LB 1044, § 985.
68-724. Repealed. Laws 1999, LB 13, § 1.

68-701 Repealed. Laws 1996, LB 1044, § 985.

68-701.01 Repealed. Laws 1996, LB 1044, § 985.

68-701.02 Repealed. Laws 1996, LB 1044, § 985.

68-701.03 Repealed. Laws 1993, LB 109, § 1.

68-702 Repealed. Laws 1961, c. 415, § 38.

68-702.01 Repealed. Laws 1990, LB 1067, § 2.

68-702.02 Repealed. Laws 1990, LB 1067, § 2.

68-702.03 Repealed. Laws 1990, LB 1067, § 2.

68-702.04 Repealed. Laws 1967, c. 253, § 4.

68-703 Repealed. Laws 1996, LB 1044, § 985.

68-703.01 Department of Health and Human Services; federal funds; expenditures; authorized.

The Department of Health and Human Services has the authority to use any funds which may be made available through an agency of the government of the United States to reimburse any county of this state, either in whole or in part, for the following expenditures: (1) Employment of staff whose duties involve the giving or strengthening of services to children, (2) the return of any nonresident child to his or her place of residence when such child shall be found in the county, and (3) the temporary cost of board and care of a needy child who by necessity requires care in a foster home.

Source: Laws 1959, c. 312, § 1, p. 1152; Laws 1961, c. 415, § 16, p. 1254; Laws 1996, LB 1044, § 298; Laws 2007, LB296, § 242.

68-704 Repealed. Laws 2000, LB 889, § 1.

68-705 Repealed. Laws 1982, LB 522, § 46.

68-706 Repealed. Laws 1982, LB 522, § 46.

68-707 Repealed. Laws 1982, LB 522, § 46.

68-708 Repealed. Laws 1982, LB 522, § 46.

68-709 Repealed. Laws 1982, LB 522, § 46.

68-709.01 Repealed. Laws 1981, LB 497, § 1.

68-710 Repealed. Laws 1982, LB 592, § 2.

68-711 Repealed. Laws 1982, LB 592, § 2.

68-712 Repealed. Laws 1982, LB 592, § 2.

68-713 Repealed. Laws 1982, LB 592, § 2.

68-714 Repealed. Laws 1982, LB 592, § 2.

68-715 Repealed. Laws 1982, LB 592, § 2.

68-716 Department of Health and Human Services; medical assistance; right of subrogation.

An application for medical assistance shall give a right of subrogation to the Department of Health and Human Services or its assigns. Subject to sections 68-921 to 68-925, subrogation shall include every claim or right which the applicant may have against a third party when such right or claim involves money for medical care. The third party shall be liable to make payments directly to the department or its assigns as soon as he or she is notified in writing of the valid claim for subrogation under this section.

Source: Laws 1976, LB 239, § 1; Laws 1982, LB 522, § 35; Laws 1988, LB 419, § 14; Laws 1989, LB 362, § 7; Laws 1996, LB 1044, § 300; Laws 1996, LB 1155, § 22; Laws 2006, LB 1248, § 69; Laws 2007, LB296, § 243.

Upon filing of a notice of subrogation under this section, in a workers' compensation case, the Department of Social Services and any third party liable to the department are entitled to a determination of the subrogation interest. Kidd v. Winchell's Donut House, 237 Neb. 176, 465 N.W.2d 442 (1991).

68-717 Department of Health and Human Services; assume responsibility for public assistance programs.

The Department of Health and Human Services shall assume the responsibility for all public assistance, including aid to families with dependent children, emergency assistance, assistance to the aged, blind, or disabled, medically handicapped children's services, commodities, the Supplemental Nutrition Assistance Program, and medical assistance.

Source: Laws 1982, LB 522, § 33; Laws 1983, LB 604, § 23; Laws 1985, LB 249, § 4; Laws 1989, LB 362, § 8; Laws 1996, LB 1044, § 301; Laws 2007, LB296, § 244; Laws 2009, LB288, § 17.

68-718 Furniture, property, personnel; transferred to Department of Health and Human Services; personnel, how treated.

All furniture, equipment, books, files, records, and personnel utilized by the county divisions or boards of public welfare for the administration of public assistance programs shall be transferred and delivered to the Department of Health and Human Services. The transferred employees shall not lose any accrued benefits or status due to the transfer and shall receive the same benefits as other state employees, including participation in the State Employees Retirement Fund.

Source: Laws 1982, LB 522, § 34; Laws 1996, LB 1044, § 302; Laws 2007, LB296, § 245.

This section as it existed prior to January 1, 1997, does not impermissibly authorize the transfer of property purchased solely with county funds from the county for the benefit of others outside that county; violate Neb. Const. art. VIII, sec. 1A, which prohibits the State from levying a property tax for state purposes; nor violate the county's due process rights under U.S. Const. amends. V and XIV and Neb. Const. art. I, sec. 3. Rock Cty. v. Spire, 235 Neb. 434, 455 N.W.2d 763 (1990).

Under prior law, a county's refusal to return retirement plan contributions made by the county on behalf of transferred employees is not a loss of benefits in violation of this section. Bamesberger v. Albert, 227 Neb. 782, 420 N.W.2d 289 (1988).

68-719 Certain vendor payments prohibited.

No payments shall be made to any vendor, under Title XIX of the Social Security Act, as reimbursement for dues for any educational or professional association.

Source: Laws 1982, LB 933, § 6.

68-720 Aid to dependent children; child care subsidy program; administrative disqualification; intentional program violation; disqualification period.

(1) The Department of Health and Human Services shall establish an administrative disqualification process for the aid to dependent children program described in section 43-512 and the child care subsidy program established pursuant to section 68-1202. The department may initiate an administrative disqualification proceeding when it has reason to believe, on the basis of sufficient documentary evidence, that an individual has committed an intentional program violation. Proceedings under this section shall be subject to the Administrative Procedure Act.

(2) If an individual is found to have committed an intentional program violation, a period of disqualification shall be imposed. The period may be determined by the Department of Health and Human Services after an administrative disqualification hearing or without a hearing if the individual waives his or her right to such hearing. The period of disqualification shall be: (a) For a first violation, up to one year; (b) for a second violation, up to two years; and (c) for a third violation, permanent disqualification. The penalties described in this subsection shall also be imposed if the individual is found by a court to have violated section 68-1017.

(3) For the aid to dependent children program, only the individual found to have committed the intentional program violation shall be disqualified under this section. For the child care subsidy program, the individual found to have committed the intentional violation shall disqualify such individual and his or her family under this section. The department shall inform each applicant in writing of the penalties described in this section for intentional program violations each time an application for benefits is made to either program.

(4) For purposes of this section, intentional program violation means any action by an individual to intentionally (a) make a false statement, either verbally or in writing, to obtain benefits to which the individual is not entitled,

(b) conceal information to obtain benefits to which the individual is not entitled, or (c) alter one or more documents to obtain benefits to which the individual is not entitled.

(5) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2008, LB797, § 30.

Cross References

Administrative Procedure Act, see section 84-920.

68-721 Repealed. Laws 1996, LB 1155, § 121.

68-722 Repealed. Laws 1990, LB 820, § 13.

68-723 Repealed. Laws 1996, LB 1044, § 985.

68-724 Repealed. Laws 1999, LB 13, § 1.

ARTICLE 8

AID FOR THE DISABLED

Section
68-801. Repealed. Laws 1965, c. 395, § 27.
68-802. Repealed. Laws 1965, c. 395, § 27.
68-803. Repealed. Laws 1965, c. 395, § 27.
68-804. Repealed. Laws 1965, c. 395, § 27.
68-804.01. Repealed. Laws 1965, c. 395, § 27.
68-805. Repealed. Laws 1965, c. 395, § 27.
68-806. Repealed. Laws 1965, c. 395, § 27.
68-807. Repealed. Laws 1965, c. 395, § 27.
68-808. Repealed. Laws 1965, c. 395, § 27.
68-809. Repealed. Laws 1965, c. 395, § 27.
68-810. Repealed. Laws 1965, c. 395, § 27.
68-811. Repealed. Laws 1965, c. 395, § 27.
68-812. Repealed. Laws 1965, c. 395, § 27.
68-813. Repealed. Laws 1965, c. 395, § 27.

68-801 Repealed. Laws 1965, c. 395, § 27.

68-802 Repealed. Laws 1965, c. 395, § 27.

68-803 Repealed. Laws 1965, c. 395, § 27.

68-804 Repealed. Laws 1965, c. 395, § 27.

68-804.01 Repealed. Laws 1965, c. 395, § 27.

68-805 Repealed. Laws 1965, c. 395, § 27.

68-806 Repealed. Laws 1965, c. 395, § 27.

68-807 Repealed. Laws 1965, c. 395, § 27.

68-808 Repealed. Laws 1965, c. 395, § 27.

68-809 Repealed. Laws 1965, c. 395, § 27.

68-810 Repealed. Laws 1965, c. 395, § 27.

68-811 Repealed. Laws 1965, c. 395, § 27.

68-812 Repealed. Laws 1965, c. 395, § 27.

68-813 Repealed. Laws 1965, c. 395, § 27.

ARTICLE 9
MEDICAL ASSISTANCE ACT

Section

Section

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-967 shall be known and may be cited as the Medical Assistance Act.

Source: Laws 2006, LB 1248, § 1; Laws 2008, LB830, § 1; Laws 2009, LB27, § 1; Laws 2009, LB288, § 18; Laws 2009, LB342, § 1; Laws 2009, LB396, § 1.

68-902 Purposes of act.

The purposes of the Medical Assistance Act are to (1) reorganize and recodify statutes relating to the medical assistance program, (2) provide for implementation of the Medicaid Reform Plan, (3) clarify public policy relating to the medical assistance program, (4) provide for administration of the medical assistance program within the department, and (5) provide for legislative oversight and public comment regarding the medical assistance program.

Source: Laws 2006, LB 1248, § 2.

68-903 Medical assistance program; established.

The medical assistance program is established, which shall also be known as medicaid.

Source: Laws 1965, c. 397, § 3, p. 1277; R.S.1943, (2003), § 68-1018; Laws 2006, LB 1248, § 3.

Nebraska has elected to participate in the federal Medicaid program through the enactment of this section. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-904 Legislative findings.

The Legislature finds that (1) many low-income Nebraska residents have health care and related needs and are unable, without assistance, to meet such needs, (2) publicly funded medical assistance provides essential coverage for necessary health care and related services for eligible low-income Nebraska children, pregnant women and families, aged persons, and persons with disabilities, (3) publicly funded medical assistance alone cannot meet all of the health care and related needs of all low-income Nebraska residents, (4) the State of Nebraska cannot sustain a rate of growth in medical assistance expenditures that exceeds the rate of growth of General Fund revenue, (5) policies must be established for the medical assistance program that will effectively address the health care and related needs of eligible recipients and effectively moderate the growth of medical assistance expenditures, and (6) publicly funded medical assistance must be integrated with other public and private health care and related initiatives providing access to health care and related services for Nebraska residents.

Source: Laws 2006, LB 1248, § 4.

68-905 Program of medical assistance; statement of public policy.

It is the public policy of the State of Nebraska to provide a program of medical assistance on behalf of eligible low-income Nebraska residents that (1) assists eligible recipients to access necessary and appropriate health care and related services, (2) emphasizes prevention, early intervention, and the provision of health care and related services in the least restrictive environment consistent with the health care and related needs of the recipients of such services, (3) emphasizes personal independence, self-sufficiency, and freedom of choice, (4) emphasizes personal responsibility and accountability for the payment of health care and related expenses and the appropriate utilization of health care and related services, (5) cooperates with public and private sector entities to promote the public health, (6) cooperates with providers, public and private employers, and private sector insurers in providing access to health care and related services and encouraging and supporting the development and utilization of alternatives to publicly funded medical assistance for such services, (7) is appropriately managed and fiscally sustainable, and (8) qualifies for federal matching funds under federal law.

Source: Laws 2006, LB 1248, § 5.

68-906 Medical assistance; state accepts federal provisions.

For purposes of paying medical assistance under the Medical Assistance Act and sections 68-1002 and 68-1006, the State of Nebraska accepts and assents to all applicable provisions of Title XIX and Title XXI of the federal Social Security Act. Any reference in the Medical Assistance Act to the federal Social Security Act or other acts or sections of federal law shall be to such federal acts or sections as they existed on January 1, 2009.

Source: Laws 1965, c. 397, § 6, p. 1278; Laws 1993, LB 808, § 2; Laws 1996, LB 1044, § 324; Laws 1998, LB 1063, § 7; Laws 2000, LB

1115, § 10; Laws 2005, LB 301, § 4; R.S.Supp.,2005, § 68-1021; Laws 2006, LB 1248, § 6; Laws 2007, LB185, § 1; Laws 2008, LB797, § 4; Laws 2009, LB288, § 19.

This section requires the director of the Department of Health and Human Services Finance and Support to promulgate rules and policies implementing the Nebraska Medicaid program. Boruch v. Nebraska Dept. of Health and Human Servs., 11 Neb. App. 713, 659 N.W.2d 848 (2003).

68-907 Terms, defined.

For purposes of the Medical Assistance Act:

(1) Committee means the Health and Human Services Committee of the Legislature;

(2) Department means the Department of Health and Human Services;

(3) Medicaid Reform Plan means the Medicaid Reform Plan submitted on December 1, 2005, pursuant to the Medicaid Reform Act enacted pursuant to Laws 2005, LB 709;

(4) Medicaid state plan means the comprehensive written document, developed and amended by the department and approved by the federal Centers for Medicare and Medicaid Services, which describes the nature and scope of the medical assistance program and provides assurances that the department will administer the program in compliance with federal requirements;

(5) Provider means a person providing health care or related services under the medical assistance program; and

(6) Waiver means the waiver of applicability to the state of one or more provisions of federal law relating to the medical assistance program based on an application by the department and approval of such application by the federal Centers for Medicare and Medicaid Services.

Source: Laws 2006, LB 1248, § 7; Laws 2007, LB296, § 246.

68-908 Department; powers and duties.

(1) The department shall administer the medical assistance program.

(2) The department may (a) enter into contracts and interagency agreements, (b) adopt and promulgate rules and regulations, (c) adopt fee schedules, (d) apply for and implement waivers and managed care plans for eligible recipients, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act.

(3) The department shall maintain the confidentiality of information regarding applicants for or recipients of medical assistance and such information shall only be used for purposes related to administration of the medical assistance program and the provision of such assistance or as otherwise permitted by federal law.

(4)(a) The department shall prepare an annual summary and analysis of the medical assistance program for legislative and public review, including, but not limited to, a description of eligible recipients, covered services, provider reimbursement, program trends and projections, program budget and expenditures, the status of implementation of the Medicaid Reform Plan, and recommendations for program changes.

(b) The department shall provide a draft report of such summary and analysis to the Medicaid Reform Council no later than September 15 of each year. The council shall conduct a public meeting no later than October 1 of each year to

discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department no later than November 1 of each year. The department shall submit a final report of such summary and analysis to the Governor, the Legislature, and the council no later than December 1 of each year. Such final report shall include a response to each written recommendation provided by the council.

Source: Laws 1965, c. 397, § 8, p. 1278; Laws 1967, c. 413, § 2, p. 1278; Laws 1982, LB 522, § 43; Laws 1996, LB 1044, § 325; R.S.1943, (2003), § 68-1023; Laws 2006, LB 1248, § 8; Laws 2007, LB296, § 247; Laws 2009, LB288, § 20.

68-909 Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; Medicaid Reform Council; department; powers and duties.

(1) All contracts, agreements, rules, and regulations relating to the medical assistance program as entered into or adopted and promulgated by the department prior to July 1, 2006, and all provisions of the medicaid state plan and waivers adopted by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law.

(2) Prior to the adoption and promulgation of proposed rules and regulations under section 68-912 or relating to the implementation of medicaid state plan amendments or waivers, the department shall provide a report to the Governor, the Legislature, and the Medicaid Reform Council no later than December 1 before the next regular session of the Legislature summarizing the purpose and content of such proposed rules and regulations and the projected impact of such proposed rules and regulations on recipients of medical assistance and medical assistance expenditures.

(3) The Medicaid Reform Council, no later than thirty days after the date of receipt of any report under subsection (2) of this section, may conduct a public meeting to receive public comment regarding such report. The council shall promptly provide any comments and recommendations regarding such report in writing to the department. Such comments and recommendations shall be advisory only and shall not be binding on the department, but the department shall promptly provide a written response to such comments or recommendations to the council.

(4) The department shall monitor and shall periodically, as necessary, but no less than biennially, report to the Governor, the Legislature, and the Medicaid Reform Council on the implementation of rules and regulations, medicaid state plan amendments, and waivers adopted under the Medical Assistance Act and the effect of such rules and regulations, amendments, or waivers on eligible recipients of medical assistance and medical assistance expenditures.

Source: Laws 2006, LB 1248, § 9; Laws 2008, LB928, § 15.

68-910 Medical assistance payments; source of funds.

(1) Medical assistance shall be paid from General Funds, cash funds, federal funds, and such other funds as may qualify for federal matching funds under federal law. General Fund appropriations for the program shall be based on an assessment by the Legislature of General Fund revenue and the competing needs of other state-funded programs.

(2) Medical assistance paid on behalf of eligible recipients may include, but is not limited to, (a) direct payments to vendors under a fee-for-service, managed care, or other provider contract, (b) premium payments, deductibles, and coinsurance for private health insurance coverage, employer-sponsored coverage, catastrophic health insurance coverage, or long-term care insurance coverage, and (c) payments to providers who serve eligible recipients of medical assistance or low-income uninsured persons and meet federal and state disproportionate-share payment requirements.

(3) Medical assistance shall not be paid directly to eligible recipients.

Source: Laws 1965, c. 397, § 7, p. 1278; Laws 1967, c. 410, § 2, p. 1274; Laws 1979, LB 138, § 1; Laws 1981, LB 39, § 1; Laws 1982, LB 522, § 42; Laws 1983, LB 604, § 24; Laws 1986, LB 1253, § 1; R.S.1943, (2003), § 68-1022; Laws 2006, LB 1248, § 10.

68-911 Medical assistance; mandated and optional coverage; department; submit state plan amendment or waiver.

(1) Medical assistance shall include coverage for health care and related services as required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Inpatient and outpatient hospital services;

(b) Laboratory and X-ray services;

(c) Nursing facility services;

(d) Home health services;

(e) Nursing services;

(f) Clinic services;

(g) Physician services;

(h) Medical and surgical services of a dentist;

(i) Nurse practitioner services;

(j) Nurse midwife services;

(k) Pregnancy-related services;

(l) Medical supplies; and

(m) Early and periodic screening and diagnosis and treatment services for children.

(2) In addition to coverage otherwise required under this section, medical assistance may include coverage for health care and related services as permitted but not required under Title XIX of the federal Social Security Act, including, but not limited to:

(a) Prescribed drugs;

(b) Intermediate care facilities for the mentally retarded;

(c) Home and community-based services for aged persons and persons with disabilities;

(d) Dental services;

(e) Rehabilitation services;

(f) Personal care services;

(g) Durable medical equipment;

(h) Medical transportation services;

(i) Vision-related services;

(j) Speech therapy services;

(k) Physical therapy services;

(l) Chiropractic services;

(m) Occupational therapy services;

(n) Optometric services;

(o) Podiatric services;

(p) Hospice services;

(q) Mental health and substance abuse services;

(r) Hearing screening services for newborn and infant children; and

(s) Administrative expenses related to administrative activities, including outreach services, provided by school districts and educational service units to students who are eligible or potentially eligible for medical assistance.

(3) No later than July 1, 2009, the department shall submit a state plan amendment or waiver to the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program for community-based secure residential and subacute behavioral health services for all eligible recipients, without regard to whether the recipient has been ordered by a mental health board under the Nebraska Mental Health Commitment Act to receive such services.

Source: Laws 1965, c. 397, § 4, p. 1277; Laws 1967, c. 413, § 1, p. 1278; Laws 1969, c. 542, § 1, p. 2193; Laws 1993, LB 804, § 1; Laws 1993, LB 808, § 1; Laws 1996, LB 1044, § 315; Laws 1998, LB 1063, § 5; Laws 1998, LB 1073, § 60; Laws 2002, Second Spec. Sess., LB 8, § 1; R.S.1943, (2003), § 68-1019; Laws 2006, LB 1248, § 11; Laws 2009, LB603, § 1.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

68-912 Limits on goods and services; considerations; procedure.

(1) The department may establish (a) premiums, copayments, and deductibles for goods and services provided under the medical assistance program, (b) limits on the amount, duration, and scope of goods and services that recipients may receive under the medical assistance program, and (c) requirements for recipients of medical assistance as a necessary condition for the continued receipt of such assistance, including, but not limited to, active participation in care coordination and appropriate disease management programs and activities.

(2) In establishing and limiting coverage for services under the medical assistance program, the department shall consider (a) the effect of such coverage and limitations on recipients of medical assistance and medical assistance expenditures, (b) the public policy in section 68-905, (c) the experience and outcomes of other states, (d) the nature and scope of benchmark or benchmark-equivalent health insurance coverage as recognized under federal law, and (e) other relevant factors as determined by the department.

(3) Coverage for mandatory and optional services and limitations on covered services as established by the department prior to July 1, 2006, shall remain in effect until revised, amended, repealed, or nullified pursuant to law. Any proposed reduction or expansion of services or limitation of covered services by the department under this section shall be subject to the reporting and review requirements of section 68-909.

(4) Except as otherwise provided in this subsection, proposed rules and regulations under this section relating to the establishment of premiums, copayments, or deductibles for eligible recipients or limits on the amount, duration, or scope of covered services for eligible recipients shall not become effective until the conclusion of the earliest regular session of the Legislature in which there has been a reasonable opportunity for legislative consideration of such rules and regulations. This subsection does not apply to rules and regulations that are (a) required by federal or state law, (b) related to a waiver in which recipient participation is voluntary, or (c) proposed due to a loss of federal matching funds relating to a particular covered service or eligibility category. Legislative consideration includes, but is not limited to, the introduction of a legislative bill, a legislative resolution, or an amendment to pending legislation relating to such rules and regulations.

Source: Laws 1993, LB 804, § 2; Laws 1996, LB 1044, § 316; R.S.1943, (2003), § 68-1019.01; Laws 2006, LB 1248, § 12.

68-913 Medical assistance program; public awareness; public school district; hospital; duties.

(1) Each public school district shall annually, at the beginning of the school year, provide written information supplied by the department to every student describing the availability of children's health services provided under the medical assistance program.

(2) Each hospital shall provide the mother of every child born in such hospital, at the time of such birth, written information provided by the department describing the availability of children's health services provided under the medical assistance program.

(3) The department shall develop and implement other activities designed to increase public awareness of the availability of children's health services provided under the medical assistance program. Such activities shall include materials and efforts designed to increase participation in the program by minority populations.

Source: Laws 1998, LB 1063, § 10; R.S.1943, (2003), § 68-1025.01; Laws 2006, LB 1248, § 13; Laws 2007, LB296, § 248.

68-914 Application for medical assistance; contents; department; decision; appeal.

An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall notify an applicant for or recipient of medical assistance of any decision of the department to deny or discontinue eligibility or to deny or modify medical assistance. Decisions of the department, including the failure of the department

to act with reasonable promptness, may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2006, LB 1248, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

68-915 Eligibility.

The following persons shall be eligible for medical assistance:

(1) Dependent children as defined in section 43-504;

(2) Aged, blind, and disabled persons as defined in sections 68-1002 to 68-1005;

(3) Children under nineteen years of age who are eligible under section 1905(a)(i) of the federal Social Security Act;

(4) Persons who are presumptively eligible as allowed under sections 1920 and 1920B of the federal Social Security Act;

(5) Children under nineteen years of age with a family income equal to or less than two hundred percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources, and pregnant women with a family income equal to or less than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline, as allowed under Title XIX and Title XXI of the federal Social Security Act, without regard to resources. Children described in this subdivision and subdivision (6) of this section shall remain eligible for six consecutive months from the date of initial eligibility prior to redetermination of eligibility. The department may review eligibility monthly thereafter pursuant to rules and regulations adopted and promulgated by the department. The department may determine upon such review that a child is ineligible for medical assistance if such child no longer meets eligibility standards established by the department;

(6) For purposes of Title XIX of the federal Social Security Act as provided in subdivision (5) of this section, children with a family income as follows:

(a) Equal to or less than one hundred fifty percent of the Office of Management and Budget income poverty guideline with eligible children one year of age or younger;

(b) Equal to or less than one hundred thirty-three percent of the Office of Management and Budget income poverty guideline with eligible children over one year of age and under six years of age; or

(c) Equal to or less than one hundred percent of the Office of Management and Budget income poverty guideline with eligible children six years of age or older and less than nineteen years of age;

(7) Persons who are medically needy caretaker relatives as allowed under 42 U.S.C. 1396d(a)(ii);

(8) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), disabled persons as defined in section 68-1005 with a family income of less than two hundred fifty percent of the Office of Management and Budget income poverty guideline and who, but for earnings in excess of the limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving federal Supplemental Security Income. The department shall apply for a waiver to disregard any

unearned income that is contingent upon a trial work period in applying the Supplemental Security Income standard. Such disabled persons shall be subject to payment of premiums as a percentage of family income beginning at not less than two hundred percent of the Office of Management and Budget income poverty guideline. Such premiums shall be graduated based on family income and shall not be less than two percent or more than ten percent of family income; and

(9) As allowed under 42 U.S.C. 1396a(a)(10)(A)(ii), persons who:

(a) Have been screened for breast and cervical cancer under the Centers for Disease Control and Prevention breast and cervical cancer early detection program established under Title XV of the federal Public Health Service Act, 42 U.S.C. 300k et seq., in accordance with the requirements of section 1504 of such act, 42 U.S.C. 300n, and who need treatment for breast or cervical cancer, including precancerous and cancerous conditions of the breast or cervix;

(b) Are not otherwise covered under creditable coverage as defined in section 2701(c) of the federal Public Health Service Act, 42 U.S.C. 300gg(c);

(c) Have not attained sixty-five years of age; and

(d) Are not eligible for medical assistance under any mandatory categorically needy eligibility group.

Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than two hundred percent of the Office of Management and Budget income poverty guideline and adult eligibility using adult income standards no greater than the applicable categorical eligibility standards established pursuant to state or federal law. The department shall determine eligibility under this section pursuant to such income budgetary methodology and subdivision (1)(q) of section 68-1713.

Source: Laws 1965, c. 397, § 5, p. 1278; Laws 1984, LB 1127, § 4; Laws 1988, LB 229, § 1; Laws 1995, LB 455, § 6; Laws 1996, LB 1044, § 323; Laws 1998, LB 1063, § 6; Laws 1999, LB 594, § 34; Laws 2001, LB 677, § 1; Laws 2002, Second Spec. Sess., LB 8, § 2; Laws 2003, LB 411, § 2; Laws 2005, LB 301, § 3; R.S.Supp.,2005, § 68-1020; Laws 2006, LB 1248, § 15; Laws 2007, LB296, § 249; Laws 2007, LB351, § 3; Laws 2009, LB603, § 2.

The adoption of an act of Congress to be passed in the future would be an unconstitutional attempt on the part of the Legislature to delegate legislative authority to Congress. By adopting the provisions of federal law, this section provides that caretaker relatives are eligible for medical assistance benefits. The Legislature may lawfully adopt by reference an existing law or regulation of another jurisdiction, including the United States. Clemens v. Harvey, 247 Neb. 77, 525 N.W.2d 185 (1994).

In order for a minor or an incompetent adult without a legal guardian to qualify for assistance under this section, the applicant's parent must be a legal resident of Nebraska, the applicant's legal residence in Nebraska must be established by a court, or the applicant must have left her parents' home while the parents were legal residents of Nebraska. Gosney v. Department of Public Welfare, 206 Neb. 137, 291 N.W.2d 708 (1980).

68-916 Medical assistance; application; assignment of rights; exception.

The application for medical assistance shall constitute an automatic assignment of the rights specified in this section to the department or its assigns effective from the date of eligibility for such assistance. The assignment shall include the rights of the applicant or recipient and also the rights of any other member of the assistance group for whom the applicant or recipient can legally make an assignment.

Pursuant to this section and subject to sections 68-921 to 68-925, the applicant or recipient shall assign to the department or its assigns any rights to

medical care support available to him or her or to other members of the assistance group under an order of a court or administrative agency and any rights to pursue or receive payments from any third party liable to pay for the cost of medical care and services arising out of injury, disease, or disability of the applicant or recipient or other members of the assistance group which otherwise would be covered by medical assistance. Medicare benefits shall not be assigned pursuant to this section. Rights assigned to the department or its assigns under this section may be directly reimbursable to the department or its assigns by liable third parties, as provided by rule or regulation of the department, when prior notification of the assignment has been made to the liable third party.

Source: Laws 1984, LB 723, § 1; Laws 1988, LB 419, § 15; Laws 1989, LB 362, § 10; Laws 1996, LB 1044, § 326; Laws 1996, LB 1155, § 23; R.S.1943, (2003), § 68-1026; Laws 2006, LB 1248, § 16.

The statutory assignment to Department of Social Services under this section is subject to a valid hospital lien acquired under section 52-401 when the hospital lien exists before the department obligates itself to pay, or does pay, medical assistance benefits under this section. Ehlers v. Perry, 242 Neb. 208, 494 N.W.2d 325 (1993).

68-917 Applicant or recipient; failure to cooperate; effect.

Refusal by the applicant or recipient specified in section 68-916 to cooperate in obtaining reimbursement for medical care or services provided to himself or herself or any other member of the assistance group renders the applicant or recipient ineligible for assistance. Ineligibility shall continue for so long as such person refuses to cooperate. Cooperation may be waived by the department upon a determination of the reasonable likelihood of physical or emotional harm to the applicant, recipient, or other member of the assistance group if the applicant or recipient were to cooperate. Eligibility shall continue for any individual who cannot legally assign his or her own rights and who would have been eligible for assistance but for the refusal by another person, legally able to assign such individual's rights, to cooperate as required by this section.

Source: Laws 1984, LB 723, § 2; Laws 1997, LB 307, § 108; R.S.1943, (2003), § 68-1027; Laws 2006, LB 1248, § 17.

68-918 Restoration of rights; when.

If the applicant or recipient or any member of the assistance group becomes ineligible for medical assistance, the department shall restore to him or her the rights assigned under section 68-916.

Source: Laws 1984, LB 723, § 3; Laws 1997, LB 307, § 109; R.S.1943, (2003), § 68-1028; Laws 2006, LB 1248, § 18.

68-919 Medical assistance recipient; liability; when; claim; procedure; department; powers.

(1) The recipient of medical assistance under the medical assistance program shall be indebted to the department for the total amount paid for medical assistance on behalf of the recipient if:

(a) The recipient was fifty-five years of age or older at the time the medical assistance was provided; or

(b) The recipient resided in a medical institution and, at the time of institutionalization or application for medical assistance, whichever is later, the department determines that the recipient could not have reasonably been

expected to be discharged and resume living at home. For purposes of this section, medical institution means a nursing facility, an intermediate care facility for the mentally retarded, or an inpatient hospital.

(2) The debt accruing under subsection (1) of this section arises during the life of the recipient but shall be held in abeyance until the death of the recipient. Any such debt to the department that exists when the recipient dies shall be recovered only after the death of the recipient's spouse, if any, and only when the recipient is not survived by a child who either is under twenty-one years of age or is blind or totally and permanently disabled as defined by the Supplemental Security Income criteria.

(3) The debt shall include the total amount of medical assistance provided when the recipient was fifty-five years of age or older or during a period of institutionalization as described in subsection (1) of this section and shall not include interest.

(4) In any probate proceedings in which the department has filed a claim under this section, no additional evidence of foundation shall be required for the admission of the department's payment record supporting its claim if the payment record bears the seal of the department, is certified as a true copy, and bears the signature of an authorized representative of the department.

(5) The department may waive or compromise its claim, in whole or in part, if the department determines that enforcement of the claim would not be in the best interests of the state or would result in undue hardship as provided in rules and regulations of the department.

Source: Laws 1994, LB 1224, § 39; Laws 1996, LB 1044, § 334; Laws 2001, LB 257, § 1; Laws 2004, LB 1005, § 7; R.S.Supp.,2004, § 68-1036.02; Laws 2006, LB 1248, § 19; Laws 2007, LB185, § 2.

The plain and unambiguous language of this section provides that reimbursement claims for medical expenses arise at or after the death of the recipient. In re Estate of Tvrz, 260 Neb. 991, 620 N.W.2d 757 (2001).

A claim by the Department of Health and Human Services Finance and Support for reimbursement of medical assistance benefits pursuant to this section is one that necessarily falls within the provisions of subsection (b) of section 30-2485 as arising ''at or after'' the death of the decedent who is a recipient of those benefits. In re Estate of Tvrz, 9 Neb. App. 98, 608 N.W.2d 226 (2000).

68-920 Department; garnish employment income; when; limitation.

The department may garnish the wages, salary, or other employment income of a person for the costs of health services provided to a child who is eligible for medical assistance pursuant to the medical assistance program if:

(1) The person is required by court or administrative order to provide health care coverage for the costs of such services; and

(2) The person has received payment from a third party for the costs of such services but has not used the payment to reimburse either the other parent or guardian or the provider of such services.

The amount garnished shall be limited to the amount necessary to reimburse the department for its expenditures for the costs of such services under the medical assistance program. Any claim for current or past-due child support shall take priority over a claim for the costs of health services.

Source: Laws 1994, LB 1224, § 71; Laws 1996, LB 1044, § 335; R.S.1943, (2003), § 68-1036.03; Laws 2006, LB 1248, § 20.

68-921 Entitlement of spouse; terms, defined.

For purposes of sections 68-921 to 68-925:

(1) Assets means property which is not exempt from consideration in determining eligibility for medical assistance under rules and regulations adopted and promulgated under section 68-922;

(2) Community spouse monthly income allowance means the amount of income determined by the department in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5;

(3) Community spouse resource allowance means the amount of assets determined in accordance with section 1924 of the federal Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5. For purposes of 42 U.S.C. 1396r-5(f)(2)(A)(i), the amount specified by the state shall be twelve thousand dollars;

(4) Home and community-based services means services furnished under home and community-based waivers as defined in Title XIX of the federal Social Security Act, as amended, 42 U.S.C. 1396;

(5) Qualified applicant means a person (a) who applies for medical assistance on or after July 9, 1988, (b) who is under care in a state-licensed hospital, a nursing facility, an intermediate care facility for the mentally retarded, an assisted-living facility, or a center for the developmentally disabled, as such terms are defined in the Health Care Facility Licensure Act, or an adult family home certified by the department or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance;

(6) Qualified recipient means a person (a) who has applied for medical assistance before July 9, 1988, and is eligible for such assistance, (b) who is under care in a facility certified to receive medical assistance funds or is receiving home and community-based services, and (c) whose spouse is not under such care or receiving such services and is not applying for or receiving medical assistance; and

(7) Spouse means the spouse of a qualified applicant or qualified recipient.

Source: Laws 1988, LB 419, § 1; Laws 1989, LB 362, § 11; Laws 1991, LB 244, § 1; Laws 1996, LB 1044, § 336; Laws 1997, LB 608, § 4; Laws 2000, LB 819, § 81; R.S.1943, (2003), § 68-1038; Laws 2006, LB 1248, § 21; Laws 2007, LB185, § 3; Laws 2007, LB296, § 250.

Cross References

Health Care Facility Licensure Act, see section 71-401.

68-922 Amount of entitlement; department; rules and regulations.

For purposes of determining medical assistance eligibility and the right to and obligation of medical support pursuant to sections 68-716, 68-915, and 68-916, a spouse may retain (1) assets equivalent to the community spouse resource allowance and (2) an amount of income equivalent to the community spouse monthly income allowance.

The department shall administer this section in accordance with section 1924 of the Social Security Act, as amended, Public Law 100-360, 42 U.S.C. 1396r-5,

and shall adopt and promulgate rules and regulations as necessary to implement and enforce sections 68-921 to 68-925.

Source: Laws 1988, LB 419, § 2; Laws 1989, LB 362, § 12; R.S.1943, (2003), § 68-1039; Laws 2006, LB 1248, § 22; Laws 2007, LB296, § 251.

68-923 Assets; eligibility for assistance; future medical support; considerations; subrogation.

If a portion of the aggregate assets is designated in accordance with section 68-924:

(1) Only the assets not designated for the spouse shall be considered in determining the eligibility of an applicant for medical assistance;

(2) In determining the eligibility of an applicant, the assets designated for the spouse shall not be taken into account and proof of adequate consideration for any assignment or transfer made as a result of the designation of assets shall not be required;

(3) The assets designated for the spouse shall not be considered to be available to an applicant or recipient for future medical support and the spouse shall have no duty of future medical support of the applicant or recipient from such assets;

(4) Recovery may not be made from the assets designated for the spouse for any amount paid for future medical assistance provided to the applicant or recipient; and

(5) Neither the department nor the state shall be subrogated to or assigned any future right of the applicant or recipient to medical support from the assets designated for the spouse.

Source: Laws 1988, LB 419, § 3; Laws 1989, LB 362, § 13; R.S.1943, (2003), § 68-1040; Laws 2006, LB 1248, § 23; Laws 2007, LB296, § 252.

68-924 Designation of assets; procedure.

A designation of assets pursuant to section 68-922 shall be evidenced by a written statement listing such assets and signed by the spouse. A copy of such statement shall be provided to the department at the time of application and shall designate assets owned as of the date of application. Failure to complete any assignments or transfers necessary to place the designated assets in sole ownership of the spouse within a reasonable time after the statement is signed as provided in rules and regulations adopted and promulgated under section 68-922 may render the applicant or recipient ineligible for assistance in accordance with such rules and regulations.

Source: Laws 1988, LB 419, § 5; Laws 1989, LB 362, § 14; R.S.1943, (2003), § 68-1042; Laws 2006, LB 1248, § 24; Laws 2007, LB296, § 253.

68-925 Department; furnish statement.

The department shall furnish to each qualified applicant for and each qualified recipient of medical assistance a clear and simple written statement explaining the provisions of section 68-922.

Source: Laws 1988, LB 419, § 6; Laws 1989, LB 362, § 15; Laws 1996, LB 1044, § 337; R.S.1943, (2003), § 68-1043; Laws 2006, LB 1248, § 25; Laws 2007, LB296, § 254.

68-926 Legislative findings.

The Legislature finds that (1) the department relies on health insurance and claims information from private insurers to ensure accuracy in processing state benefit program payments to providers and in verifying individual recipients' eligibility, (2) delay or refusal to provide such information causes unnecessary expenditures of state funds, (3) disclosure of such information to the department is permitted pursuant to the federal Health Insurance Portability and Accountability privacy rules under 45 C.F.R. part 164, and (4) for medical assistance program recipients who also have other insurance coverage, including coverage by licensed and self-funded insurers, the department is required by 42 U.S.C. 1396a(a)(25) to assure that licensed and self-funded insurers coordinate benefits with the program.

Source: Laws 2005, LB 589, § 1; R.S.Supp.,2005, § 68-10,100; Laws 2006, LB 1248, § 26; Laws 2007, LB296, § 255.

68-927 Terms, defined.

For purposes of sections 68-926 to 68-933:

(1) Coordinate benefits means:

(a) Provide to the department information regarding the licensed insurer's or self-funded insurer's existing coverage for an individual who is eligible for a state benefit program; and

(b) Meet payment obligations;

(2) Coverage information means health information possessed by a licensed insurer or self-funded insurer that is limited to the following information about an individual:

(a) Eligibility for coverage under a health plan;

(b) Coverage of health care under the health plan; or

(c) Benefits and payments associated with the health plan;

(3) Health plan means any policy of insurance issued by a licensed insurer or any employee benefit plan offered by a self-funded insurer that provides for payment to or on behalf of an individual as a result of an illness, disability, or injury or change in a health condition;

(4) Individual means a person covered by a state benefit program, including the medical assistance program, or a person applying for such coverage;

(5) Licensed insurer means any insurer, except a self-funded insurer, including a fraternal benefit society, producer, or other person licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of the state; and

(6) Self-funded insurer means any employer or union who or which provides a self-funded employee benefit plan.

Source: Laws 2005, LB 589, § 2; R.S.Supp.,2005, § 68-10,101; Laws 2006, LB 1248, § 27; Laws 2007, LB296, § 256.

68-928 Licensed insurer or self-funded insurer; provide coverage information.

(1) Except as provided in subsection (2) of this section, at the request of the department, a licensed insurer or a self-funded insurer shall provide coverage information to the department without an individual's authorization for purposes of:

(a) Determining an individual's eligibility for state benefit programs, including the medical assistance program; or

(b) Coordinating benefits with state benefit programs.

Such information shall be provided within thirty days after the date of request unless good cause is shown. Requests for coverage information shall specify individual recipients for whom information is being requested.

(2)(a) Coverage information requested pursuant to subsection (1) of this section regarding a limited benefit policy shall be limited to whether a specified individual has coverage and, if so, a description of that coverage, and such information shall be used solely for the purposes of subdivision (1)(a) of this section.

(b) For purposes of this section, limited benefit policy means a policy of insurance issued by a licensed insurer that consists only of one or more, or any combination of the following:

(i) Coverage only for accident or disability income insurance, or any combination thereof;

(ii) Coverage for specified disease or illness; or

(iii) Hospital indemnity or other fixed indemnity insurance.

Source: Laws 2005, LB 589, § 3; R.S.Supp.,2005, § 68-10,102; Laws 2006, LB 1248, § 28; Laws 2007, LB296, § 257.

68-929 Licensed insurer; violation.

Any violation of section 68-928 by a licensed insurer shall be subject to the Unfair Insurance Claims Settlement Practices Act.

Source: Laws 2005, LB 589, § 4; R.S.Supp.,2005, § 68-10,103; Laws 2006, LB 1248, § 29.

Cross References

Unfair Insurance Claims Settlement Practices Act, see section 44-1536.

68-930 Self-funded insurer; violation; civil penalty.

The department may impose and collect a civil penalty on a self-funded insurer who violates the requirements of section 68-928 if the department finds that the self-funded insurer:

(1) Committed the violation flagrantly and in conscious disregard of the requirements; or

(2) Has committed violations with such frequency as to indicate a general business practice to engage in that type of conduct.

The civil penalty shall not be more than one thousand dollars for each violation, not to exceed an aggregate penalty of thirty thousand dollars, unless the violation by the self-funded insurer was committed flagrantly and in conscious disregard of section 68-928, in which case the penalty shall not be more than fifteen thousand dollars for each violation, not to exceed an aggregate penalty of one hundred fifty thousand dollars.

Source: Laws 2005, LB 589, § 5; R.S.Supp.,2005, § 68-10,104; Laws 2006, LB 1248, § 30; Laws 2007, LB296, § 258.

68-931 Recovery; authorized.

The department is authorized to recover all amounts paid or to be paid to state benefit programs as a result of failure to coordinate benefits by a licensed insurer or a self-funded insurer.

Source: Laws 2005, LB 589, § 6; R.S.Supp.,2005, § 68-10,105; Laws 2006, LB 1248, § 31; Laws 2007, LB296, § 259.

68-932 Process for resolving violations; appeal.

The department shall establish a process by rule and regulation for resolving any violation by a self-funded insurer of section 68-928 and for assessing the financial penalties contained in section 68-930. Any appeal of an action by the department under such policies shall be in accordance with the Administrative Procedure Act.

Source: Laws 2005, LB 589, § 7; R.S.Supp.,2005, § 68-10,106; Laws 2006, LB 1248, § 32; Laws 2007, LB296, § 260.

Cross References

Administrative Procedure Act, see section 84-920.

68-933 Civil penalties; disposition.

All money collected as a civil penalty under section 68-929 or 68-930 shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2005, LB 589, § 8; R.S.Supp.,2005, § 68-10,107; Laws 2006, LB 1248, § 33.

68-934 False Medicaid Claims Act; act, how cited.

Sections 68-934 to 68-947 shall be known and may be cited as the False Medicaid Claims Act.

Source: Laws 1996, LB 1155, § 67; R.S.1943, (2003), § 68-1037.01; Laws 2004, LB 1084, § 1; R.S.Supp.,2004, § 68-1073; Laws 2006, LB 1248, § 34; Laws 2009, LB288, § 21.

68-935 Terms, defined.

For purposes of the False Medicaid Claims Act:

(1) Attorney General means the Attorney General, the office of the Attorney General, or a designee of the Attorney General;

(2) Claim means any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, provider, or other recipient if the state provides any portion of the money or property that is requested or demanded or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded, whether or not the state pays any portion of such request or demand;

(3) Good or service includes (a) any particular item, device, medical supply, or service claimed to have been provided to a recipient and listed in an itemized claim for payment and (b) any entry in the cost report, books of account, or other documents supporting such good or service;

(4) Knowing or knowingly means that a person, with respect to information:

(a) Has actual knowledge of such information;

(b) Acts in deliberate ignorance of the truth or falsity of such information; or

(c) Acts in reckless disregard of the truth or falsity of such information;

(5) Person means any body politic or corporate, society, community, the public generally, individual, partnership, limited liability company, joint-stock company, or association; and

(6) Recipient means an individual who is eligible to receive goods or services for which payment may be made under the medical assistance program.

Source: Laws 1996, LB 1155, § 68; R.S.1943, (2003), § 68-1037.02; Laws 2004, LB 1084, § 2; R.S.Supp.,2004, § 68-1074; Laws 2006, LB 1248, § 35.

68-936 Presentation of false medicaid claim; civil liability; civil penalty; costs and attorney's fees.

(1) A person presents a false medicaid claim and is subject to civil liability if such person:

(a) Knowingly presents, or causes to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval;

(b) Knowingly makes or uses, or causes to be made or used, a false record or statement to obtain payment or approval by the state of a false or fraudulent claim;

(c) Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent claim;

(d) Has possession, custody, or control of property or money used, or that will be used, by the state and, intending to defraud the state or willfully conceal the property, delivers, or causes to be delivered, less property than the amount for which such person receives a certificate or receipt;

(e) Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state knowing that such officer or employee may not lawfully sell or pledge such property; or

(f) Knowingly makes, uses, or causes to be made or used, a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state.

(2) A person who presents a false medicaid claim under subsection (1) of this section is subject to, in addition to any other remedies that may be prescribed

by law, a civil penalty of not more than ten thousand dollars. In addition to any civil penalty, a person who presents a false medicaid claim under subsection (1) of this section may be subject to damages in the amount of three times the amount of the false claim submitted to the state due to the act of such person.

(3) If the state is the prevailing party in an action under the False Medicaid Claims Act, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

(4) Liability under this section is joint and several for any act committed by two or more persons.

Source: Laws 1996, LB 1155, § 69; Laws 1997, LB 307, § 110; R.S.1943, (2003), § 68-1037.03; Laws 2004, LB 1084, § 3; R.S.Supp.,2004, § 68-1075; Laws 2006, LB 1248, § 36.

68-937 Failure to report.

A person violates the False Medicaid Claims Act, and is subject to civil liability as provided in section 68-936, if such person is a beneficiary of an inadvertent submission of a false medicaid claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within sixty days of such discovery. The beneficiary is not obliged to make such a report to the department if more than six years have passed since submission of the claim.

Source: Laws 2004, LB 1084, § 4; R.S.Supp.,2004, § 68-1076; Laws 2006, LB 1248, § 37.

68-938 Charge, solicitation, acceptance, or receipt; unlawful; when.

A person violates the False Medicaid Claims Act, and a claim submitted with regard to a good or service is deemed to be false and subjects such person to civil liability as provided in section 68-936, if he or she, acting on behalf of a provider providing such good or service to a recipient under the medical assistance program, charges, solicits, accepts, or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of such good or service knowing that such charge, solicitation, acceptance, or receipt is not legally payable.

Source: Laws 2004, LB 1084, § 5; R.S.Supp.,2004, § 68-1077; Laws 2006, LB 1248, § 38.

68-939 Records; duties; acts prohibited; liability; costs and attorney's fees.

(1) A person violates the False Medicaid Claims Act and is subject to civil liability as provided in section 68-936 and damages as provided in subsection (2) of this section if he or she:

(a) Having submitted a claim or received payment for a good or service under the medical assistance program, knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as are necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which payment was received; or

(b) Knowingly destroys such records within six years from the date payment was received.

(2) A person who knowingly fails to maintain records or who knowingly destroys records within six years from the date payment for a claim was received shall be subject to damages in the amount of three times the amount of the claim submitted for which records were knowingly not maintained or knowingly destroyed.

(3) If the state is the prevailing party in an action under this section, the defendant, in addition to penalties and damages, shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages under the act.

Source: Laws 2004, LB 1084, § 6; R.S.Supp.,2004, § 68-1078; Laws 2006, LB 1248, § 39.

68-940 Penalties or damages; considerations; liability; costs and attorney's fees.

(1) In determining the amount of any penalties or damages awarded under the False Medicaid Claims Act, the following shall be taken into account:

(a) The nature of claims and the circumstances under which they were presented;

(b) The degree of culpability and history of prior offenses of the person presenting the claims;

(c) Coordination of the total penalties and damages arising from the same claims, goods, or services, whether based on state or federal statute; and

(d) Such other matters as justice requires.

(2)(a) Any person who presents a false medicaid claim is subject to civil liability as provided in section 68-936, except when the court finds that:

(i) The person committing the violation of the False Medicaid Claims Act furnished officials of the state responsible for investigating violations of the act with all information known to such person about the violation within thirty days after the date on which the defendant first obtained the information;

(ii) Such person fully cooperated with any state investigation of such violation; and

(iii) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the act with respect to such violation and the person did not have actual knowledge of the existence of an investigation into such violation.

(b) The court may assess not more than two times the amount of the false medicaid claims submitted because of the action of a person coming within the exception under subdivision (2)(a) of this section, and such person is also liable for the state's costs and attorney's fees for a civil action brought to recover any penalty or damages.

(3) Amounts recovered under the False Medicaid Claims Act shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, except that (a) amounts recovered for the state's costs and attorney's fees pursuant to subdivision (2)(b) of this section and sections 68-936 and 68-939 shall be remitted to the State Treasurer for credit to the State Medicaid Fraud Control Unit Cash Fund and (b) the State Treasurer shall distribute civil

penalties in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1996, LB 1155, § 70; Laws 1997, LB 307, § 111; R.S.1943, (2003), § 68-1037.04; Laws 2004, LB 1084, § 7; R.S.Supp.,2004, § 68-1079; Laws 2006, LB 1248, § 40; Laws 2007, LB296, § 261; Laws 2009, LB288, § 22.

68-940.01 State Medicaid Fraud Control Unit Cash Fund; created; use; investment.

The State Medicaid Fraud Control Unit Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. The fund shall consist of any recovery for the state's costs and attorney's fees received pursuant to subdivision (2)(b) of section 68-940 and sections 68-936 and 68-939, except criminal penalties, whether such recovery is by way of verdict, judgment, compromise, or settlement in or out of court, or other final disposition of any case or controversy under such subdivision or sections. Money in the fund shall be used to pay the salaries and related expenses of the Department of Justice for the state medicaid fraud control unit. 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.

Source: Laws 2009, LB288, § 23.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-941 Limitation of actions; burden of proof.

(1) A civil action under the False Medicaid Claims Act shall be brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed.

(2) In an action brought under the act, the state shall prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Source: Laws 1996, LB 1155, § 71; R.S.1943, (2003), § 68-1037.05; Laws 2004, LB 1084, § 8; R.S.Supp.,2004, § 68-1080; Laws 2006, LB 1248, § 41.

68-942 Investigation and prosecution.

(1) In any case involving allegations of civil violations or criminal offenses under the False Medicaid Claims Act, the Attorney General may take full charge of any investigation or advancement or prosecution of the case.

(2) The department shall cooperate with the state medicaid fraud control unit in conducting such investigations, civil actions, and criminal prosecutions and shall provide such information for such purposes as may be requested by the Attorney General.

Source: Laws 2004, LB 1084, § 9; R.S.Supp.,2004, § 68-1081; Laws 2006, LB 1248, § 42.

68-943 State medicaid fraud control unit; certification.

The Attorney General shall:

(1) Establish a state medicaid fraud control unit that meets the standards prescribed by 42 U.S.C. 1396b(q); and

(2) Apply to the Secretary of Health and Human Services for certification of the unit under 42 U.S.C. 1396b(q).

Source: Laws 2004, LB 1084, § 10; R.S.Supp.,2004, § 68-1082; Laws 2006, LB 1248, § 43.

68-944 State medicaid fraud control unit; powers and duties.

The state medicaid fraud control unit shall employ such attorneys, auditors, investigators, and other personnel as authorized by law to carry out the duties of the unit in an effective and efficient manner. The purpose of the state medicaid fraud control unit is to conduct a statewide program for the investigation and prosecution of medicaid fraud and violations of all applicable state laws relating to the providing of medical assistance and the activities of providers. The state medicaid fraud control unit may review and act on complaints of abuse and neglect of patients at health care facilities that receive payments under the medical assistance program and may provide for collection or referral for collection of overpayments made under the medical assistance program that are discovered by the unit.

Source: Laws 2004, LB 1084, § 11; R.S.Supp.,2004, § 68-1083; Laws 2006, LB 1248, § 44.

68-945 Attorney General; powers and duties.

In carrying out the duties and responsibilities under the False Medicaid Claims Act, the Attorney General may:

(1) Enter upon the premises of any provider participating in the medical assistance program (a) to examine all accounts and records that are relevant in determining the existence of fraud in the medical assistance program, (b) to investigate alleged abuse or neglect of patients, or (c) to investigate alleged misappropriation of patients' private funds. The accounts or records of a nonmedicaid patient may not be reviewed by, or turned over to, the Attorney General without the patient's written consent or a court order;

(2) Subpoena witnesses or materials, including medical records relating to recipients, within or outside the state and, through any duly designated employee, administer oaths and affirmations and collect evidence for possible use in either civil or criminal judicial proceedings;

(3) Request and receive the assistance of any prosecutor or law enforcement agency in the investigation and prosecution of any violation of this section; and

(4) Refer to the department for collection each instance of overpayment to a provider under the medical assistance program which is discovered during the course of an investigation.

Source: Laws 2004, LB 1084, § 12; R.S.Supp.,2004, § 68-1084; Laws 2006, LB 1248, § 45.

68-946 Attorney General; access to records.

(1) Notwithstanding any other provision of law, the Attorney General, upon reasonable request, shall have full access to all records held by a provider, or by any other person on his or her behalf, that are relevant to the determination of (a) the existence of civil violations or criminal offenses under the False Medicaid Claims Act or related offenses, (b) the existence of patient abuse, mistreatment, or neglect, or (c) the theft of patient funds.

(2) In examining such records, the Attorney General shall safeguard the privacy rights of recipients, avoiding unnecessary disclosure of personal information concerning named recipients. The Attorney General may transmit such information as he or she deems appropriate to the department and to other agencies concerned with the regulation of health care facilities or health professionals.

(3) No person holding such records may refuse to provide the Attorney General access to such records for the purposes described in the act on the basis that release would violate (a) a recipient's right of privacy, (b) a recipient's privilege against disclosure or use, or (c) any professional or other privilege or right.

Source: Laws 2004, LB 1084, § 13; R.S.Supp.,2004, § 68-1085; Laws 2006, LB 1248, § 46.

68-947 Contempt of court.

Any person who, after being ordered by a court to comply with a subpoena issued under the False Medicaid Claims Act, fails in whole or in part to testify or to produce evidence, documentary or otherwise, shall be in contempt of court as if the failure was committed in the presence of the court. The court may assess a fine of not less than one hundred dollars nor more than one thousand dollars for each day such person fails to comply. No person shall be found to be in contempt of court nor shall any fine be assessed if compliance with such subpoena violates such person's right against self-incrimination.

Source: Laws 2004, LB 1084, § 14; R.S.Supp.,2004, § 68-1086; Laws 2006, LB 1248, § 47.

68-948 Medicaid Reform Council; established; members; duties; expenses; terms; vacancies; department; provide information.

(1) The Medicaid Reform Council is established. The council shall consist of ten persons appointed by the Governor. The chairperson of the Health and Human Services Committee of the Legislature or his or her designee shall serve as a nonvoting, ex officio member of the council. The council shall include, but not be limited to, at least one representative from each of the following: Providers, recipients of medical assistance, advocates for such recipients, business representatives, insurers, and elected officials. The Governor shall appoint the chairperson of the council. Members of the council may be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The council shall (a) oversee and advise the department regarding implementation of reforms to the medical assistance program, including, but not limited to, reforms such as those contained in the Medicaid Reform Plan, (b) conduct public meetings at least quarterly and other meetings at the call of the chairperson of the council, in consultation with the department, and (c) provide comments and recommendations to the department regarding the

administration of the medical assistance program and any proposed changes to such program.

(3) The department shall provide the council with any reports, data, analysis, or other such information upon which the department relied, which provided a basis for the department's proposed reforms, or which the department otherwise intends to present to the council at least two weeks prior to the quarterly meeting.

(4) Beginning June 30, 2010, the terms of the existing members of the council shall be extended as follows: One-half of the members shall serve for two-year terms and one-half of the members shall serve for four-year terms as determined by the Governor. Thereafter all members shall serve for four-year terms. Members may be reappointed at the discretion of the Governor. Appointments to the council occurring as a result of replacement of an existing member at the expiration of the member's term or due to resignation of an existing member shall be made by the Governor.

Source: Laws 2006, LB 1248, § 48; Laws 2007, LB296, § 262; Laws 2009, LB288, § 24.

68-949 Medical assistance program; legislative intent; department; duties; reports.

(1) It is the intent of the Legislature that the department implement reforms to the medical assistance program such as those contained in the Medicaid Reform Plan, including (a) an incremental expansion of home and community-based services for aged persons and persons with disabilities consistent with such plan, (b) an increase in care coordination or disease management initiatives to better manage medical assistance expenditures on behalf of high-cost recipients with multiple or chronic medical conditions, and (c) other reforms as deemed necessary and appropriate by the department, in consultation with the committee and the Medicaid Reform Council.

(2)(a) The department shall develop recommendations based on a comprehensive analysis of various options available to the state under applicable federal law for the provision of medical assistance to persons with disabilities who are employed, including persons with a medically improved disability, to enhance and replace current eligibility provisions contained in subdivision (8) of section 68-915.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2008. The council shall conduct a public meeting no later than October 15, 2008, to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1, 2008. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2008.

(3)(a) The department shall develop recommendations for further modification or replacement of the defined benefit structure of the medical assistance program. Such recommendations shall be consistent with the public policy in section 68-905 and shall consider the needs and resources of low-income Nebraska residents who are eligible or may become eligible for medical assistance, the experience and outcomes of other states that have developed and

implemented such changes, and other relevant factors as determined by the department.

(b) The department shall provide a draft report of such recommendations to the committee and the Medicaid Reform Council no later than October 1, 2008. The council shall conduct a public meeting no later than October 15, 2008, to discuss and receive public comment regarding such report. The council shall provide any comments and recommendations regarding such report in writing to the department and the committee no later than November 1, 2008. The department shall provide a final report of such recommendations to the Governor, the committee, and the council no later than December 1, 2008.

Source: Laws 2006, LB 1248, § 49; Laws 2007, LB296, § 263; Laws 2008, LB928, § 16.

68-950 Medicaid Prescription Drug Act, how cited.

Sections 68-950 to 68-956 shall be known and may be cited as the Medicaid Prescription Drug Act.

Source: Laws 2008, LB830, § 2.

68-951 Purpose of act.

The purpose of the Medicaid Prescription Drug Act is to provide appropriate pharmaceutical care to medicaid recipients in a cost-effective manner by requiring the establishment of a preferred drug list and other activities as prescribed. The preferred drug list and other activities mandated by the act shall not be construed to replace, prohibit, or limit other lawful activities of the department not specifically permitted or required by the act.

Source: Laws 2008, LB830, § 3.

68-952 Terms, defined.

For purposes of the Medicaid Prescription Drug Act:

(1) Labeler means a person or entity that repackages prescription drugs for retail sale and has a labeler code from the federal Food and Drug Administration under 21 C.F.R. 207.20, as such regulation existed on January 1, 2008;

(2) Manufacturer means a manufacturer of prescription drugs as defined in 42 U.S.C. 1396r-8(k)(5), as such section existed on January 1, 2008, including a subsidiary or affiliate of such manufacturer;

(3) Multistate purchasing pool means an entity formed by an agreement between two or more states to negotiate for supplemental rebates on prescription drugs;

(4) Pharmacy benefit manager means a person or entity that negotiates prescription drug price and rebate arrangements with manufacturers or labelers;

(5) Preferred drug list means a list of prescription drugs that may be prescribed for medicaid recipients without prior authorization by the department; and

(6) Prescription drug has the definition found in section 38-2841.

Source: Laws 2008, LB830, § 4.

68-953 Preferred drug list; department; establish and maintain; pharmaceutical and therapeutics committee; members; expenses.

(1) No later than July 1, 2010, the department shall establish and maintain a preferred drug list for the medical assistance program. The department shall establish a pharmaceutical and therapeutics committee to advise the department on all matters relating to the establishment and maintenance of such list.

(2) The pharmaceutical and therapeutics committee shall include at least fifteen but no more than twenty members. The committee shall consist of at least (a) eight physicians, (b) four pharmacists, (c) a university professor of pharmacy or a person with a doctoral degree in pharmacology, and (d) two public members. No more than twenty-five percent of the committee shall be state employees.

(3) The physician members of the committee, so far as practicable, shall include physicians practicing in the areas of (a) family medicine, (b) internal medicine, (c) pediatrics, (d) cardiology, (e) psychiatry or neurology, (f) obstetrics or gynecology, (g) endocrinology, and (h) oncology.

(4) Members of the committee shall submit conflict of interest disclosure statements to the department and shall have an ongoing duty to disclose conflicts of interest not included in the original disclosure.

(5) The committee shall elect a chairperson and a vice-chairperson from among its members. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(6) The department, in consultation with the committee, shall adopt and publish policies and procedures relating to the preferred drug list, including (a) guidelines for the presentation and review of drugs for inclusion on the preferred drug list, (b) the manner and frequency of audits of the preferred drug list for appropriateness of patient care and cost effectiveness, (c) an appeals process for the resolution of disputes, and (d) such other policies and procedures as the department deems necessary and appropriate.

Source: Laws 2008, LB830, § 5.

68-954 Preferred drug list; considerations; availability of list.

(1) The department and the pharmaceutical and therapeutics committee shall consider all therapeutic classes of prescription drugs for inclusion on the preferred drug list, except that antidepressant, antipsychotic, and anticonvulsant prescription drugs shall not be subject to consideration for inclusion on the preferred drug list.

(2)(a) The department shall include a prescription drug on the preferred drug list if the prescription drug is therapeutically equivalent to or superior to a prescription drug on the list and the net cost of the new prescription drug is equal to or less than the net cost of the listed drug, after consideration of applicable rebates or discounts negotiated by the department.

(b) If the department finds that two or more prescription drugs under consideration for inclusion on the preferred drug list are therapeutically equivalent, the department shall include the more cost-effective prescription drug or drugs on the preferred drug list, after consideration of applicable rebates or discounts negotiated by the department.

(3) The department shall maintain an updated preferred drug list in electronic format and shall make the list available to the public on the department's Internet web site.

Source: Laws 2008, LB830, § 6.

68-955 Prescription of drug not on preferred drug list; conditions.

(1) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient if (a) the prescription drug is medically necessary, (b)(i) the provider certifies that the preferred drug has not been therapeutically effective, or with reasonable certainty is not expected to be therapeutically effective, in treating the recipient's condition or (ii) the preferred drug causes or is reasonably expected to cause adverse or harmful reactions in the recipient, and (c) the department authorizes coverage for the prescription drug prior to the dispensing of the drug. The department shall respond to a prior authorization request no later than twenty-four hours after receiving such request.

(2) A health care provider may prescribe a prescription drug not on the preferred drug list to a medicaid recipient without prior authorization by the department if the provider certifies that (a) the recipient is achieving therapeutic success with a course of antidepressant, antipsychotic, or anticonvulsant medication or medication for human immunodeficiency virus, multiple sclerosis, epilepsy, cancer, or immunosuppressant therapy or (b) the recipient has experienced a prior therapeutic failure with a medication.

Source: Laws 2008, LB830, § 7.

68-956 Department; duties.

The department shall: (1) Enter into a multistate purchasing pool; (2) negotiate directly with manufacturers or labelers; or (3) contract with a pharmacy benefit manager for negotiated discounts or rebates for all prescription drugs under the medical assistance program in order to achieve the lowest available price for such drugs under such program.

Source: Laws 2008, LB830, § 8.

68-957 Medical Home Pilot Program Act; act, how cited; purpose; termination.

Sections 68-957 to 68-961 shall be known and may be cited as the Medical Home Pilot Program Act. The Medical Home Pilot Program Act terminates on June 30, 2014. The purposes of the act are to improve health care access and health outcomes for patients and to contain costs of the medical assistance program.

Source: Laws 2009, LB396, § 2.
Termination date June 30, 2014.

68-958 Medical Home Pilot Program Act; terms, defined.

For purposes of the Medical Home Pilot Program Act:

(1) Division means the Division of Medicaid and Long-Term Care of the Department of Health and Human Services;

(2) Medical home means a provider of primary health care services to patients that meets the requirements for participation in the medical home pilot program established under section 68-960;

(3) Patient means a recipient of medical assistance under the Medical Assistance Act; and

(4) Primary care physician means a physician licensed under the Uniform Credentialing Act and practicing in the area of general medicine, family medicine, pediatrics, or internal medicine.

Source: Laws 2009, LB396, § 3.
Termination date June 30, 2014.

Cross References

Uniform Credentialing Act, see section 38-101.

68-959 Medical Home Pilot Program; designation; division; duties; evaluation; report.

(1) No later than January 1, 2012, the division shall design and implement a medical home pilot program, in consultation with the Medical Home Advisory Council, in one or more geographic regions of the state to provide access to medical homes for patients. The division shall apply for any available federal or other funds for the program. The division shall establish necessary and appropriate reimbursement policies and incentives under such program to accomplish the purposes of the Medical Home Pilot Program Act. The reimbursement policies:

(a) Shall require the provision of a medical home for clients;

(b) Shall be designed to increase the availability of primary health care services to clients;

(c) May provide an increased reimbursement rate to providers who provide primary health care services to clients outside of regular business hours or on weekends; and

(d) May provide a postevaluation incentive payment.

(2) No later than June 1, 2014, the division shall evaluate the medical home pilot program and report the results of such evaluation to the Governor and the Health and Human Services Committee of the Legislature. Such report shall include an evaluation of health outcomes and cost savings achieved, recommendations for improvement, recommendations regarding continuation and expansion of the program, and such other information as deemed necessary by the division or requested by the committee.

Source: Laws 2009, LB396, § 4.
Termination date June 30, 2014.

68-960 Medical home; duties.

A medical home shall:

(1) Provide comprehensive, coordinated health care for patients and consistent, ongoing contact with patients throughout their interactions with the health care system, including, but not limited to, electronic contacts and ongoing care coordination and health maintenance tracking for patients;

(2) Provide primary health care services for patients and appropriate referral to other health care professionals or behavioral health professionals as needed;

(3) Focus on the ongoing prevention of illness and disease;

(4) Encourage active participation by a patient and the patient's family, guardian, or authorized representative, when appropriate, in health care decisionmaking and care plan development;

(5) Encourage the appropriate use of specialty care services and emergency room services by patients; and

(6) Provide other necessary and appropriate health care services and supports to accomplish the purposes of the Medical Home Pilot Program Act.

Source: Laws 2009, LB396, § 5.
Termination date June 30, 2014.

68-961 Medical Home Advisory Council; created; members; chairperson; expenses; removal; duties.

(1) The Medical Home Advisory Council is created. The council shall consist of seven voting members appointed by the Governor as follows:

(a) Two licensed primary care physicians actively practicing in the area of general and family medicine;

(b) Two licensed primary care physicians actively practicing in the area of pediatrics;

(c) Two licensed primary care physicians actively practicing in the area of internal medicine; and

(d) One representative from a licensed hospital in Nebraska.

(2) The chairperson of the Health and Human Services Committee of the Legislature or another member of the committee designated by the chairperson shall serve as an ex officio, nonvoting member of the council.

(3) The council shall annually select one of its appointed members to serve as chairperson of the council for a one-year term. Appointed members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The division shall provide administrative support to the council.

(4) The Governor may remove appointed members of the council for good cause upon written notice and an opportunity to be heard. Any appointed member of the council who ceases to meet the requirements for appointment to the council shall cease to be a member of the council. A vacancy on the council shall be filled in the same manner as provided for the original appointment.

(5) The Governor shall make initial appointments to the council no later than October 1, 2009. The council shall conduct its initial organizational meeting no later than October 31, 2009.

(6) The council shall (a) guide and assist the division in the design and implementation of the medical home pilot program and (b) promote the use of best practices to ensure access to medical homes for patients and accomplish the purposes of the Medical Home Pilot Program Act.

Source: Laws 2009, LB396, § 6.
Termination date June 30, 2014.

68-962 Autism Treatment Program Act; act, how cited.

Sections 68-962 to 68-966 shall be known and may be cited as the Autism Treatment Program Act.

Source: Laws 2007, LB482, § 1; R.S.1943, (2008), § 85-1,138; Laws 2009, LB27, § 2.

68-963 Purpose of Autism Treatment Program Act.

The purpose of the Autism Treatment Program Act is to provide for the development and administration of a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903.

Source: Laws 2007, LB482, § 2; R.S.1943, (2008), § 85-1,139; Laws 2009, LB27, § 3.

68-964 Autism Treatment Program; created; administration; funding.

The Autism Treatment Program is created. The program shall be administered by the department.

Source: Laws 2007, LB482, § 3; R.S.1943, (2008), § 85-1,140; Laws 2009, LB27, § 4.

68-965 Autism Treatment Program Cash Fund; created; use; investment.

(1) The Autism Treatment Program Cash Fund is created. The fund shall include revenue transferred from the Nebraska Health Care Cash Fund and revenue received from gifts, grants, bequests, donations, other similar donation arrangements, or other contributions from public or private sources. The department shall administer the fund. The Autism Treatment Program Cash Fund shall be used as the state's matching share for the waiver established under section 68-966 and for expenses incurred in the administration of the Autism Treatment Program. 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.

(2) The program shall utilize private funds deposited in the Autism Treatment Program Cash Fund and funds transferred by the Legislature from the Nebraska Health Care Cash Fund to the Autism Treatment Program Cash Fund. Transfers from the Nebraska Health Care Cash Fund in any fiscal year shall be contingent upon the receipt of private matching funds for such program, with no less than one dollar of private funds received for every two dollars transferred from the Nebraska Health Care Cash Fund. No donations from a provider of services under Title XIX of the federal Social Security Act shall be deposited into the Autism Treatment Program Cash Fund.

Source: Laws 2007, LB482, § 4; R.S.1943, (2008), § 85-1,141; Laws 2009, LB27, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-966 Department; apply for medical assistance program waiver or amendment; legislative intent.

(1) The department shall apply for a waiver or an amendment to an existing waiver under the medical assistance program established in section 68-903 for the purpose of providing medical assistance for intensive early intervention

services based on behavioral principles for children with a medical diagnosis of an autism spectrum disorder or an educational verification of autism. Such waiver shall not be construed to create an entitlement to services provided under such waiver.

(2) It is the intent of the Legislature that such waiver (a) require means testing for and cost-sharing by recipient families, (b) limit eligibility only to children for whom such services have been initiated prior to the age of nine years, (c) limit the number of children served according to available funding, (d) require demonstrated progress toward the attainment of treatment goals as a condition for continued receipt of medical assistance benefits for such treatment, (e) be developed in consultation with the Health and Human Services Committee of the Legislature and the federal Centers for Medicare and Medicaid Services and with the input of parents and families of children with autism spectrum disorders and organizations advocating on behalf of such persons, and (f) be submitted to the federal Centers for Medicare and Medicaid Services as soon as practicable, but no later than September 1, 2009.

Source: Laws 2007, LB482, § 5; R.S.1943, (2008), § 85-1,142; Laws 2009, LB27, § 6.

68-967 Comprehensive treatment of pediatric feeding disorders; amendment to state medicaid plan; department; duties.

(1) On or before July 1, 2010, the Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for medicaid payments for the comprehensive treatment of pediatric feeding disorders through interdisciplinary treatment.

(2) For purposes of this section, interdisciplinary treatment means the collaboration of medicine, psychology, nutrition science, speech therapy, occupational therapy, social work, and other appropriate medical and behavioral disciplines in an integrated program.

(3) This section terminates on January 1, 2015, unless extended by action of the Legislature.

Source: Laws 2009, LB342, § 2.
Termination date January 1, 2015.

ARTICLE 10

ASSISTANCE, GENERALLY

Cross References

Homes for aged persons, establishment by counties, see section 23-3501.
Telephone service, financial assistance, Nebraska Telephone Assistance Program, see section 86-329.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

Section
68-1001. Assistance to the aged, blind, or disabled; program; administration.
68-1001.01. Department of Health and Human Services; rules and regulations; promulgate.
68-1001.02. Assistance; action for reimbursement; statute of limitations; when commences to run.
68-1002. Persons eligible for assistance.
68-1003. Assistance to the aged; additional qualifications required.
68-1004. Assistance to the blind; additional qualifications required.

Section
68-1037.01. Transferred to section 68-1073.
68-1037.02. Transferred to section 68-1074.
68-1037.03. Transferred to section 68-1075.
68-1037.04. Transferred to section 68-1079.
68-1037.05. Transferred to section 68-1080.
68-1037.06. Repealed. Laws 2000, LB 1135, § 34.

(d) ENTITLEMENT OF SPOUSE

68-1038. Transferred to section 68-921.
68-1039. Transferred to section 68-922.
68-1040. Transferred to section 68-923.
68-1041. Repealed. Laws 1989, LB 362, § 19.
68-1042. Transferred to section 68-924.
68-1043. Transferred to section 68-925.
68-1044. Repealed. Laws 1989, LB 362, § 19.
68-1045. Repealed. Laws 1989, LB 362, § 19.
68-1046. Repealed. Laws 1989, LB 362, § 19.

(e) TRUSTS

68-1047. Repealed. Laws 2000, LB 1352, § 4.

(f) MANAGED CARE PLAN

68-1048. Repealed. Laws 2006, LB 1248, § 92.
68-1049. Repealed. Laws 2006, LB 1248, § 92.
68-1050. Repealed. Laws 2006, LB 1248, § 92.
68-1051. Repealed. Laws 2006, LB 1248, § 92.
68-1052. Repealed. Laws 2000, LB 892, § 7.
68-1053. Repealed. Laws 2000, LB 892, § 7.
68-1054. Repealed. Laws 2000, LB 892, § 7.
68-1055. Repealed. Laws 2000, LB 892, § 7.
68-1056. Repealed. Laws 2006, LB 1248, § 92.
68-1057. Repealed. Laws 2006, LB 1248, § 92.
68-1058. Repealed. Laws 2006, LB 1248, § 92.
68-1059. Repealed. Laws 2006, LB 1248, § 92.
68-1060. Repealed. Laws 2006, LB 1248, § 92.
68-1061. Repealed. Laws 2006, LB 1248, § 92.
68-1062. Repealed. Laws 2006, LB 1248, § 92.
68-1063. Repealed. Laws 2006, LB 1248, § 92.
68-1064. Repealed. Laws 2005, LB 301, § 78.
68-1065. Repealed. Laws 2000, LB 892, § 7.
68-1066. Repealed. Laws 2000, LB 892, § 7.

(g) MEDICAID RECIPIENTS PARTICIPATING IN MANAGED CARE PLAN

68-1067. Repealed. Laws 2006, LB 1248, § 92.
68-1068. Repealed. Laws 2006, LB 1248, § 92.
68-1069. Repealed. Laws 2006, LB 1248, § 92.

(h) NON-UNITED-STATES CITIZENS

68-1070. Non-United-States citizens; assistance; eligibility.

(i) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

68-1071. Repealed. Laws 2006, LB 1248, § 92.
68-1072. Repealed. Laws 2006, LB 1248, § 92.

(j) FALSE MEDICAID CLAIMS ACT

68-1073. Transferred to section 68-934.
68-1074. Transferred to section 68-935.
68-1075. Transferred to section 68-936.
68-1076. Transferred to section 68-937.
68-1077. Transferred to section 68-938.
68-1078. Transferred to section 68-939.
68-1079. Transferred to section 68-940.

Section
68-1080. Transferred to section 68-941.
68-1081. Transferred to section 68-942.
68-1082. Transferred to section 68-943.
68-1083. Transferred to section 68-944.
68-1084. Transferred to section 68-945.
68-1085. Transferred to section 68-946.
68-1086. Transferred to section 68-947.

(k) MEDICAID REFORM ACT

68-1087. Repealed. Laws 2006, LB 1248, § 92.
68-1088. Repealed. Laws 2006, LB 1248, § 92.
68-1089. Repealed. Laws 2006, LB 1248, § 92.
68-1090. Repealed. Laws 2006, LB 1248, § 92.
68-1091. Repealed. Laws 2006, LB 1248, § 92.
68-1092. Repealed. Laws 2006, LB 1248, § 92.
68-1093. Repealed. Laws 2006, LB 1248, § 92.
68-1094. Repealed. Laws 2006, LB 1248, § 92.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

68-1095. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1095.01. Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.
68-1096. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1097. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1098. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.
68-1099. Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

68-10,100. Transferred to section 68-926.
68-10,101. Transferred to section 68-927.
68-10,102. Transferred to section 68-928.
68-10,103. Transferred to section 68-929.
68-10,104. Transferred to section 68-930.
68-10,105. Transferred to section 68-931.
68-10,106. Transferred to section 68-932.
68-10,107. Transferred to section 68-933.

(a) ASSISTANCE TO THE AGED, BLIND, OR DISABLED

68-1001 Assistance to the aged, blind, or disabled; program; administration.

There is hereby established in and for the State of Nebraska a program to be known as assistance to the aged, blind, or disabled, which assistance shall be administered by the Department of Health and Human Services. Such assistance shall consist of money payments to, medical care in behalf of, or any type of remedial care in behalf of needy individuals.

Source: Laws 1965, c. 395, § 1, p. 1264; Laws 1982, LB 522, § 36; Laws 1996, LB 1044, § 304.

68-1001.01 Department of Health and Human Services; rules and regulations; promulgate.

For the purpose of adding to the security and social adjustment of former and potential recipients of assistance to the aged, blind, and disabled, and of medical assistance, the Department of Health and Human Services is authorized to promulgate rules and regulations providing for services to such persons.

Source: Laws 1969, c. 558, § 1, p. 2274; Laws 1996, LB 1044, § 305; Laws 2007, LB296, § 264.

Regulations adopted hereunder provide appeal forms may be filed with the county division and that place of hearing shall be the county in which appellant resides. Downer v. Ihms, 192 Neb. 594, 223 N.W.2d 148 (1974).

68-1001.02 Assistance; action for reimbursement; statute of limitations; when commences to run.

No statute of limitations shall apply to any claim or cause of action, belonging to the county or state on account of the payment of assistance to the aged, blind or disabled while the recipient, former recipient, spouse, or dependent children of such recipient survive.

Source: Laws 1935, Spec. Sess., c. 28, § 13, p. 172; C.S.Supp.,1941, § 68-269; R.S.1943, § 68-216; Laws 1965, c. 395, § 22, p. 1272; R.S.1943, (1990), § 68-216.

Statute of limitations on claim for reimbursement does not begin to run while recipient is alive. Boone County Old Age Assistance Board v. Myhre, 149 Neb. 669, 32 N.W.2d 262 (1948).

68-1002 Persons eligible for assistance.

In order to qualify for assistance to the aged, blind, or disabled, an individual:

(1) Must be a bona fide resident of the State of Nebraska, except that a resident of another state who enters the State of Nebraska solely for the purpose of receiving care in a home licensed by the Department of Health and Human Services shall not be deemed to be a bona fide resident of Nebraska while such care is being provided;

(2) Shall not be receiving care or services as an inmate of a public institution, except as a patient in a medical institution, and if the individual is a patient in an institution for tuberculosis or mental diseases, he or she has attained the age of sixty-five years;

(3) Shall not have deprived himself or herself directly or indirectly of any property whatsoever for the purpose of qualifying for assistance to the aged, blind, or disabled;

(4) May receive care in a public or private institution only if such institution is subject to a state authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and

(5) Must be in need of shelter, maintenance, or medical care.

Source: Laws 1965, c. 395, § 2, p. 1264; Laws 1965, c. 396, § 1, p. 1274; Laws 1965, c. 397, § 1, p. 1276; Laws 1967, c. 409, § 2, p. 1273; Laws 1969, c. 343, § 5, p. 1208; Laws 1977, LB 480, § 1; Laws 1996, LB 1044, § 306; Laws 2007, LB296, § 265.

The clear import of this section is to prevent citizens from raiding the public purse when they possess sufficient resources to care for themselves. This section provides an exception to the general rule expressed in section 30-2352 that a renunciation of assets relates back to the death of the decedent ''for all purposes''; that is, this section declares a citizen ineligible if he has deprived himself ''directly or indirectly of any property whatsoever'' for the purpose of qualifying for assistance. Hoesly v. State, 243 Neb. 304, 498 N.W.2d 571 (1993).

Under the language of this section, depriving oneself of resources is not, in and of itself, the disqualifying act; disqualification results from doing so with the intention and for the purpose of becoming eligible for public assistance. Meier v. State, 227 Neb. 376, 417 N.W.2d 771 (1988).

68-1003 Assistance to the aged; additional qualifications required.

In order to qualify for assistance to the aged, an individual must, in addition to the requirements set forth in section 68-1002, have attained the age of sixty-five years.

Source: Laws 1965, c. 395, § 3, p. 1265.

68-1004 Assistance to the blind; additional qualifications required.

In order to qualify for assistance to the blind, an individual must, in addition to the requirements set forth in section 68-1002, have been determined to be blind by an examination by a physician skilled in diseases of the eye or by an optometrist.

Source: Laws 1965, c. 395, § 4, p. 1265; Laws 1977, LB 311, § 1.

68-1005 Assistance to the disabled; additional qualifications required; department; powers and duties.

In order to qualify for assistance to the disabled, an individual shall, in addition to the requirements set forth in section 68-1002, be considered to be disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than one hundred eighty days or, in the case of a child under eighteen years of age, if he or she suffers from any medically determinable physical or mental impairment of comparable severity. In determining eligibility for assistance to the disabled, the Department of Health and Human Services may adopt the determination of the Social Security Administration that an individual is or is not disabled for the purposes of the federal programs of Supplemental Security Income or Old Age Survivors' and Disability Insurance, except that if the Social Security Administration has denied benefits to an individual on the basis of the duration of the individual's disability, the department shall perform an independent medical review of such individual's disability.

Source: Laws 1965, c. 395, § 5, p. 1266; Laws 1976, LB 454, § 1; Laws 1977, LB 311, § 2; Laws 1984, LB 1127, § 1; Laws 1996, LB 1044, § 307.

68-1006 Assistance to the aged, blind, or disabled; amount authorized per person; payment.

The amount of assistance to the aged, blind or disabled shall be based on the need of the individual and the circumstances existing in each case. When permitted by the federal old age and survivors insurance act, any accumulations of increased benefits under such act may be disregarded when determining need. Payments shall be made by state warrant directly to each recipient.

Source: Laws 1965, c. 395, § 6, p. 1266; Laws 1965, c. 397, § 2, p. 1277; Laws 1967, c. 410, § 1, p. 1274; Laws 1969, c. 535, § 2, p. 2180.

68-1006.01 Personal needs allowance; amount authorized.

The Department of Health and Human Services shall include in the standard of need for eligible aged, blind, and disabled persons at least fifty dollars per month for a personal needs allowance if such persons reside in an alternative living arrangement.

For purposes of this section, an alternative living arrangement shall include board and room, a boarding home, a certified adult family home, a licensed assisted-living facility, a licensed group home for children or child-caring

agency, a licensed center for the developmentally disabled, and a long-term care facility.

Source: Laws 1991, LB 57, § 1; Laws 1996, LB 1044, § 308; Laws 1997, LB 608, § 3; Laws 1999, LB 119, § 1; Laws 2000, LB 819, § 79.

68-1007 Determination of need; elements considered; amounts disregarded.

In determining need for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall take into consideration all other income and resources of the individual claiming such assistance, as well as any expenses reasonably attributable to the earning of any such income, except as otherwise provided in this section. In making such determination with respect to any individual who is blind, there shall be disregarded the first eighty-five dollars per month of earned income plus one-half of earned income in excess of eighty-five dollars per month and, for a period not in excess of twelve months, such additional amounts of other income and resources, in the case of an individual who has an approved plan for achieving self-support, as may be necessary for the fulfillment of such plan. In making such determination with respect to an individual who has attained age sixty-five, or who is permanently and totally disabled, and is claiming aid to the aged, blind, or disabled, the department shall disregard earned income at least to the extent such income was disregarded on January 1, 1972, as provided in 42 U.S.C. 1396a(f).

Source: Laws 1965, c. 395, § 7, p. 1266; Laws 1967, c. 411, § 1, p. 1275; Laws 1969, c. 539, § 1, p. 2189; Laws 1972, LB 760, § 1; Laws 1982, LB 522, § 37; Laws 1987, LB 255, § 1; Laws 1996, LB 1044, § 309; Laws 2007, LB296, § 266.

Cross References

Available resources, computation, see section 68-129.

68-1008 Application for assistance; investigation; notification.

Upon the filing of an application for assistance to the aged, blind, or disabled, the Department of Health and Human Services shall make such investigation as it deems necessary to determine the circumstances existing in each case. Each applicant and recipient shall be notified in writing as to (1) the approval or disapproval of any application, (2) the amount of payments awarded, (3) any change in the amount of payments awarded, and (4) the discontinuance of payments.

Source: Laws 1965, c. 395, § 8, p. 1267; Laws 1967, c. 253, § 2, p. 673; Laws 1977, LB 312, § 8; Laws 1982, LB 522, § 38; Laws 1996, LB 1044, § 310; Laws 2007, LB296, § 267.

68-1009 Repealed. Laws 1982, LB 522, § 46.

68-1010 Repealed. Laws 1982, LB 522, § 46.

68-1011 Repealed. Laws 1972, LB 760, § 2.

68-1012 Repealed. Laws 1969, c. 532, § 2.

68-1013 Assistance to the aged, blind, and disabled; not vested right; not assignable; exemption from levy.

No person shall have any vested right to any claim against the county or state for assistance of any kind by virtue of being or having been a recipient of assistance to the aged, blind or disabled, aid to dependent children, or medical assistance for the aged. No such assistance shall be alienable by assignment or transfer, or be subject to attachment, garnishment or any other legal process.

Source: Laws 1965, c. 394, § 1, p. 1261.

68-1014 Assistance; payment to guardian or conservator; when authorized.

If any guardian or conservator shall have been appointed to take charge of the property of any recipient of assistance to the aged, blind, or disabled, aid to dependent children, or medical assistance, such assistance payments shall be made to the guardian or conservator upon his or her filing with the Department of Health and Human Services a certified copy of his or her letters of guardianship or conservatorship.

Source: Laws 1965, c. 394, § 2, p. 1261; Laws 1982, LB 522, § 39; Laws 1996, LB 1044, § 311; Laws 2007, LB296, § 268.

(b) PROCEDURE AND PENALTIES

68-1015 Assistance; investigation; attendance of witnesses; production of records; subpoena power; oaths.

For the purpose of any investigation or hearing, the chief executive officer of the Department of Health and Human Services and the division directors appointed pursuant to section 81-3115, through authorized agents, shall have the power to compel, by subpoena, the attendance and testimony of witnesses and the production of books and papers. Witnesses may be examined on oath or affirmation.

Source: Laws 1965, c. 394, § 3, p. 1262; Laws 1982, LB 522, § 40; Laws 1996, LB 1044, § 312; Laws 2007, LB296, § 269.

68-1016 Assistance; appeals; procedure.

The chief executive officer of the Department of Health and Human Services, or his or her designated representative, shall provide for granting an opportunity for a fair hearing to any individual whose claim for assistance to the aged, blind, or disabled, aid to dependent children, emergency assistance, medical assistance, commodities, or Supplemental Nutrition Assistance Program benefits is denied, is not granted in full, or is not acted upon with reasonable promptness. An appeal shall be taken by filing with the department a written notice of appeal setting forth the facts on which the appeal is based. The department shall thereupon, in writing, notify the appellant of the time and place for hearing which shall be not less than one week nor more than six weeks from the date of such notice. Hearings shall be before the duly authorized agent of the department. On the basis of evidence adduced, the duly authorized agent shall enter a final order on such appeal, which order shall be transmitted to the appellant.

Source: Laws 1965, c. 394, § 4, p. 1262; Laws 1969, c. 540, § 1, p. 2190; Laws 1982, LB 522, § 41; Laws 1989, LB 362, § 9; Laws 1996, LB 1044, § 313; Laws 1998, LB 1073, § 57; Laws 2007, LB296, § 270; Laws 2009, LB288, § 25.

One seeking public assistance has the burden of proving entitlement to the benefits. Dobrovolny v. Dunning, 221 Neb. 67, 375 N.W.2d 123 (1985).

Orders of the Department of Public Welfare made pursuant to this section may be reviewed by petition in error as well as by appeal. Downer v. Ihms, 192 Neb. 594, 223 N.W.2d 148 (1974).

68-1017 Assistance; violations; penalties.

Any person, including vendors and providers of medical assistance and social services, who, by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or aids or abets any person to obtain or to attempt to obtain (1) an assistance certificate of award to which he or she is not entitled, (2) any commodity, any foodstuff, any food coupon, any Supplemental Nutrition Assistance Program coupon, electronic benefit, or electronic benefit card, or any payment to which such individual is not entitled or a larger payment than that to which he or she is entitled, (3) any payment made on behalf of a recipient of medical assistance or social services, or (4) any other benefit administered by the Department of Health and Human Services, or who violates any statutory provision relating to assistance to the aged, blind, or disabled, aid to dependent children, social services, or medical assistance, commits an offense and shall upon conviction be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1965, c. 394, § 5, p. 1262; Laws 1969, c. 541, § 1, p. 2192; Laws 1977, LB 39, § 127; Laws 1984, LB 1127, § 2; Laws 1996, LB 1044, § 314; Laws 1998, LB 1073, § 58; Laws 2007, LB296, § 271; Laws 2009, LB288, § 26.

68-1017.01 Supplemental Nutrition Assistance Program; violations; penalties.

(1) A person commits an offense if he or she knowingly uses, alters, or transfers any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program in any manner not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program coupons, electronic benefits, electronic benefit cards, or authorizations is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(2) A person commits an offense if he or she knowingly (a) possesses any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program when such individual is not authorized by law to possess them, (b) redeems Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards for purposes not authorized by law. An offense under this subsection shall be a Class III misdemeanor if the value of the Supplemental Nutrition Assistance Program coupons, electronic benefits, electronic benefit cards, or authoriza-

tions is less than five hundred dollars and shall be a Class IV felony if the value is five hundred dollars or more.

(3) A person commits an offense if he or she knowingly possesses blank authorizations to participate in the Supplemental Nutrition Assistance Program when such possession is not authorized by law. An offense under this subsection shall be a Class IV felony.

(4) When any Supplemental Nutrition Assistance Program coupons, electronic benefits, or electronic benefit cards or any authorizations to participate in the Supplemental Nutrition Assistance Program of various values are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense, and the values aggregated in determining the grade of the offense.

Source: Laws 1984, LB 1127, § 3; Laws 1998, LB 1073, § 59; Laws 2009, LB288, § 27.

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; report; contents; person ineligible; when.

(1)(a) The Department of Health and Human Services shall apply for and utilize to the maximum extent possible, within limits established by the Legislature, any and all appropriate options available to the state under the federal Supplemental Nutrition Assistance Program and regulations adopted under such program to maximize the number of Nebraska residents being served under such program within such limits. The department shall seek to maximize federal funding for such program and minimize the utilization of General Funds for such program and shall employ the personnel necessary to determine the options available to the state and issue the report to the Legislature required by subdivision (b) of this subsection.

(b) The department shall report annually to the Health and Human Services Committee of the Legislature by December 1 on efforts by the department to carry out the provisions of this subsection. Such report shall provide the committee with all necessary and appropriate information to enable the committee to conduct a meaningful evaluation of such efforts. Such information shall include, but not be limited to, a clear description of various options available to the state under the federal Supplemental Nutrition Assistance Program, the department's evaluation of and any action taken by the department with respect to such options, the number of persons being served under such program, and any and all costs and expenditures associated with such program.

(c) The Health and Human Services Committee of the Legislature, after receipt and evaluation of the report required in subdivision (b) of this subsection, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) Within the limits specified in this subsection, the State of Nebraska opts out of the provision of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as such act existed on January 1, 2009, that eliminates eligibility for the Supplemental Nutrition Assistance Program for any person convicted of a felony involving the possession, use, or distribution of a controlled substance.

(b) A person shall be ineligible for Supplemental Nutrition Assistance Program benefits under this subsection if he or she (i) has had three or more felony convictions for the possession or use of a controlled substance or (ii) has been convicted of a felony involving the sale or distribution of a controlled substance or the intent to sell or distribute a controlled substance. A person with one or two felony convictions for the possession or use of a controlled substance shall only be eligible to receive Supplemental Nutrition Assistance Program benefits under this subsection if he or she is participating in or has completed a state-licensed or nationally accredited substance abuse treatment program since the date of conviction. The determination of such participation or completion shall be made by the treatment provider administering the program.

Source: Laws 2003, LB 667, § 22; Laws 2005, LB 301, § 2; Laws 2008, LB171, § 1; Laws 2009, LB288, § 28.

(c) MEDICAL ASSISTANCE

68-1018 Transferred to section 68-903.

68-1019 Transferred to section 68-911.

68-1019.01 Transferred to section 68-912.

68-1019.02 Repealed. Laws 2006, LB 1248, § 92.

68-1019.03 Repealed. Laws 2006, LB 1248, § 92.

68-1019.04 Repealed. Laws 2006, LB 1248, § 92.

68-1019.05 Repealed. Laws 2006, LB 1248, § 92.

68-1019.06 Repealed. Laws 2006, LB 1248, § 92.

68-1019.07 Repealed. Laws 1996, LB 1044, § 985.

68-1019.08 Repealed. Laws 1996, LB 1155, § 121.

68-1019.09 Repealed. Laws 2006, LB 1248, § 92.

68-1020 Transferred to section 68-915.

68-1021 Transferred to section 68-906.

68-1021.01 Repealed. Laws 2006, LB 1248, § 92.

68-1022 Transferred to section 68-910.

68-1023 Transferred to section 68-908.

68-1023.01 Repealed. Laws 1993, LB 816, § 22.

68-1024 Repealed. Laws 2006, LB 1248, § 92.

68-1025 Repealed. Laws 2006, LB 1248, § 92.

68-1025.01 Transferred to section 68-913.

68-1026 Transferred to section 68-916.

68-1027 Transferred to section 68-917.

68-1028 Transferred to section 68-918.

68-1029 Repealed. Laws 2006, LB 1248, § 92.

68-1030 Repealed. Laws 2006, LB 1248, § 92.

68-1031 Repealed. Laws 2006, LB 1248, § 92.

68-1032 Repealed. Laws 1993, LB 816, § 22.

68-1033 Repealed. Laws 2006, LB 1248, § 92.

68-1034 Repealed. Laws 2006, LB 1248, § 92.

68-1035 Repealed. Laws 2006, LB 1248, § 92.

68-1035.01 Repealed. Laws 2006, LB 1248, § 92.

68-1036 Repealed. Laws 2006, LB 1248, § 92.

68-1036.01 Repealed. Laws 1996, LB 1155, § 121.

68-1036.02 Transferred to section 68-919.

68-1036.03 Transferred to section 68-920.

68-1037 Repealed. Laws 2006, LB 1248, § 92.

68-1037.01 Transferred to section 68-1073.

68-1037.02 Transferred to section 68-1074.

68-1037.03 Transferred to section 68-1075.

68-1037.04 Transferred to section 68-1079.

68-1037.05 Transferred to section 68-1080.

68-1037.06 Repealed. Laws 2000, LB 1135, § 34.

(d) ENTITLEMENT OF SPOUSE

68-1038 Transferred to section 68-921.

68-1039 Transferred to section 68-922.

68-1040 Transferred to section 68-923.

68-1041 Repealed. Laws 1989, LB 362, § 19.

68-1042 Transferred to section 68-924.

68-1043 Transferred to section 68-925.

68-1044 Repealed. Laws 1989, LB 362, § 19.

68-1045 Repealed. Laws 1989, LB 362, § 19.

68-1046 Repealed. Laws 1989, LB 362, § 19.

(e) TRUSTS

68-1047 Repealed. Laws 2000, LB 1352, § 4.

(f) MANAGED CARE PLAN

68-1048 Repealed. Laws 2006, LB 1248, § 92.

68-1049 Repealed. Laws 2006, LB 1248, § 92.

68-1050 Repealed. Laws 2006, LB 1248, § 92.

68-1051 Repealed. Laws 2006, LB 1248, § 92.

68-1052 Repealed. Laws 2000, LB 892, § 7.

68-1053 Repealed. Laws 2000, LB 892, § 7.

68-1054 Repealed. Laws 2000, LB 892, § 7.

68-1055 Repealed. Laws 2000, LB 892, § 7.

68-1056 Repealed. Laws 2006, LB 1248, § 92.

68-1057 Repealed. Laws 2006, LB 1248, § 92.

68-1058 Repealed. Laws 2006, LB 1248, § 92.

68-1059 Repealed. Laws 2006, LB 1248, § 92.

68-1060 Repealed. Laws 2006, LB 1248, § 92.

68-1061 Repealed. Laws 2006, LB 1248, § 92.

68-1062 Repealed. Laws 2006, LB 1248, § 92.

68-1063 Repealed. Laws 2006, LB 1248, § 92.

68-1064 Repealed. Laws 2005, LB 301, § 78.

68-1065 Repealed. Laws 2000, LB 892, § 7.

68-1066 Repealed. Laws 2000, LB 892, § 7.

(g) MEDICAID RECIPIENTS PARTICIPATING IN MANAGED CARE PLAN

68-1067 Repealed. Laws 2006, LB 1248, § 92.

68-1068 Repealed. Laws 2006, LB 1248, § 92.

68-1069 Repealed. Laws 2006, LB 1248, § 92.

(h) NON-UNITED-STATES CITIZENS

68-1070 Non-United-States citizens; assistance; eligibility.

(1) If the following non-United-States citizens meet the income and other requirements for participation in the medical assistance program established pursuant to the Medical Assistance Act, in the program for financial assistance

pursuant to section 43-512, in the Supplemental Nutrition Assistance Program administered by the State of Nebraska pursuant to the federal Food and Nutrition Act of 2008 as the act existed on January 1, 2009, or in the program for assistance to the aged, blind, and disabled, such persons shall be eligible for such program or benefits:

(a) Non-United-States citizens lawfully admitted, regardless of the date entry was granted, into the United States for permanent residence;

(b) Refugees admitted under section 207 of the federal Immigration and Naturalization Act, non-United-States citizens granted asylum under section 208 of such federal act, and non-United-States citizens whose deportation is withheld under section 243(h) of such federal act, regardless of the date of entry into the United States; and

(c) Individuals for whom coverage is mandated under federal law.

(2) Individuals eligible for the Supplemental Nutrition Assistance Program under this section shall receive any Supplemental Nutrition Assistance Program coupons or electronic benefits or a state voucher which can be used only for food products authorized under the federal Food and Nutrition Act of 2008 as the act existed on January 1, 2009, in the amount of the Supplemental Nutrition Assistance Program benefit for which this individual was otherwise eligible but for the citizenship provisions of Public Law 104-193, 110 Stat. 2105 (1996).

(3) The income and resources of any individual who assists a non-United-States citizen to enter the United States by signing an affidavit of support shall be deemed available in determining the non-United-States citizen's eligibility for assistance until the non-United-States citizen becomes a United States citizen.

Source: Laws 1997, LB 864, § 6; Laws 1998, LB 1073, § 61; Laws 2006, LB 1248, § 70; Laws 2009, LB288, § 29.

Cross References

Medical Assistance Act, see section 68-901.

(i) SCHOOL DISTRICTS AND EDUCATIONAL SERVICE UNITS

68-1071 Repealed. Laws 2006, LB 1248, § 92.

68-1072 Repealed. Laws 2006, LB 1248, § 92.

(j) FALSE MEDICAID CLAIMS ACT

68-1073 Transferred to section 68-934.

68-1074 Transferred to section 68-935.

68-1075 Transferred to section 68-936.

68-1076 Transferred to section 68-937.

68-1077 Transferred to section 68-938.

68-1078 Transferred to section 68-939.

68-1079 Transferred to section 68-940.

68-1080 Transferred to section 68-941.

68-1081 Transferred to section 68-942.

68-1082 Transferred to section 68-943.

68-1083 Transferred to section 68-944.

68-1084 Transferred to section 68-945.

68-1085 Transferred to section 68-946.

68-1086 Transferred to section 68-947.

(k) MEDICAID REFORM ACT

68-1087 Repealed. Laws 2006, LB 1248, § 92.

68-1088 Repealed. Laws 2006, LB 1248, § 92.

68-1089 Repealed. Laws 2006, LB 1248, § 92.

68-1090 Repealed. Laws 2006, LB 1248, § 92.

68-1091 Repealed. Laws 2006, LB 1248, § 92.

68-1092 Repealed. Laws 2006, LB 1248, § 92.

68-1093 Repealed. Laws 2006, LB 1248, § 92.

68-1094 Repealed. Laws 2006, LB 1248, § 92.

(l) LONG-TERM CARE PARTNERSHIP PROGRAM

68-1095 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1095.01 Long-Term Care Partnership Program; established; Department of Health and Human Services; duties.

The Long-Term Care Partnership Program is established. The program shall be administered by the Department of Health and Human Services in accordance with federal requirements on state long-term care partnership programs. In order to implement the program, the department shall file a state plan amendment with the federal Centers for Medicare and Medicaid Services pursuant to the requirements set forth in 42 U.S.C. 1396p(b), as such section existed on March 1, 2006.

Source: Laws 2006, LB 965, § 7; Laws 2007, LB296, § 272.

68-1096 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1097 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1098 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

68-1099 Repealed. Laws 2006, LB 965, § 10; Laws 2006, LB 1248, § 92.

(m) COORDINATION OF BENEFITS

68-10,100 Transferred to section 68-926.

68-10,101 Transferred to section 68-927.

68-10,102 Transferred to section 68-928.

68-10,103 Transferred to section 68-929.

68-10,104 Transferred to section 68-930.

68-10,105 Transferred to section 68-931.

68-10,106 Transferred to section 68-932.

68-10,107 Transferred to section 68-933.

ARTICLE 11
ADVISORY COMMITTEE ON AGING

Section

68-1101 Division of Medicaid and Long-Term Care Advisory Committee on Aging; created; members; appointment; term; vacancy.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging is created. The committee shall consist of twelve members, one from each of the planning-and-service areas as designated in the Nebraska Community Aging Services Act and the remaining members from the state at large.

Any member serving on the Department of Health and Human Services Advisory Committee on Aging on July 1, 2007, shall continue to serve until his or her term expires. As the terms of the members expire, the Governor shall, on or before March 1 of such year, appoint or reappoint a member of the committee for a term of four years. Each area agency on aging serving a designated planning-and-service area shall recommend to the Governor the names of persons qualified to represent the senior population of the planning-and-service area. Any vacancy on the committee shall be filled for the unexpired term. A vacancy shall exist when a member of the committee ceases to be a resident of the planning-and-service area from which he or she was appointed or reappointed. The members to be appointed to represent a planning-and-service area shall be residents of the planning-and-service area from which they are appointed. Members of the advisory committee shall not be elected public

officials or staff of the Department of Health and Human Services or of an area agency on aging.

Source: Laws 1965, c. 409, § 1, p. 1311; Laws 1971, LB 97, § 1; Laws 1982, LB 404, § 30; Laws 1987, LB 456, § 1; Laws 1996, LB 1044, § 341; Laws 2007, LB296, § 273.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

68-1102 Repealed. Laws 1987, LB 456, § 2.

68-1103 Committee; officers; meetings.

Members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging shall meet within thirty days after their appointment to select from the members of the committee a chairperson, and such other officers as committee members deem necessary, who shall serve for a period of two years. The committee shall elect a new chairperson every two years thereafter. The committee shall meet at regular intervals at least once each year and may hold special meetings at the call of the chairperson or at the request of a majority of the members of the committee. The committee shall meet at the seat of government or such other place as the members of the committee may designate.

Source: Laws 1965, c. 409, § 3, p. 1312; Laws 1971, LB 97, § 2; Laws 1982, LB 404, § 31; Laws 1996, LB 1044, § 342; Laws 2007, LB296, § 274.

68-1104 Committee; duties.

The Division of Medicaid and Long-Term Care Advisory Committee on Aging shall advise the Division of Medicaid and Long-Term Care of the Department of Health and Human Services regarding:

(1) The collection of facts and statistics and special studies of conditions and problems pertaining to the employment, health, financial status, recreation, social adjustment, or other conditions and problems pertaining to the general welfare of the aging of the state;

(2) Recommendations to state and local agencies serving the aging for purposes of coordinating such agencies' activities, and reports from the various state agencies and institutions on matters within the jurisdiction of the committee;

(3) The latest developments of research, studies, and programs being conducted throughout the nation on the problems and needs of the aging;

(4) The mutual exchange of ideas and information on the aging between federal, state, and local governmental agencies, private organizations, and individuals; and

(5) Cooperation with agencies, federal, state, and local or private organizations, in administering and supervising demonstration programs of services for aging designed to foster continued participation of older people in family and community life and to prevent insofar as possible the onset of dependency and the need for long-term institutional care.

The committee shall have the power to create special committees to undertake such special studies as members of the committee shall authorize and may

include noncommittee members who are qualified in any field of activity related to the general welfare of the aging in the membership of such committees.

Source: Laws 1965, c. 409, § 4, p. 1313; Laws 1971, LB 97, § 3; Laws 1981, LB 545, § 20; Laws 1982, LB 404, § 32; Laws 1996, LB 1044, § 343; Laws 2007, LB296, § 275.

68-1105 Committee; special committees; members; compensation.

The members of the Division of Medicaid and Long-Term Care Advisory Committee on Aging, and noncommittee members serving on special committees, shall receive no compensation for their services other than reimbursement for actual and necessary expenses as provided in sections 81-1174 to 81-1177. Committee expenses and any office expenses shall be paid from funds made available to the committee by the Legislature.

Source: Laws 1965, c. 409, § 5, p. 1314; Laws 1971, LB 97, § 4; Laws 1974, LB 660, § 4; Laws 1981, LB 204, § 104; Laws 1982, LB 404, § 33; Laws 1996, LB 1044, § 344; Laws 2007, LB296, § 276.

68-1106 Committee; federal funds; grants; gifts; acceptance; disposition.

The Governor may receive federal funds or any grants and gifts on behalf of the state for such purposes as are authorized by the provisions of sections 68-1101 to 68-1106. All federal funds, grants, and gifts shall be deposited with the State Treasurer and shall be used only for such purposes agreed upon as conditions for receiving the funds, grants and gifts.

Source: Laws 1965, c. 409, § 6, p. 1314.

68-1107 Repealed. Laws 1975, LB 443, § 18.

68-1108 Repealed. Laws 1975, LB 443, § 18.

68-1109 Repealed. Laws 1975, LB 443, § 18.

68-1110 Repealed. Laws 1985, LB 4, § 1.

68-1111 Repealed. Laws 1985, LB 4, § 1.

ARTICLE 12

SOCIAL SERVICES

Section

Section
68-1209. Applications for social services; information; safeguarded.
68-1210. Department of Health and Human Services; certain foster care children; payment rates.

68-1201 Repealed. Laws 1985, LB 1, § 4.

68-1202 Social services; services included.

Social services may be provided on behalf of recipients with payments for such social services made directly to vendors. Social services shall include those mandatory and optional services to former, present, or potential social services recipients provided for under the federal Social Security Act, as such act existed on September 4, 2005, and described by the State of Nebraska in the approved State Plan for Services. Such services may include, but shall not be limited to, foster care for children, child care, family planning, treatment for alcoholism and drug addiction, treatment for persons with mental retardation, health-related services, protective services for children, homemaker services, employment services, foster care for adults, protective services for adults, transportation services, home management and other functional education services, housing improvement services, legal services, adult day services, home delivered or congregate meals, educational services, and secondary prevention services, including, but not limited to, home visitation, child screening and early intervention, and parenting education programs.

Source: Laws 1973, LB 511, § 2; Laws 1986, LB 1177, § 28; Laws 2000, LB 819, § 82; Laws 2005, LB 264, § 1.

68-1203 Social services; provided or purchased; dependent children and families; aged, blind, or disabled persons.

Social services shall be provided or purchased for dependent children and families, aged persons, blind individuals, and disabled individuals as defined by state law and to former and potential recipients as defined in federal regulations.

Source: Laws 1973, LB 511, § 3.

68-1204 Social services or specialized developmental disability services; rules and regulations; agreements; fee schedules.

(1) For the purpose of providing or purchasing social services described in section 68-1202, the state hereby accepts and assents to all applicable provisions of the federal Social Security Act, as such act existed on July 1, 2006. The Department of Health and Human Services may adopt and promulgate rules and regulations, enter into agreements, and adopt fee schedules with regard to social services described in section 68-1202.

(2) The department shall adopt and promulgate rules and regulations to administer funds under Title XX of the federal Social Security Act, as such title existed on July 1, 2006, designated for specialized developmental disability services.

Source: Laws 1973, LB 511, § 4; Laws 1991, LB 830, § 31; Laws 1996, LB 1044, § 345; Laws 2006, LB 994, § 66; Laws 2007, LB296, § 277.

68-1205 Matching funds.

The matching funds required to obtain the federal share of the services described in section 68-1202 may come from either state, county, or donated sources in amounts and other provisions to be determined by the Department of Health and Human Services.

Source: Laws 1973, LB 511, § 5; Laws 1996, LB 1044, § 346; Laws 2006, LB 994, § 67; Laws 2007, LB296, § 278.

68-1206 Social services; administration; contracts; payments.

(1) The Department of Health and Human Services shall administer the program of social services in this state. The department may contract with other social agencies for the purchase of social services at rates not to exceed those prevailing in the state or the cost at which the department could provide those services. The statutory maximum payments for the separate program of aid to dependent children shall apply only to public assistance grants and shall not apply to payments for social services.

(2) In determining the rate or rates to be paid by the department for child care as defined in section 43-2605, the department shall adopt a fixed-rate schedule for the state or a fixed-rate schedule for an area of the state applicable to each child care program category of provider as defined in section 71-1910 which may claim reimbursement for services provided by the federal Child Care Subsidy program, except that the department shall not pay a rate higher than that charged by an individual provider to that provider's private clients. The schedule may provide separate rates for care for infants, for children with special needs, including disabilities or technological dependence, or for other individual categories of children. The schedule shall be effective on October 1 of every year and shall be revised annually by the department.

Source: Laws 1973, LB 511, § 6; Laws 1982, LB 522, § 44; Laws 1991, LB 836, § 26; Laws 1995, LB 401, § 22; Laws 1996, LB 1044, § 347; Laws 2006, LB 994, § 68; Laws 2007, LB296, § 279.

68-1207 Department of Health and Human Services; public child welfare services; supervise; caseload requirements.

The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department shall establish and maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. In establishing the standards for such caseloads, the department shall (1) include the workload factors that may differ due to geographic responsibilities, office location, and the travel required to provide a timely response in the investigation of abuse and neglect, the protection of children, and the provision of services to children and families in a uniform and consistent statewide manner and (2) consider workload standards recommended by national child welfare organizations and factors related to the attainment of such standards. The department shall consult with the appropriate employee representative in establishing such standards.

To carry out the provisions of this section, the Legislature shall provide funds for additional staff.

Source: Laws 1973, LB 511, § 7; Laws 1985, LB 1, § 2; Laws 1990, LB 720, § 1; Laws 1996, LB 1044, § 348; Laws 2005, LB 264, § 2; Laws 2007, LB296, § 280.

68-1207.01 Department of Health and Human Services; caseloads report; contents.

The Department of Health and Human Services shall annually provide a report to the Legislature and Governor outlining the caseloads of child protective services, the factors considered in their establishment, and the fiscal resources necessary for their maintenance. Such report shall include:

(1) A comparison of caseloads established by the department with the workload standards recommended by national child welfare organizations along with the amount of fiscal resources necessary to maintain such caseloads in Nebraska;

(2)(a) The number of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) statistics on the average length of employment in such positions, statewide and by health and human services area;

(3)(a) The average caseload of child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska and (b) the outcomes of such cases, including the number of children reunited with their families, children adopted, children in guardianships, placement of children with relatives, and other permanent resolutions established, statewide and by health and human services area; and

(4) The average cost of training child welfare services caseworkers and case managers employed by the State of Nebraska and child welfare services workers, providing services directly to children and families, who are under contract with the State of Nebraska or employed by a private entity under contract with the State of Nebraska, statewide and by health and human services area.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281.

68-1208 Rules and regulations; right of appeal and hearings.

Authority to adopt rules and regulations and the right to appeal and hearing shall be the same in the program of social services as in the program of assistance to families and children and the aged, blind, or disabled.

Source: Laws 1973, LB 511, § 8.

68-1209 Applications for social services; information; safeguarded.

Information regarding applicants for or recipients of social services shall be safeguarded and shall be used only for purposes connected with the administration of social services.

Source: Laws 1973, LB 511, § 9.

68-1210 Department of Health and Human Services; certain foster care children; payment rates.

Notwithstanding any other provision of law, the Department of Health and Human Services shall have the authority through rule or regulation to establish payment rates for children with special needs who are in foster care and in the custody of the department.

Source: Laws 1990, LB 1022, § 1; Laws 1996, LB 1044, § 350; Laws 2007, LB296, § 282.

ARTICLE 13

OLDER NEBRASKANS ACT

Section
68-1301. Repealed. Laws 1990, LB 1067, § 2.
68-1302. Repealed. Laws 1990, LB 1067, § 2.
68-1303. Repealed. Laws 1990, LB 1067, § 2.
68-1304. Repealed. Laws 1990, LB 1067, § 2.
68-1305. Repealed. Laws 1990, LB 1067, § 2.
68-1306. Repealed. Laws 1990, LB 1067, § 2.

68-1301 Repealed. Laws 1990, LB 1067, § 2.

68-1302 Repealed. Laws 1990, LB 1067, § 2.

68-1303 Repealed. Laws 1990, LB 1067, § 2.

68-1304 Repealed. Laws 1990, LB 1067, § 2.

68-1305 Repealed. Laws 1990, LB 1067, § 2.

68-1306 Repealed. Laws 1990, LB 1067, § 2.

ARTICLE 14

GENETICALLY HANDICAPPED PERSONS

Section
68-1401. Act, how cited.
68-1402. Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.
68-1403. Genetically handicapped persons; medical care program; services and treatment included.
68-1404. Medical care of genetically handicapping conditions; reimbursement.
68-1405. Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.
68-1406. Benefits and services; payment liability.

68-1401 Act, how cited.

Sections 68-1401 to 68-1406 shall be known and may be cited as the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 1.

68-1402 Department of Health and Human Services; program for persons with genetically handicapping conditions; duties.

The Department of Health and Human Services shall establish and administer a program for the medical care of persons of all ages with genetically handicapping conditions, including cystic fibrosis, hemophilia, and sickle cell disease, through physicians and health care providers that are qualified pursu-

ant to the regulations of the department to provide such medical services. The department shall adopt such rules and regulations pursuant to the Administrative Procedure Act, as are necessary for the implementation of the provisions of the Genetically Handicapped Persons Act. The department shall establish priorities for the use of funds and provision of services under the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 2; Laws 1996, LB 1044, § 351; Laws 2006, LB 994, § 69; Laws 2007, LB296, § 283.

Cross References

Administrative Procedure Act, see section 84-920.

68-1403 Genetically handicapped persons; medical care program; services and treatment included.

The program established under the Genetically Handicapped Persons Act, which shall be under the supervision of the Department of Health and Human Services, shall include any or all of the following:

(1) Initial intake and diagnostic evaluation;

(2) The cost of blood transfusion and use of blood derivatives, or both;

(3) Rehabilitation services, including reconstructive surgery;

(4) Expert diagnosis;

(5) Medical treatment;

(6) Surgical treatment;

(7) Hospital care;

(8) Physical therapy;

(9) Occupational therapy;

(10) Materials and prescription drugs;

(11) Appliances and their upkeep, maintenance, and care;

(12) Maintenance, transportation, or care incidental to any other form of services; and

(13) Appropriate and sufficient staff to carry out the provisions of the Genetically Handicapped Persons Act.

Source: Laws 1980, LB 989, § 3; Laws 1996, LB 1044, § 352; Laws 2006, LB 994, § 70; Laws 2007, LB296, § 284.

68-1404 Medical care of genetically handicapping conditions; reimbursement.

Reimbursement under sections 68-1401 to 68-1406 shall be made to the extent services are not available or provided to the recipient under any other private, state, or federal programs or under other contractual or legal entitlement including insurance, but no provision in sections 68-1401 to 68-1406 shall be construed as limiting in any way state participation in any federal governmental program for medical care of persons with genetically handicapping conditions.

Source: Laws 1980, LB 989, § 4.

68-1405 Department of Health and Human Services; medical care program; uniform standards of financial eligibility and payment; establish.

The Department of Health and Human Services shall establish uniform standards of financial eligibility for the treatment services under the program established under the Genetically Handicapped Persons Act, including a uniform formula for the payment of services by physicians and health care providers rendered under such program and such formula for payment shall provide for reimbursement at rates similar to those set by other federal and state programs, and private entitlements. The standards of the department for financial eligibility shall be the same as those established for Medically Handicapped Children's Services, as administered by the department. All county or district health departments shall use the uniform standards for financial eligibility and uniform formula for payment established by the department. All payments shall be used in support of the program for services established under the act.

The department shall establish payment schedules for services.

Source: Laws 1980, LB 989, § 5; Laws 1985, LB 249, § 5; Laws 1996, LB 1044, § 353; Laws 2006, LB 994, § 71; Laws 2007, LB296, § 285.

68-1406 Benefits and services; payment liability.

The health care benefits and services specified in sections 68-1401 to 68-1406, to the extent that such benefits and services are neither provided under any other federal or state law nor provided or available under other contractual or legal entitlements including insurance of the person, shall be provided to any patient who is a resident of this state and is made eligible by the provisions of sections 68-1401 to 68-1406. After such patient has utilized such contractual or legal entitlements, the payment liability under section 68-1405 shall then be applied to the remaining cost of the genetically handicapped person's services.

Source: Laws 1980, LB 989, § 6.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

Section

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

68-1501 Act, how cited.

Sections 68-1501 to 68-1519 shall be known and may be cited as the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 1.

68-1502 Legislative findings.

The Legislature finds and declares that:

(1) The family is vital to the fundamental development of each person in the State of Nebraska;

(2) A growing number of families are searching for ways to provide for disabled family members in the home rather than placing them in state or private institutional or residential facilities;

(3) Employable disabled persons should be encouraged to engage in employment and ultimately become self-supporting;

(4) Necessary services should be available to families caring for a disabled family member so that disabled persons may remain in the home, obtain employment if possible, and maintain a more independent form of living;

(5) The State of Nebraska should make every effort to preserve the family unit, to insure that decisions of providing for a disabled person are based on the best interests of the disabled person and the family, and to provide services to disabled persons which promote independent living and employability; and

(6) The State of Nebraska should promote cost-effective health care alternatives for disabled persons.

Source: Laws 1981, LB 389, § 2.

68-1503 Terms, defined.

For purposes of the Disabled Persons and Family Support Act:

(1) Department means the Department of Health and Human Services;

(2) Disabled family member or disabled person means a person who has a medically determinable severe, chronic disability which:

(a) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(b) Is likely to continue indefinitely;

(c) Results in substantial functional limitations in two or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, (vii) work skills or work tolerance, and (viii) economic sufficiency; and

(d) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, vocational rehabilitation, or other services which are of lifelong or extended duration and are individually planned and coordinated; and

(3) Other support programs means all forms of local, state, or federal assistance, grants-in-aid, educational programs, or support provided by public or private funds for disabled persons or their families.

Source: Laws 1981, LB 389, § 3; Laws 1996, LB 1044, § 354; Laws 2006, LB 994, § 72; Laws 2007, LB296, § 286.

68-1504 Department of Health and Human Services; provide support; expenses; compensation.

The department may provide support to families providing for a disabled member in the home and to disabled persons in independent living situations. Such support may be made available to compensate for present and future expenses, including, but not limited to:

(1) The purchase or lease of special equipment or architectural modifications of a home made to improve or facilitate the care, treatment, therapy, general living conditions, or access of the disabled person;

(2) Medical, surgical, therapeutic, diagnostic, and other health services related to the disability or disabilities of the disabled person;

(3) Counseling or training programs which assist the family in providing proper care for the disabled family member or assist the disabled person in an independent living situation and which provide for the special needs of the family or disabled person;

(4) Attendant care, respite care, home health aid services, homemaker services, and chore services which provide assistance with training, routine body functions, dressing, preparation, consumption of food, and ambulation as well as providing respite assistance to the family;

(5) Transportation services for the disabled person; and

(6) Transportation, room, and board costs incurred by the family or disabled person during evaluations or treatment of the disabled family member which receive prior approval from the department.

Source: Laws 1981, LB 389, § 4.

68-1505 Support; families; eligibility requirements.

Families may be eligible to receive support pursuant to sections 68-1501 to 68-1519 if the family (1) resides in the State of Nebraska, (2) has a family member who is disabled and is (a) living at home or (b) residing in a state or private institutional or residential facility but could return home under sections

68-1501 to 68-1519, and (3) has insufficient income to provide for the total cost of care for the disabled family member.

Source: Laws 1981, LB 389, § 5.

68-1506 Support; disabled person in independent living situation; eligibility requirements.

A disabled person in an independent living situation may be eligible to receive support pursuant to sections 68-1501 to 68-1519 if the person (1) is a resident of the State of Nebraska, (2) requires care to remain within an independent living situation, and (3) has insufficient income to provide for the total cost of such care.

Source: Laws 1981, LB 389, § 6; Laws 1985, LB 87, § 1.

68-1507 Eligibility; department determine.

The determination of disability and the need for programs and services shall be supported by current program plans, evaluations, and medical reports which shall be provided to the department upon request. The department may decide that additional evaluations of the disabled person are necessary to determine eligibility or the need for programs and services. Such additional evaluations shall be provided by the department.

Source: Laws 1981, LB 389, § 7.

68-1508 Support; allocation of costs; basis.

The department may allocate costs for programs and services between the department and the family or the disabled person in an independent living situation. Such cost allocation shall be based on the need for support pursuant to sections 68-1501 to 68-1519 and shall not be based on income guidelines or fee schedules established for other programs administered by the department.

Source: Laws 1981, LB 389, § 8.

68-1509 Department; needs and eligibility criteria; factors.

The department, in considering the needs and eligibility criteria of families and disabled persons, shall consider various factors, including, but not limited to:

(1) Total family income, except that the amount which the spouse may designate as provided in section 68-922 shall be excluded in determining total family income per month;

(2) The cost of providing supplemental services to the family or the disabled person;

(3) The need for each program or service received by the family or the disabled person;

(4) The eligibility of the family or the disabled person for other support programs;

(5) The costs of providing for the family or the disabled person in an independent living situation, notwithstanding the special circumstances of providing for a disabled person;

(6) The number of persons in the family; and

(7) The availability of insurance to cover the cost of needed programs and services.

If assets have been designated for an individual in accordance with section 68-922, such assets shall not be considered in determining the eligibility for support of the individual's disabled spouse.

Source: Laws 1981, LB 389, § 9; Laws 1988, LB 419, § 16; Laws 1989, LB 362, § 16; Laws 2006, LB 1248, § 71.

68-1510 Support; supplemental to other programs; availability of other programs; department; duties.

The support available under sections 68-1501 to 68-1519 shall be supplemental to other support programs for which the family or disabled person is eligible and is not intended to reduce the responsibility for the provision of services and support by such other programs. The department shall (1) determine whether any request under sections 68-1501 to 68-1519 is appropriate to and available from other support programs, (2) deny any request if the requested assistance is appropriate to and available from other support programs, and (3) provide information and referral to all families and disabled persons whose request for assistance was denied pursuant to this section on the procedure for applying for other appropriate and available support programs.

Source: Laws 1981, LB 389, § 10.

68-1511 Department; payment of support; provide assistance; providers of programs and services.

The department may, by agreement with the head of the family or disabled person, provide support pursuant to sections 68-1501 to 68-1519 (1) directly to the family or the disabled person, or (2) directly to qualified programs and services. The department shall assist each family or disabled person receiving support under sections 68-1501 to 68-1519 in locating qualified programs and services. The family or the disabled person may be required to be responsible for contracting for those programs and services which the department approves and shall furnish the department a copy of each contract. The family or the disabled person may compensate the providers of such programs and services directly. Providers of programs and services shall be required to comply with all standards established by the department for participation pursuant to sections 68-1501 to 68-1519.

Source: Laws 1981, LB 389, § 11.

68-1512 Support; maximum allowance; limitations.

The maximum support allowable under sections 68-1501 to 68-1519 shall be (1) three hundred dollars per month per disabled person averaged over any one-year period or (2) three hundred dollars per month per family averaged over any one-year period for the first disabled family member plus one hundred fifty dollars per month averaged over any one-year period for each additional disabled family member. The department shall not provide support, pursuant to sections 68-1501 to 68-1519, to any family or disabled person whose gross income less the cost of medical or other care specifically related to the disability exceeds the median family income for a family of four in Nebraska,

except that the department shall make adjustments for the actual size of the family.

Source: Laws 1981, LB 389, § 12; Laws 1985, LB 87, § 2.

68-1513 Department; review needs of support recipient.

The department shall review the needs of each family or disabled person receiving support under sections 68-1501 to 68-1519 on a regular basis, as established by the department, or upon the showing of a change of circumstances by the head of the family.

Source: Laws 1981, LB 389, § 13.

68-1514 Denial of support; hearing provided.

The chief executive officer of the department, or his or her designated representative, shall provide an opportunity for a fair hearing to any family or disabled person who is denied support pursuant to the Disabled Persons and Family Support Act.

Source: Laws 1981, LB 389, § 14; Laws 1996, LB 1044, § 355; Laws 2006, LB 994, § 73; Laws 2007, LB296, § 287.

68-1515 Rules and regulations; contents.

The department shall adopt and promulgate rules and regulations, as necessary, to implement sections 68-1501 to 68-1519, including:

(1) Standards and procedures for determining approval of qualified programs and services to participate under sections 68-1501 to 68-1519;

(2) Identification of the need for programs and services of families providing for a disabled family member in the home or of disabled persons in an independent living situation;

(3) Identification of the need for support to families and disabled persons and procedures for the provision of support under sections 68-1501 to 68-1519;

(4) Procedures for review of each family or disabled person receiving support under sections 68-1501 to 68-1519;

(5) Procedures and guidelines for determining priorities, eligibility standards, and eligibility criteria for the selection of families and disabled persons to participate in programs pursuant to sections 68-1501 to 68-1519;

(6) Procedures and guidelines for determining when support pursuant to sections 68-1501 to 68-1519 would be a duplication of support from other support programs or would result in excessive support to a family or disabled person; and

(7) An annual determination of the family income guidelines necessary to carry out the provisions of section 68-1512. Such guidelines shall be based on population, per capita income, and other data provided by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1981, LB 389, § 15.

68-1516 Department; provide support; when; priorities.

The department shall begin providing support pursuant to sections 68-1501 to 68-1519 on July 1, 1982. From July 1, 1982, to July 1, 1986, the department

shall provide support on a priority basis to families and disabled persons eligible to receive support pursuant to sections 68-1501 to 68-1519. The department shall give priority to those families providing for a severely or multiple disabled family member and to severely or multiple disabled persons in independent living situations. Priority shall also be given to those families and disabled persons (1) with the greatest need for support to maintain the disabled person in the family home or independent living situation, (2) who have the greatest possibility of maintaining the disabled person in the home or independent living situation on a continual basis, and (3) who demonstrate that support pursuant to sections 68-1501 to 68-1519 will provide the most cost-effective form of care for the disabled person.

Source: Laws 1981, LB 389, § 16.

68-1517 Department; expenditure of funds authorized.

The department may expend funds for the administration of the Disabled Persons and Family Support Act and for support pursuant to the act.

Source: Laws 1981, LB 389, § 17; Laws 1990, LB 917, § 1.

68-1518 Department; report; contents.

The department shall file an annual report with the Governor and the Clerk of the Legislature on or before January 1 of each year beginning January 1, 1983. Such report shall include:

(1) The number of families and disabled persons applying for support pursuant to sections 68-1501 to 68-1519 and the number of families and disabled persons receiving support pursuant to sections 68-1501 to 68-1519;

(2) The types of services and programs being applied for and those being provided through sections 68-1501 to 68-1519;

(3) The effects of the support provided under sections 68-1501 to 68-1519 on the disabled and their families; and

(4) Any proposals for amendment of sections 68-1501 to 68-1519.

Source: Laws 1981, LB 389, § 18.

68-1519 Obtaining support in violation of sections; violation; penalty.

Any person who by means of a willfully false statement or representation, or by impersonation or other device, obtains or attempts to obtain, or who aids or abets any other person in obtaining support under sections 68-1501 to 68-1519 shall, upon conviction thereof, be punished pursuant to section 68-1017.

Source: Laws 1981, LB 389, § 19.

(b) NEBRASKA LIFESPAN RESPITE SERVICES PROGRAM

68-1520 Legislative findings.

The Legislature finds that:

(1) Supporting the efforts of families and caregivers to care for individuals at home is efficient, cost effective, and humane. Families receiving occasional respite services are less likely to request admission of an individual to a nursing home, foster care, or other out-of-home care at public expense;

(2) Respite services reduce family and caregiver stress, enhance family and caregiver coping ability, and strengthen family and caregiver ability to meet the challenging demands of caring for family members;

(3) Respite services reduce the risk of abuse and neglect of children, senior citizens, and other vulnerable groups; and

(4) Coordinated, noncategorical respite services must be available locally to provide reliable respite services when needed by families and caregivers regardless of where they live in Nebraska.

Source: Laws 1999, LB 148, § 1.

68-1521 Terms, defined.

For purposes of sections 68-1520 to 68-1528:

(1) Caregiver means an individual providing ongoing care for an individual unable to care for himself or herself;

(2) Community lifespan respite services program means a noncategorical respite services program that:

(a) Is operated by a community-based private nonprofit or for-profit agency or a public agency that provides respite services;

(b) Receives funding through the Nebraska Lifespan Respite Services Program established under section 68-1522;

(c) Serves an area in one or more of the six regional services areas of the department;

(d) Acts as a single local source for respite services information and referral; and

(e) Facilitates access to local respite services;

(3) Department means the Department of Health and Human Services;

(4) Noncategorical care means care without regard to the age, type of special needs, or other status of the individual receiving care;

(5) Provider means an individual or agency selected by a family or caregiver to provide respite services to an individual with special needs;

(6) Respite care means the provision of short-term relief to primary caregivers from the demands of ongoing care for an individual with special needs; and

(7) Respite services includes:

(a) Recruiting and screening of paid and unpaid respite care providers;

(b) Identifying local training resources and organizing training opportunities for respite care providers;

(c) Matching of families and caregivers with providers and other types of respite care;

(d) Linking families and caregivers with payment resources;

(e) Identifying, coordinating, and developing community resources for respite services;

(f) Quality assurance and evaluation; and

(g) Assisting families and caregivers to identify respite care needs and resources.

Source: Laws 1999, LB 148, § 2; Laws 2006, LB 994, § 74; Laws 2007, LB296, § 288.

68-1522 Nebraska Lifespan Respite Services Program; established.

The department shall establish the Nebraska Lifespan Respite Services Program to develop and encourage statewide coordination of respite services and to work with community-based private nonprofit or for-profit agencies, public agencies, and interested citizen groups in the establishment of community lifespan respite services programs. The Nebraska Lifespan Respite Services Program shall:

(1) Provide policy and program development support, including, but not limited to, data collection and outcome measures;

(2) Identify and promote resolution of local and state-level policy concerns;

(3) Provide technical assistance to community lifespan respite services programs;

(4) Develop and distribute respite services information;

(5) Promote the exchange of information and coordination among state and local governments, community lifespan respite services programs, agencies serving individuals unable to care for themselves, families, and respite care advocates to encourage efficient provision of respite services and reduce duplication of effort;

(6) Ensure statewide access to community lifespan respite services programs; and

(7) Monitor and evaluate implementation of community lifespan respite services programs.

Source: Laws 1999, LB 148, § 3; Laws 2006, LB 994, § 75; Laws 2007, LB296, § 289.

68-1523 Program; administration.

(1) The department, through the Nebraska Lifespan Respite Services Program, shall coordinate the establishment of community lifespan respite services programs. The program shall accept proposals submitted in the form and manner required by the program from community-based private nonprofit or for-profit agencies or public agencies that provide respite services to operate community lifespan respite services programs. According to criteria established by the department, the Nebraska Lifespan Respite Services Program shall designate and fund agencies described in this section to operate community lifespan respite services programs.

(2) The department shall create the position of program specialist for the Nebraska Lifespan Respite Services Program to administer the program.

Source: Laws 1999, LB 148, § 4; Laws 2006, LB 994, § 76; Laws 2007, LB296, § 290.

68-1524 Program; requirements.

Each community lifespan respite services program established pursuant to section 68-1523 shall:

(1) Involve key local individuals and agencies in the community lifespan respite services program planning process; and

(2) Create an advisory committee to advise the community lifespan respite services program on how the program may best serve the needs of families and caregivers of individuals unable to care for themselves. Other members shall include respite services providers, representatives of local service agencies,

consumers, and other community representatives. Committee membership shall represent senior citizens, individuals with special needs, and families at risk of abuse and neglect.

Source: Laws 1999, LB 148, § 5.

68-1525 Services; requirements.

Respite services made available through the Nebraska Lifespan Respite Services Program shall:

(1) Include a flexible array of respite care options responsive to family and caregiver needs and available before families and caregivers are in a crisis;

(2) Be sensitive to the unique needs, strengths, and cultural values of an individual, family, or caregiver;

(3) Offer the most efficient access to an array of coordinated respite services that are built on existing community support and services;

(4) Be driven by community strengths, needs, and resources; and

(5) Use a variety of funds and resources, including, but not limited to:

(a) Family or caregiver funds;

(b) Private and volunteer resources;

(c) Public funds; and

(d) Exchange of care among families or caregivers.

Source: Laws 1999, LB 148, § 6.

68-1526 Rules and regulations.

The department shall adopt and promulgate rules and regulations for the operation and administration of the Nebraska Lifespan Respite Services Program, including, but not limited to:

(1) Criteria, procedures, and timelines for designation of the community-based private nonprofit or for-profit agencies or public agencies that will receive funding to provide respite services under community lifespan respite services programs;

(2) A requirement that each community lifespan respite services program publicize the telephone number and address where families and caregivers may contact the program; and

(3) Procedures and guidelines for determining priorities, eligibility standards, and eligibility criteria for the selection of caregivers to participate in programs funded under the Nebraska Lifespan Respite Services Program.

Source: Laws 1999, LB 148, § 7; Laws 2001, LB 692, § 1.

68-1527 Department; duties.

The department shall establish at least six community lifespan respite services programs in Nebraska on or before July 1, 2000.

Source: Laws 1999, LB 148, § 8.

68-1528 Use of funds.

The Nebraska Lifespan Respite Services Program may use the funds appropriated to the program for the following purposes:

(1) The purposes established in sections 68-1522 and 68-1523;

(2) Costs related to developing provider recruitment and training, information and referral, outreach, and other components of the provision of respite services;

(3) One-time-only startup costs related to the establishment of the community lifespan respite services program; and

(4) Minimum administrative costs for operating the Nebraska Lifespan Respite Services Program.

Source: Laws 1999, LB 148, § 9.

ARTICLE 16
HOMELESS SHELTER ASSISTANCE

Section

68-1601 Act, how cited.

Sections 68-1601 to 68-1608 shall be known and may be cited as the Homeless Shelter Assistance Trust Fund Act.

Source: Laws 1992, LB 1192, § 1.

68-1602 Legislative intent.

It is the intent of the Homeless Shelter Assistance Trust Fund Act to provide funds aimed at meeting the needs of homeless individuals and other individuals with locally identified and documented special housing needs.

It is further the intent of the act that homeless individuals shall include persons who lack a fixed, regular, and adequate nighttime residence and who are living in a publicly or privately subsidized hotel, motel, shelter, or other temporary living quarters or any place not designated for or ordinarily used as regular sleeping accommodations for human beings. The act is not intended to include those individuals in prison or detained pursuant to state or federal law.

Source: Laws 1992, LB 1192, § 2.

68-1603 Department, defined.

For purposes of the Homeless Shelter Assistance Trust Fund Act, department shall mean the Department of Health and Human Services.

Source: Laws 1992, LB 1192, § 3; Laws 2001, LB 516, § 1.

68-1604 Homeless Shelter Assistance Trust Fund; created; use; investment.

The Homeless Shelter Assistance Trust Fund is hereby created. The fund shall include the proceeds raised from the documentary stamp tax and remitted for such fund pursuant to section 76-903. Money remitted to such fund shall be used by the department (1) for grants to eligible shelter providers as set out in

section 68-1605 for the purpose of assisting in the alleviation of homelessness, to provide temporary and permanent shelters for homeless persons, to encourage the development of projects which link housing assistance to programs promoting the concept of self-sufficiency, and to address the needs of the migrant farmworker and (2) to aid in defraying the expenses of administering the Homeless Shelter Assistance Trust Fund Act, which shall not exceed seventy-five thousand dollars in any fiscal year.

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.

Source: Laws 1992, LB 1192, § 4; Laws 1994, LB 1066, § 62; Laws 2001, LB 516, § 2; Laws 2005, LB 301, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-1605 Department; grants; requirements; application; considerations.

(1) The department shall use the funds in the Homeless Shelter Assistance Trust Fund to finance grants for projects or programs that provide for persons or families with special housing needs.

(2) Projects and programs to which funds shall be provided include eligible community, neighborhood-based, housing-assistance organizations, institutions, associations, and societies or corporations that:

(a) Are exempt from taxation under section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01;

(b) Do not discriminate on the basis of age, religion, sex, race, color, or national origin;

(c) Provide residential housing for at least eight hours of every twenty-four-hour period; and

(d) Operate a drug-free premises.

(3) The department shall establish an advisory committee consisting of individuals and groups involved with housing issues, in particular those pertaining to persons or families with special housing needs, to advise and assist the department in establishing criteria, priorities, and guidelines for eligibility requirements, application requirements and dates, public notification, and monitoring and shall assist the department in adopting and promulgating rules and regulations for providing grants from the fund.

(4) An application submitted by an organization representing a number of eligible applicants may be considered even though the representing organization may itself not qualify under this section.

(5) In making grants pursuant to the Homeless Shelter Assistance Trust Fund Act, the department shall consider, but not be limited to, the following factors:

(a) The number of night-lodging units provided by the applicant as measured by the number of persons housed per night;

(b) Participation by the applicant in community planning processes and activities aimed at preventing and alleviating homelessness;

(c) Other verifiable units of service provided by the applicant; and

(d) The geographic distribution of funds.

Source: Laws 1992, LB 1192, § 5; Laws 1995, LB 574, § 59; Laws 2001, LB 516, § 3.

68-1606 Grant money; use.

Grant money may be used by eligible recipients in meeting the special housing needs of individuals including meals, transportation, counseling, housekeeping, care management, and personal emergency response needs.

Source: Laws 1992, LB 1192, § 6.

68-1607 Recipients; requirements.

Recipients of grant money shall, upon request, submit to the department records for verification of the information included on applications submitted for grants from the Homeless Shelter Assistance Trust Fund.

Source: Laws 1992, LB 1192, § 7; Laws 2001, LB 516, § 4.

68-1608 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Homeless Shelter Assistance Trust Fund Act.

Source: Laws 1992, LB 1192, § 8.

ARTICLE 17

WELFARE REFORM

(a) WELFARE REFORM ACT

Section

(a) WELFARE REFORM ACT

68-1701 Repealed. Laws 1996, LB 892, § 3.

68-1702 Repealed. Laws 1996, LB 892, § 3.

68-1703 Repealed. Laws 1996, LB 892, § 3.

68-1704 Repealed. Laws 1996, LB 892, § 3.

68-1705 Repealed. Laws 1996, LB 892, § 3.

68-1706 Repealed. Laws 1996, LB 892, § 3.

68-1707 Repealed. Laws 1996, LB 892, § 3.

68-1708 Act, how cited.

Sections 68-1708 to 68-1734 shall be known and may be cited as the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 8; Laws 1995, LB 455, § 8; Laws 1996, LB 892, § 1; Laws 1997, LB 864, § 11; Laws 2000, LB 1352, § 2.

68-1709 Legislative findings and declarations.

The Legislature finds and declares that the primary purpose of the welfare programs in this state is to provide temporary, transitional support for Nebraska families so that economic self-sufficiency is attained in as expeditious a manner as possible. The Legislature further finds and declares that this goal is to be accomplished through individualized assessments of the personal and economic resources of each applicant for public assistance and through the use of individualized self-sufficiency contracts.

The Legislature further finds and declares that it is in the best interests of the state, its citizens, and especially those receiving public assistance through welfare programs in this state that the welfare system be reformed to support, stabilize, and enhance individual and family life in Nebraska by: (1) Pursuing

efforts to help Nebraskans avoid poverty and prevent the need for welfare; (2) eliminating existing complex and conflicting welfare programs; (3) creating a simplified program in place of the existing complex and conflicting welfare programs; (4) removing disincentives to work and promoting economic self-sufficiency; (5) providing individuals and families the support needed to move from public assistance to economic self-sufficiency; (6) changing public assistance from entitlements to temporary, contract-based support; (7) removing barriers to public assistance for intact families; (8) basing the duration of public assistance upon the individual circumstances of each applicant within the time limits allowed under federal law; (9) providing continuing assistance and support for persons sixty-five years of age or over and for individuals and families with physical, mental, or intellectual limitations preventing total economic self-sufficiency; (10) supporting regular school attendance of children; and (11) promoting public sector, private sector, individual, and family responsibility.

Source: Laws 1994, LB 1224, § 9; Laws 2007, LB351, § 4.

68-1710 Legislative intent.

It is the intent of the Legislature that, with the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, the Department of Health and Human Services implement the Welfare Reform Act in a manner consistent with federal law.

Source: Laws 1997, LB 864, § 12; Laws 2007, LB351, § 5.

68-1711 Assessment tool; state agencies; utilize.

State agencies, including the Department of Health and Human Services and the Department of Labor, which assess training options, job readiness, adult basic skills, aptitudes, interests, workplace maturity, and career development of applicants for services shall utilize a common, comprehensive assessment tool.

Source: Laws 1994, LB 1224, § 11; Laws 1995, LB 455, § 9; Laws 1996, LB 1044, § 356.

68-1712 Repealed. Laws 1995, LB 455, § 27.

68-1713 Department of Health and Human Services; implementation of policies; transitional health care benefits.

(1) The Department of Health and Human Services shall implement the following policies:

(a) Permit Work Experience in Private for-Profit Enterprises;

(b) Permit Job Search;

(c) Permit Employment to be Considered a Program Component;

(d) Make Sanctions More Stringent to Emphasize Participant Obligations;

(e) Alternative Hearing Process;

(f) Permit Adults in Two-Parent Households to Participate in Activities Based on Their Self-Sufficiency Needs;

(g) Eliminate Exemptions for Individuals with Children Between the Ages of 12 Weeks and Age Six;

(h) Providing Poor Working Families with Transitional Child Care to Ease the Transition from Welfare to Self-Sufficiency;

(i) Provide Transitional Health Care for 12 Months After Termination of ADC if funding for such transitional medical assistance is available under Title XIX of the federal Social Security Act, as amended, as described in section 68-906;

(j) Require Adults to Ensure that Children in the Family Unit Attend School;

(k) Encourage Minor Parents to Live with Their Parents;

(l) Establish a Resource Limit of $4,000 for a single individual and $6,000 for two or more individuals for ADC;

(m) Exclude the Value of One Vehicle Per Family When Determining ADC Eligibility;

(n) Exclude the Cash Value of Life Insurance Policies in Calculating Resources for ADC;

(o) Establish the Supplemental Nutrition Assistance Program as a Continuous Benefit with Eligibility Reevaluated with Yearly Redeterminations;

(p) Establish a Budget the Gap Methodology Whereby Countable Earned Income is Subtracted from the Standard of the Need and Payment is Based on the Difference or Maximum Payment Level, Whichever is Less. That this Gap be Established at a Level that Encourages Work but at Least at a Level that Ensures that Those Currently Eligible for ADC do not Lose Eligibility Because of the Adoption of this Methodology;

(q) Adopt an Earned Income Disregard of Twenty Percent of Gross Earnings in the ADC Program and One Hundred Dollars in the Related Medical Assistance Program;

(r) Disregard Financial Assistance Received Intended for Books, Tuition, or Other Self-Sufficiency Related Use;

(s) Culture: Eliminate the 100-Hour Rule, The Quarter of Work Requirement, and The 30-Day Unemployed/Underemployed Period for ADC-UP Eligibility; and

(t) Make ADC a Time-Limited Program.

(2) The Department of Health and Human Services shall (a) apply for a waiver to allow for a sliding-fee schedule for the population served by the caretaker relative program or (b) pursue other public or private mechanisms, to provide for transitional health care benefits to individuals and families who do not qualify for cash assistance. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available.

Source: Laws 1994, LB 1224, § 13; Laws 1995, LB 455, § 10; Laws 1996, LB 1044, § 357; Laws 1997, LB 864, § 13; Laws 2002, Second Spec. Sess., LB 8, § 3; Laws 2006, LB 994, § 77; Laws 2007, LB351, § 6; Laws 2009, LB288, § 30.

68-1714 Repealed. Laws 1995, LB 455, § 27.

68-1715 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 15; Laws 1995, LB 455, § 11; Laws 1996, LB 1044, § 358.

68-1716 Repealed. Laws 2005, LB 301, § 78.

68-1717 Repealed. Laws 1997, LB 864, § 20.

68-1718 Financial assistance; comprehensive assets assessment required; contents; periodic assessments.

(1) At the time an individual or a family applies for financial assistance pursuant to section 43-512, an assessment shall be conducted. Eligibility determination shall begin with a comprehensive assets assessment, in which the applicant and case manager collaborate to identify the economic and personal resources available to the applicant. Each applicant shall work with only one case manager who shall facilitate all service provision.

(2) Each applicant's personal resources shall be assessed in the comprehensive assets assessment. For purposes of this section, personal resources shall include education, vocational skills, employment history, health, life skills, personal strengths, and support from family and the community. This assessment shall also include a determination of the applicant's goals, employment background, educational background, housing needs, child care and transportation needs, health care needs, and other barriers to economic self-sufficiency.

(3) The comprehensive assets assessment shall structure personal resources information and control subjectivity. The assessment shall be used:

(a) To develop a self-sufficiency contract under section 68-1719 and promote services which specifically lead to self-sufficiency; and

(b) To determine if the applicant should be referred to other community resources for assistance.

(4) Periodic assessments, including an exit assessment prior to implementation of the time limit on cash assistance as provided in section 68-1724, shall be conducted with recipients to establish if the terms of the self-sufficiency contract have been met by the recipient family and by the state.

Source: Laws 1994, LB 1224, § 18; Laws 1997, LB 864, § 14; Laws 2007, LB351, § 7.

68-1719 Self-sufficiency contract; purpose.

Based on the results of the comprehensive assets assessment under section 68-1718, the applicant and the case manager shall develop a self-sufficiency contract. The contract shall be built upon the premise of urgent action. To ensure that the applicant can make constant, measurable progress toward self-sufficiency, goals shall be set with timelines and benchmarks that facilitate forward momentum. In the case of an entire family applying for assistance, each family member shall have responsibilities within the self-sufficiency contract.

Source: Laws 1994, LB 1224, § 19.

''Participation in the program,'' within the meaning of section 68-1724, refers to participation in a self-sufficiency contract as described in this section, and the family cap established by section 68-1724 does not apply to families who are not partici-

pating in a self-sufficiency contract. Mason v. State, 267 Neb. 44, 627 N.W.2d 28 (2003).

The self-sufficiency contracts created under this section are creatures of statute, and not common law. The self-sufficiency contract serves as a means for the State and a recipient of public assistance to memorialize a specific plan of action by which a recipient can attain self-sufficiency, but is not given legal effect by the agreement of the parties and therefore is not a contract as that term is generally used in civil law. The enforceability of statutory requirements cannot be voided in the same manner as a civil contract that is created solely by agreement of the parties. Kosmicki v. State, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1720 Self-sufficiency contract; contents.

The responsibilities, roles, and expectations of the applicant family, the case manager, and all other service providers shall be detailed in the self-sufficiency contract developed under section 68-1719. The contract shall be signed by the applicant and by the case manager representing the state. The state and the applicant shall fulfill their respective terms of the contract.

Source: Laws 1994, LB 1224, § 20.

68-1721 Principal wage earner and other nonexempt members of applicant family; duties.

(1) Under the self-sufficiency contract developed under section 68-1719, the principal wage earner and other nonexempt members of the applicant family shall be required to participate in one or more of the following approved activities, including, but not limited to, education, job skills training, work experience, job search, or employment.

(2) Education shall consist of the general education development program, high school, Adult Basic Education, English as a Second Language, postsecondary education, or other education programs approved in the contract.

(3) Job skills training shall include vocational training in technical job skills and equivalent knowledge. Activities shall consist of formalized, technical job skills training, apprenticeships, on-the-job training, or training in the operation of a microbusiness enterprise. The types of training, apprenticeships, or training positions may include, but need not be limited to, the ability to provide services such as home repairs, automobile repairs, respite care, foster care, personal care, and child care. Job skills training shall be prioritized and approved for occupations that facilitate economic self-sufficiency.

(4) The purpose of work experience shall be to improve the employability of applicants by providing work experience and training to assist them to move promptly into regular public or private employment. Work experience shall mean unpaid work in a public, private, for-profit, or nonprofit business or organization. Work experience placements shall take into account the individual's prior training, skills, and experience. A placement shall not exceed six months.

(5) Job search shall assist adult members of recipient families in finding their own jobs. The emphasis shall be placed on teaching the individual to take responsibility for his or her own job development and placement.

(6) Employment shall consist of work for pay. The employment may be full-time or part-time but shall be adequate to help the recipient family reach economic self-sufficiency.

(7) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant shall be allowed to engage in vocational training that leads to an associate degree, a diploma, or a

certificate for a minimum of twenty hours per week for up to thirty-six months. This subsection terminates on September 30, 2012.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8; Laws 2009, LB458, § 1.

The postsecondary education provision of this section was intended to permit a recipient of public assistance to complete a course of postsecondary education within the cash assistance limitation period of section 68-1724. Kosmicki v. State, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1722 Legislative findings; case management practices and supportive services; department; powers and duties; extension of time limit on cash assistance; when.

The Legislature finds that the state has responsibilities to help ensure the success of the self-sufficiency contract for each recipient. The Department of Health and Human Services shall employ case management practices and supportive services to the extent necessary to facilitate movement toward self-sufficiency within the time limit on participation as provided in section 68-1724.

The department may purchase case management services. It is the intent of the Legislature that any case management utilized by the department shall include standards which emphasize communication skills; appropriate interviewing techniques; and methods for positive feedback, support, encouragement, and counseling. The case management provided shall also include a recognition of family dynamics and emphasize working with all family members; shall respect diversity; shall empower individuals; and shall include recognizing, capitalizing, and building on a family's strengths and existing support network. It is the intent of the Legislature that generally a case manager would have a family caseload of no more than seventy cases.

Supportive services shall include, but not be limited to, assistance with transportation expenses, participation and work expenses, parenting education, family planning, budgeting, and relocation to provide for specific needs critical to the recipient's or the recipient family's self-sufficiency contract. For purposes of this section, family planning shall not include abortion counseling, referral for abortion, or funding for abortion. If the state fails to meet the specific terms of the self-sufficiency contract, the time limit on cash assistance under section 68-1724 shall be extended.

Source: Laws 1994, LB 1224, § 22; Laws 1996, LB 1044, § 361; Laws 2007, LB351, § 9.

68-1723 Cash assistance; requirements; extension of time limit; when; hearing; review.

(1) Cash assistance shall be provided only while recipients are actively engaged in the specific activities outlined in the self-sufficiency contract developed under section 68-1719. If the recipients are not actively engaged in these activities, no cash assistance shall be paid.

(2) Recipient families with at least one adult with the capacity to work, as determined by the comprehensive assets assessment, shall participate in the self-sufficiency contract as a condition of receiving cash assistance. If any such adult fails to cooperate in carrying out the terms of the contract, the family shall be ineligible for cash assistance.

(a) Adult members of recipient families whose youngest child is between the ages of twelve weeks and six months shall engage in an individually determined number of part-time hours in activities such as family nurturing, preemployment skills, or education.

(b) Participation in activities outlined in the self-sufficiency contract shall not be required for one parent of a recipient family whose youngest child is under the age of twelve weeks.

(c) Cash assistance under section 68-1724 shall be extended: (i) To cover the twelve-week postpartum recovery period for children born to recipient families; and (ii) to recognize special medical conditions of such children requiring the presence of at least one adult member of the recipient family, as determined by the state, which extend past the age of twelve weeks.

(d) Full participation in the activities outlined in the self-sufficiency contract shall be required for adult members of a two-parent recipient family whose youngest child is over the age of six months. Part-time participation in activities outlined in the self-sufficiency contract shall be required for an adult member of a single-parent recipient family whose youngest child is under the age of six years.

(e) In cases in which the only adults in the recipient family do not have parental responsibility which shall mean such adults are not the biological or adoptive parents or stepparents of the children in their care, and assistance is requested for all family members, including the adults, the family shall participate in the activities outlined in the self-sufficiency contract as a condition of receiving cash assistance.

(f) Unemployed or underemployed absent and able-to-work parents of children in the recipient family may participate in self-sufficiency contracts, employment, and payment of child support, and such absent parents may be required to pay all or a part of the costs of the self-sufficiency contracts.

(3) Individual recipients and recipient families shall have the right to request an administrative hearing (a) for the purpose of reviewing compliance by the state with the terms of the self-sufficiency contract or (b) for the purpose of reviewing a determination by the department that the recipient or recipient family has not complied with the terms of the self-sufficiency contract. It is the intent of the Legislature that an independent mediation appeal process be developed as an option to be considered.

Source: Laws 1994, LB 1224, § 23; Laws 2007, LB351, § 10.

68-1724 Cash assistance; duration; reimbursement of expenses; when; conditions; extension of time limit.

(1) Cash assistance shall be provided for a period or periods of time not to exceed a total of sixty months for recipient families with children subject to the following:

(a) If the state fails to meet the specific terms of the self-sufficiency contract developed under section 68-1719, the sixty-month time limit established in this section shall be extended;

(b) The sixty-month time period for cash assistance shall begin within the first month of eligibility;

(c) When no longer eligible to receive cash assistance, assistance shall be available to reimburse work-related child care expenses even if the recipient

family has not achieved economic self-sufficiency. The amount of such assistance shall be based on a cost-shared plan between the recipient family and the state which shall provide assistance up to one hundred eighty-five percent of the federal poverty level for up to twenty-four months. A recipient family may be required to contribute up to twenty percent of such family's gross income for child care. It is the intent of the Legislature that transitional health care coverage be made available on a sliding-scale basis to individuals and families with incomes up to one hundred eighty-five percent of the federal poverty level if other health care coverage is not available; and

(d) The self-sufficiency contract shall be revised and cash assistance extended when there is no job available for adult members of the recipient family. It is the intent of the Legislature that available job shall mean a job which results in an income of at least equal to the amount of cash assistance that would have been available if receiving assistance minus unearned income available to the recipient family.

The department shall develop policy guidelines to allow for cash assistance to persons who have received the maximum cash assistance provided by this section and who face extreme hardship without additional assistance. For purposes of this section, extreme hardship means a recipient family does not have adequate cash resources to meet the costs of the basic needs of food, clothing, and housing without continuing assistance or the child or children are at risk of losing care by and residence with their parent or parents.

(2) Cash assistance conditions under the Welfare Reform Act shall be as follows:

(a) Adults in recipient families shall mean individuals at least nineteen years of age living with and related to a child eighteen years of age or younger and shall include parents, siblings, uncles, aunts, cousins, or grandparents, whether the relationship is biological, adoptive, or step;

(b) The payment standard shall be based upon family size;

(c) The adults in the recipient family shall ensure that the minor children regularly attend school. Education is a valuable personal resource. The cash assistance provided to the recipient family may be reduced when the parent or parents have failed to take reasonable action to encourage the minor children of the recipient family ages sixteen and under to regularly attend school. No reduction of assistance shall be such as may result in extreme hardship. It is the intent of the Legislature that a process be developed to insure communication between the case manager, the parent or parents, and the school to address issues relating to school attendance;

(d) Two-parent families which would otherwise be eligible under section 43-504 or a federally approved waiver shall receive cash assistance under this section;

(e) For minor parents, the assistance payment shall be based on the minor parent's income. If the minor parent lives with at least one parent, the family's income shall be considered in determining eligibility and cash assistance payment levels for the minor parent. If the minor parent lives independently, support shall be pursued from the parents of the minor parent. If the absent parent of the minor's child is a minor, support from his or her parents shall be pursued. Support from parents as allowed under this subdivision shall not be pursued when the family income is less than three hundred percent of the federal poverty guidelines; and

(f) For adults who are not biological or adoptive parents or stepparents of the child or children in the family, if assistance is requested for the entire family, including the adults, a self-sufficiency contract shall be entered into as provided in section 68-1719. If assistance is requested for only the child or children in such a family, such children shall be eligible after consideration of the family's income and if (i) the family cooperates in pursuing child support and (ii) the minor children of the family regularly attend school.

Source: Laws 1994, LB 1224, § 24; Laws 1995, LB 455, § 15; Laws 2007, LB351, § 11.

''Participation in the program,'' within the meaning of this section, refers to participation in a self-sufficiency contract as described in section 68-1719, and the family cap established by this section does not apply to families who are not participating in a self-sufficiency contract. Mason v. State, 267 Neb. 44, 627 N.W.2d 28 (2003).

The postsecondary education provision of section 68-1721 was intended to permit a recipient of public assistance to complete a course of postsecondary education within the cash assistance limitation period of this section. Kosmicki v. State, 264 Neb. 887, 652 N.W.2d 883 (2002).

68-1725 Alternative payment systems authorized.

The Department of Health and Human Services may either develop an electronic benefit system for purposes of eliminating as much paper and coupon conveyance of public assistance as is practical or provide cash in lieu of coupons.

Source: Laws 1994, LB 1224, § 25; Laws 1996, LB 1044, § 362.

68-1725.01 Repealed. Laws 2004, LB 940, § 4.

68-1726 Assistance under act; eligibility factors.

Based on the comprehensive assets assessment, each individual and family receiving assistance under the Welfare Reform Act shall reach for his or her highest level of economic self-sufficiency or the family's highest level of economic self-sufficiency. The following eligibility factors shall apply:

(1) Financial resources, excluding the primary home and furnishings and the primary automobile, shall not exceed four thousand dollars in value for a single individual and six thousand dollars in value for two or more individuals;

(2) Available resources, including, but not limited to, savings accounts and real estate, shall be used in determining financial resources;

(3) Income received by family members, except income earned by children attending school, shall be considered in determining total family income. Income earned by an individual or a family by working shall be treated differently than unearned income in determining the amount of cash assistance as follows:

(a) Earned income shall be counted in determining the level of cash assistance after disregarding an amount of earned income equal to twenty percent of earned income or other incentives to work;

(b) Financial assistance provided by other programs that support the transition to economic self-sufficiency shall be considered to the extent the payments are intended to provide for life's necessities; and

(c) Financial assistance or those portions of it intended for books, tuition, or other self-sufficiency-related expenses shall not be counted in determining financial resources. Such assistance shall include, but not be limited to, school grants, scholarships, vocational rehabilitation payments, Job Training Partner-

ship Act payments, and education-related loans or other loans that are expected to be repaid; and

(4) Individuals and families shall pursue potential sources of economic support, including, but not limited to, unemployment compensation and child support.

Source: Laws 1994, LB 1224, § 26; Laws 1997, LB 864, § 15.

68-1727 Family resource centers; legislative intent.

It is the intent of the Legislature that family resource centers be considered a priority in the utilization of the federal funding allocated to Nebraska through Family Preservation and Support Services, as provided by Public Law 103-66, 1993.

Source: Laws 1994, LB 1224, § 27.

68-1728 Services for families and children; legislative findings and declarations.

(1) The Legislature hereby finds and declares that: (a) The family is the cornerstone of society; (b) families have the primary responsibility for supporting their children; and (c) families require the support of their community and the state to fulfill their duties.

(2) The Legislature further finds that: (a) Many state initiatives for improving or reforming the systems of service delivery for children and their families have been identified and are underway within Nebraska; (b) there is a need to coordinate and promote communication in these initiatives to identify common visions and approaches and to establish linkages across the areas of health services, social services, family support services, mental health services, education, economic development, labor, and juvenile justice at the state level and the community level; and (c) these initiatives need continued support in order to empower communities and families to provide and promote an integrated, efficient, and effective service delivery system.

(3) The Legislature declares that it shall be the policy of the State of Nebraska (a) to promote the development of a statewide system of comprehensive, coordinated, family-centered, community-based, and culturally competent services for children and their families to assure that services help build strong families and provide appropriate environments for children and (b) that these services should be available, accessible, and equitable and, whenever possible, be located together.

Source: Laws 1994, LB 1224, § 28.

68-1729 Repealed. Laws 2007, LB 296, § 815.

68-1730 Repealed. Laws 2007, LB 296, § 815.

68-1731 Family services; legislative intent.

The Legislature recognizes that parents should continue to have the primary responsibility for meeting the needs of their children but that if a family requires services it should be able to receive services which are available, accessible, and equitable. It is the intent of the Legislature that such services should be coordinated between agencies serving common populations and that

whenever possible a plan should be implemented for location of services together to provide consistent, efficient, and effective services.

Source: Laws 1994, LB 1224, § 31.

68-1732 Integrated programs and policies; legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services, the State Department of Education, the Department of Labor, the Office of Probation Administration, the Department of Correctional Services, and the Department of Economic Development will have integrated programs and policies when serving a common customer. Organizational mergers and operating agreements shall be developed within state government which bring together the state's community-based child-serving and family-serving resources in the areas of health care services, social services, mental health services, developmental disabilities services, juvenile justice, and education. Such actions shall eliminate the need for the public to understand the differing roles, responsibilities, and services of the agencies enumerated in this section and their affiliates.

Source: Laws 1994, LB 1224, § 32; Laws 1996, LB 1044, § 365; Laws 2007, LB296, § 291.

68-1733 Planning process; state agencies; duty to establish.

The state agencies enumerated in section 68-1732 shall establish a planning process to:

(1) Assist communities in joining together to assess their resources and strengths;

(2) Assess what services are needed in participating communities and coordinate how such services should be developed and provided;

(3) Identify and support a plan for location of related human services and agencies together;

(4) Identify human services that already exist and decide how to coordinate such services most efficiently;

(5) Link existing planning processes;

(6) Promote decategorization of selected federal and state programs to bring about greater cohesiveness and flexibility when locating services together; and

(7) Cooperate and coordinate with building owners and other business owners in the community to assess the most efficient way to locate or relocate agencies.

Source: Laws 1994, LB 1224, § 33.

68-1734 Application process; legislative intent; common assessment tool.

It is the intent of the Legislature that the agencies enumerated in section 68-1732, whenever possible, shall develop a uniform, consolidated, and streamlined application process for all programs serving children and families. The application process shall be electronically linked so families will not have to repeat the application process. The state shall assist communities and eliminate barriers in developing a common application form and make the form available across the state. The application process shall provide for common data collection, intake, referral, and assessment and shall be ongoing. A single

common assessment tool shall be developed which captures information once for use in making the full range of state, local, and community support available as part of the cash assistance program established under the Welfare Reform Act.

Source: Laws 1994, LB 1224, § 34.

68-1735 Repealed. Laws 1995, LB 455, § 27.

(b) GOVERNOR'S ROUNDTABLE

68-1736 Repealed. Laws 2008, LB 797, § 35.

68-1737 Repealed. Laws 2008, LB 797, § 35.

(c) TRIBAL LANDS AND SERVICE AREAS

68-1738 Department of Health and Human Services; duty.

The Department of Health and Human Services shall make state funds available which are appropriated to meet the needs of people living on tribal lands or in tribal service areas as defined in section 43-1503 if the people residing on tribal lands or in tribal services areas choose to operate their own welfare reform programs.

Source: Laws 1999, LB 475, § 2.

ARTICLE 18

ICF/MR REIMBURSEMENT PROTECTION ACT

Section

68-1801 Act, how cited.

Sections 68-1801 to 68-1809 shall be known and may be cited as the ICF/MR Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 2.

68-1802 Terms, defined.

For purposes of the ICF/MR Reimbursement Protection Act:

(1) Department means the Department of Health and Human Services;

(2) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(3) Medical assistance program means the program established pursuant to the Medical Assistance Act; and

(4) Net revenue means the revenue paid to an intermediate care facility for the mentally retarded for resident care, room, board, and services less contractual adjustments and does not include revenue from sources other than operations, including, but not limited to, interest and guest meals.

Source: Laws 2004, LB 841, § 3; Laws 2006, LB 1248, § 72; Laws 2007, LB296, § 292.

Cross References

Medical Assistance Act, see section 68-901.

68-1803 Tax; rate; collection; report.

(1) Each intermediate care facility for the mentally retarded shall pay a tax equal to a percentage of its net revenue for the most recent State of Nebraska fiscal year. The percentage shall be (a) six percent prior to January 1, 2008, (b) five and one-half percent beginning January 1, 2008, through September 30, 2011, and (c) six percent beginning October 1, 2011.

(2) Taxes collected under this section shall be remitted to the State Treasurer for credit to the ICF/MR Reimbursement Protection Fund.

(3) Taxes collected pursuant to this section shall be reported on a separate line on the cost report of the intermediate care facility for the mentally retarded, regardless of how such costs are reported on any other cost report or income statement. The department shall recognize such tax as an allowable cost within the state plan for reimbursement of intermediate care facilities for the mentally retarded which participate in the medical assistance program. The tax shall be a direct pass-through and shall not be subject to cost limitations.

Source: Laws 2004, LB 841, § 4; Laws 2006, LB 1248, § 73; Laws 2007, LB292, § 2.

68-1804 ICF/MR Reimbursement Protection Fund; created; allocation; investment.

(1) The ICF/MR Reimbursement Protection Fund is created. 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. Interest and income earned by the fund shall be credited to the fund.

(2) For fiscal year 2004-05, proceeds from the tax imposed under section 68-1803 shall be allocated as follows:

(a) First, fifty-five thousand dollars to the department for administration of the fund;

(b) Second, payment to intermediate care facilities for the mentally retarded for the cost of the tax;

(c) Third, three hundred thousand dollars, in addition to any federal medicaid matching funds, for increases in payments to non-state-operated intermediate care facilities for the mentally retarded which shall be such facilities' only increase in payments for such fiscal year;

(d) Fourth, three hundred twelve thousand dollars, in addition to any federal medicaid matching funds, for payment to providers of community-based services for the purpose of reducing the waiting list of persons with developmental disabilities; and

(e) Fifth, any money remaining in the fund after the allocations required by subdivisions (2)(a) through (d) of this section have been made shall be transferred to the General Fund.

(3) For FY2005-06 and each fiscal year thereafter, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit as follows:

(a) To the ICF/MR Reimbursement Protection Fund for allocation as described in this subdivision: (i) Fifty-five thousand dollars for administration of the fund; (ii) the amount needed to reimburse intermediate care facilities for the mentally retarded for the cost of the tax; (iii) three hundred thousand dollars for payment of rates to non-state-operated intermediate care facilities; and (iv) three hundred twelve thousand dollars for community-based services for persons with developmental disabilities; and

(b) To the General Fund: The remainder of the proceeds.

Source: Laws 2004, LB 841, § 5.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

68-1805 State medicaid plan; application for amendment; tax; when due.

(1) On or before July 1, 2004, the department shall submit an application to the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services amending the state medicaid plan to provide for utilization of money in the ICF/MR Reimbursement Protection Fund to increase medicaid payments to intermediate care facilities for the mentally retarded.

(2) The tax imposed under section 68-1803 is not due and payable until such amendment to the state medicaid plan is approved by the Centers for Medicare and Medicaid Services.

Source: Laws 2004, LB 841, § 6.

68-1806 Collection of tax; discontinued; when; effect.

(1) Collection of the tax imposed by section 68-1803 shall be discontinued if:

(a) The amendment to the state medicaid plan described in section 68-1805 is disapproved by the Centers for Medicare and Medicaid Services;

(b) The department reduces rates paid to intermediate care facilities for the mentally retarded to an amount less than the rates effective September 1, 2003; or

(c) The department or any other state agency attempts to utilize the money in the ICF/MR Reimbursement Protection Fund for any use other than uses permitted pursuant to the ICF/MR Reimbursement Protection Act.

(2) If collection of the tax is discontinued as provided in subsection (1) of this section, all money in the fund shall be returned to the intermediate care facilities for the mentally retarded from which the tax was collected on the same basis as the tax was assessed.

Source: Laws 2004, LB 841, § 7.

68-1807 Failure to pay tax; penalty.

(1) An intermediate care facility for the mentally retarded that fails to pay the tax required by section 68-1803 shall be subject to a penalty of five hundred dollars per day of delinquency. The total amount of the penalty assessed under this section shall not exceed five percent of the tax due from the intermediate care facility for the mentally retarded for the year for which the tax is assessed.

(2) The department shall collect the penalties and remit them to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2004, LB 841, § 8; Laws 2007, LB296, § 293.

68-1808 Refund; procedure.

An intermediate care facility for the mentally retarded that has paid a tax that is not required by section 68-1803 may file a claim for refund with the department. The department may by rule and regulation establish procedures for filing and consideration of such claims.

Source: Laws 2004, LB 841, § 9.

68-1809 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the ICF/MR Reimbursement Protection Act.

Source: Laws 2004, LB 841, § 10.

CHAPTER 69
PERSONAL PROPERTY

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Cross References

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ARTICLE 1

SECURITY INTERESTS

Cross References

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Section

69-101 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-102 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-103 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-104 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-105 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-106 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-107 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-108 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-109 Security interest; personal property; sale or transfer without consent; penalty.

Any person who, after having created any security interest in any article of personal property, either presently owned or after-acquired, for the benefit of another, shall, during the existence of the security interest, sell, transfer, or in any manner dispose of the said personal property, or any part thereof so given as security, to any person or body corporate, without first procuring the consent, in writing, of the owner and holder of the security interest, to any such sale, transfer or disposal, shall be deemed guilty of a Class IV felony.

Source: Laws 1867, § 9, p. 11; Laws 1877, § 1, p. 5; Laws 1889, c. 35, § 1, p. 386; R.S.1913, § 534; C.S.1922, § 425; C.S.1929, § 69-109; R.S.1943, § 69-109; Laws 1969, c. 543, § 1, p. 2194; Laws 1971, LB 961, § 1; Laws 1977, LB 39, § 128.

1. Constitutionality
2. Sale with consent of mortgagee
3. Sale without consent of mortgagee
4. Criminal responsibility

1. Constitutionality

Section is not in conflict with Article I, section 9, Constitution of Nebraska. State v. Heldenbrand, 62 Neb. 136, 87 N.W. 25 (1901).

2. Sale with consent of mortgagee

In a prosecution for the unlawful sale of mortgaged property without the written consent of the mortgagee, oral consent of the mortgagee to the sale, coupled with payment of the value of the property, is a defense. Mullins v. State, 146 Neb. 521, 20 N.W.2d 385 (1945).

Sale by mortgagor under agreement with mortgagee for application of proceeds on mortgage debt is equitable assignment of proceeds. Lathrop v. Schlauger, 113 Neb. 14, 201 N.W. 654 (1924).

Where sale is made with consent of mortgagee, mortgagor is agent of mortgagee. State ex rel. Davis v. Brown County Bank of Long Pine, 112 Neb. 642, 200 N.W. 866 (1924); Farmers State Bank of Petersburg v. Anderson, 112 Neb. 413, 199 N.W. 728 (1924); Farmers State Bank of Stella v. Home State Bank of Humboldt, 106 Neb. 711, 184 N.W. 170 (1921).

Mortgagee waives his lien where sale is made with his consent by mortgagor. Warrick v. Rasmussen, 112 Neb. 299, 199 N.W. 544 (1924); Seymour v. Standard Live Stock Comm. Co., 110 Neb. 185, 192 N.W. 398 (1923); Gosnell v. Webster, 70 Neb. 705, 97 N.W. 1060 (1904); Drexel v. Murphy, 59 Neb. 210, 80 N.W. 813 (1899).

Mortgagor may contract for future sale and disposition of property. Morris v. Persing, 76 Neb. 80, 107 N.W. 218 (1906).

3. Sale without consent of mortgagee

Mortgagee may recover payment of one who sells property subject to mortgage without notice. Caproon v. Mitchell, 77 Neb. 562, 110 N.W. 378 (1906).

Mortgagee, without knowledge of unauthorized sale, does not ratify by accepting proceeds. Gosnell v. Webster, 70 Neb. 705, 97 N.W. 1060 (1904).

A mortgagee of chattels will be held to have ratified an unauthorized sale of the property by knowingly receiving and retaining the proceeds of sale. Ayers v. McConahey, 65 Neb. 588, 91 N.W. 494 (1902).

Mortgagee may either disavow the sale and retake property or ratify it and recover proceeds of sale. Burke v. First Nat. Bank of Pender, 61 Neb. 20, 84 N.W. 408 (1900).

4. Criminal responsibility

Although section does not expressly require fraud, judicial construction of the section has established that proof of fraud is required for a conviction thereunder. It is presumed that when a statute has been construed by the Supreme Court, and the same is substantially reenacted, the Legislature gave to the language the significance previously accorded it by the Supreme Court. State v. Hocutt, 207 Neb. 689, 300 N.W.2d 198 (1981).

Conviction of disposing of mortgaged personal property sustained. Pulliam v. State, 169 Neb. 661, 100 N.W.2d 704 (1960).

Law was enacted to prevent fraudulent transfer of mortgaged chattel property. Pulliam v. State, 167 Neb. 614, 94 N.W.2d 51 (1959).

Information is not fatally defective because it fails to allege name of person or body corporate to whom sale or transfer was made. Hunt v. State, 143 Neb. 871, 11 N.W.2d 533 (1943).

In prosecution hereunder accused may show as defense (1) that full value of mortgaged chattel has been turned over to mortgagee or (2) that the mortgage debt has been paid. Fiehn v. State, 124 Neb. 16, 245 N.W. 6 (1932).

Wrongdoer cannot be convicted in Nebraska on sole charge of selling mortgaged property when actual sale occurred in Iowa. Forney v. State, 123 Neb. 179, 242 N.W. 441 (1932).

Mortgage upon unplanted crop is invalid as basis of conviction of tenant in case he sells crops not planted at time the mortgage in lease was executed. Nelson v. State, 121 Neb. 658, 238 N.W. 110 (1931).

Lien on properly identified crop extends to harvested crop unless otherwise provided, and it is a crime to sell same. Eigbrett v. State, 111 Neb. 388, 196 N.W. 700 (1923).

Statute contains all the elements of the crime for which it is sought to provide punishment, and criminal intent is not an essential ingredient of the offense. State v. Butcher, 104 Neb. 380, 177 N.W. 184 (1920).

Section applies to sale to partnerships. State v. Stapel, 103 Neb. 135, 170 N.W. 665 (1919).

Sale of mortgaged property without mortgagee's consent is punishable. Wilson v. State, 43 Neb. 745, 62 N.W. 209 (1895).

To constitute offense, the sale of the property must have been made by the mortgagor during the existence of the mortgage lien without the written consent of the owner and holder of the debt secured by the mortgage. State v. Hughes, 38 Neb. 366, 56 N.W. 982 (1893).

Information need not allege intent. State v. Hurds, 19 Neb. 316, 27 N.W. 139 (1886).

69-109.01 Security interest; personal property; sale by auctioneer; no liability under conditions specified.

The auctioneer, who in good faith and without notice of a security interest therein, sells personal property at auction, which is in fact subject to a security interest, for a principal whose identity has been disclosed, in which property the auctioneer has no interest but acts only as an intermediary of the owner is not liable to the holder of the security interest for any damage sustained as a result of such sale.

Source: Laws 1963, c. 391, § 1, p. 1242; Laws 1969, c. 543, § 2, p. 2194; Laws 1971, LB 961, § 2.

Section held constitutional, but auctioneer to be relieved of liability must meet all conditions, including actual disclosure of principal's identity. State Securities Co. v. Norfolk Livestock Sales Co., Inc., 187 Neb. 446, 191 N.W.2d 614 (1971).

Where auctioneer, in good faith, without notice of security interests of Farmers Home Administration, and for principals whose identities had not been disclosed, sold cattle, he was not liable to government in conversion. United States v. Chappel Livestock Auction, Inc., 523 F.2d 840 (8th Cir. 1975).

Where security agreement between bank and debtor granted security interest in livestock for farming operations rather than for personal, family, or household purposes or for business purposes, a security interest in livestock used in farming operations, as opposed to inventory, was created. First State Bank v. Maxfield, 485 F.2d 71 (10th Cir. 1973).

Title to the one hundred forty-five head of cattle passed to H & O Farms at the time the plaintiff delivered them and, therefor, any interest the plaintiff retained was no more than a security interest provided there was no agreement between the parties, either expressly or in course of conduct, that altered the result. Myers v. Columbus Sales Pavilion, Inc., 575 F.Supp. 805 (D. Neb. 1983).

69-110 Security interest; personal property; removal from county; penalty.

Any person who, after having created any security interest in any article of personal property, whether presently owned or after-acquired, for the benefit of another, shall, during the existence of such interest, remove, permit, or cause to be removed such property or any part thereof out of the county within which such property was situated, with intent to deprive the owner or owners of the security interest of his or her or their security, shall be deemed guilty of a felony and upon conviction thereof shall be imprisoned in a Department of Correctional Services adult correctional facility for a term not exceeding ten years and be fined in a sum not exceeding one thousand dollars.

Source: Laws 1885, c. 11, § 1, p. 108; R.S.1913, § 535; C.S.1922, § 426; C.S.1929, § 69-110; R.S.1943, § 69-110; Laws 1969, c. 543, § 3, p. 2195; Laws 1971, LB 961, § 3; Laws 1993, LB 31, § 20.

Conviction for removing mortgaged personal property out of county sustained. Pulliam v. State, 169 Neb. 661, 100 N.W.2d 704 (1960).

Criminal intent is an essential element of offense. Pulliam v. State, 167 Neb. 614, 94 N.W.2d 51 (1959).

Where property mortgaged in Nebraska was removed by truck and sold in Iowa, conviction under this section was proper. Forney v. State, 123 Neb. 179, 242 N.W. 441 (1932).

A mortgagor who removes only a portion of the mortgaged property is as amenable under statute as if he had removed all of it. Wilson v. State, 43 Neb. 745, 62 N.W. 209 (1895).

69-111 Security interest; personal property; failure to account or produce for inspection; penalty.

Any person who, after having created any security interest in any article of personal property, whether presently owned or after-acquired, for the benefit of another, shall, during the existence of the lien or title of such security interest, fail to give, from time to time upon the demand of the holder of the security interest, an accounting for such property, or who, when the holder of the security interest has reason to believe his security insufficient or when the creator of the security interest requests an extension of the time of payment, shall fail, on demand of the holder of the security interest or his agent, to identify and exhibit for inspection the property covered by the security interest at reasonable hours; or who, in case of loss or death of such articles covered by the security interest, shall fail to produce within ten days after knowledge of the loss or death, notice in writing to the holder of the security interest of such death or loss, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five dollars nor more than one hundred dollars, or imprisoned in the county jail not exceeding thirty days.

Source: Laws 1917, c. 204, § 1, p. 482; C.S.1922, § 427; Laws 1927, c. 37, § 1, p. 166; C.S.1929, § 69-111; Laws 1941, c. 136, § 1, p. 541; C.S.Supp.,1941, § 69-111; R.S.1943, § 69-111; Laws 1969, c. 543, § 4, p. 2195; Laws 1971, LB 961, § 4.

69-112 Repealed. Laws 1967, c. 416, § 1.

69-113 Repealed. Laws 1967, c. 416, § 1.

69-114 Repealed. Laws 1967, c. 416, § 1.

69-115 Repealed. Laws 1967, c. 416, § 1.

ARTICLE 2

PAWNBROKERS AND JUNK DEALERS

Cross References

Buyer in ordinary course of business, pawnbroker not included, see section 1-201, Uniform Commercial Code.
County zoning, junk and salvage yards, see section 23-174.10.
Municipalities, regulatory powers of:
Cities of the first class, see section 16-205.
Cities of the metropolitan class, see section 14-109.
Cities of the primary class, see section 15-203.
Cities of the second class and villages, see sections 17-134 and 17-525.
Nebraska State Patrol, required to keep record of personal property pawned, see section 29-210.

Section

69-201 Pawnbroker, defined.

Any person engaged in the business of lending money upon chattel property for security and requiring possession of the property so mortgaged on condition

of returning the same upon payment of a stipulated amount of money, or purchasing property on condition of selling it back at a stipulated price, is declared to be a pawnbroker for the purpose of sections 69-201 to 69-210.

Source: Laws 1899, c. 10, § 1, p. 64; R.S.1913, § 536; C.S.1922, § 428; C.S.1929, § 69-201; R.S.1943, § 69-201; Laws 1981, LB 44, § 1.

69-202 Permit required; fees; application, contents; issuance; bond.

Every person engaged in the business of pawnbroking shall pay to the city or village treasurer for a permit to carry on business the sum of one hundred dollars per year or fifty dollars for every six months, in metropolitan cities, but in all other cities or villages the sum of fifty dollars per year or the sum of twenty-five dollars for every six months. Such permit shall be obtained by filing an application with, and having such application approved by, the governing body of the city or village or an officer or agency designated by such governing body for such purpose.

The application shall contain the following information:

(1) The name and address of the owner and the manager of the business and, if the applicant is an individual, the applicant's social security number;

(2) If the applicant is a corporation, a copy of the articles of incorporation and the names of its officers and shareholders;

(3) The exact location where the business is to be conducted; and

(4) The exact location where any goods, wares, and merchandise may be stored or kept if other than the business location.

When reviewing applications for a permit required by this section, the governing body or delegated officer or agency shall take into consideration the criminal record, if any, of the applicant and, if the applicant is a corporation, of its officers and shareholders. No permit shall be issued to any applicant who has been convicted of a felony and, if the applicant is a corporation, no permit shall be issued when any officer or shareholder has been convicted of a felony.

Such person shall also give bond to the city or village in which he, she, or it is to do business, in the sum of five thousand dollars with surety to be approved by the mayor or its chief executive officer, conditioned for the faithful performance by the principal, of each and all of the trusts imposed by law or by usage attached to pawnbrokers.

No permit fee shall be exacted under this section in municipalities which impose a permit fee for the pawnbroking business by ordinance.

Source: Laws 1899, c. 10, § 2, p. 64; R.S.1913, § 537; C.S.1922, § 429; C.S.1929, § 69-202; R.S.1943, § 69-202; Laws 1981, LB 44, § 2; Laws 1997, LB 752, § 154.

69-203 Permit; business location; prohibited activities.

No person shall be allowed to do business in more than one location under one permit. Each permit shall state the place where such business is to be carried on, and shall not be assigned. Goods, wares, and merchandise shall be kept or stored only at those locations specifically listed in the permit application.

It shall be unlawful for any person not having a permit as required in section 69-202 to display any sign or advertisement stating that money is lent on goods or that goods are purchased as described in section 69-201.

Source: Laws 1899, c. 10, § 3, p. 65; R.S.1913, § 538; C.S.1922, § 430; C.S.1929, § 69-203; R.S.1943, § 69-203; Laws 1981, LB 44, § 3.

69-204 Records required; inspection; stolen property; procedures.

All persons who shall be engaged in the business of pawnbrokers, dealers in secondhand goods, or junk dealers, shall keep a ledger and complete a card, to be furnished by the city or village, on which shall be legibly written in ink, at the time of any loan or purchase, the following information:

(1) The date of the loan or purchase;

(2) The name of the person from whom the property is purchased or received, his or her signature, date of birth, and driver's license number or other means of identification;

(3) A full and accurate description of the property purchased or received, including any manufacturer's identifying insignia or serial number;

(4) The time when any loan becomes due;

(5) The amount of purchase money, or the amount lent and any loan charges, for each item; and

(6) The identification and signature of the clerk or agent for the business who handled the transaction.

Entries shall not in any manner be erased, obliterated, or defaced. The person receiving a loan or selling property shall receive at no charge a plain written or printed ticket for the loan, or a plain written or printed receipt for the articles sold, containing a copy of the entries required by this section.

Every pawnbroker, or employee of a pawnbroker, shall admit to the pawnbroker's premises at any reasonable time during normal business hours any law enforcement officer for the purpose of examining any property and records on the premises, and shall allow such officer to place restrictions on the disposition of any property for which a reasonable belief exists that it has been stolen. Any person claiming an ownership interest in property received by a pawnbroker for which a reasonable belief exists that such property has been stolen may recover such property as provided by sections 25-1093 to 25-10,110.

Source: Laws 1899, c. 10, § 4, p. 65; R.S.1913, § 539; C.S.1922, § 431; C.S.1929, § 69-204; R.S.1943, § 69-204; Laws 1981, LB 44, § 4.

69-205 Reports to police; when required.

It shall be the duty of every such pawnbroker, dealer in secondhand goods, or junk dealer, every day except Sunday before the hour of 12 noon, to deliver to the police department of the municipality where said business is located, or if the municipality does not have a police department, to the sheriff's office, a legible and correct copy of each card or ledger entry required by section 69-204 for the transactions of the previous day. Transactions occurring on Saturday shall be reported on the following Monday. No card shall be required for goods purchased from manufacturers or wholesale dealers having an established place of business, or goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of

business in the city or village, but such goods must be accompanied by a bill of sale or other evidence of open and legitimate purchase, and must be shown to the mayor or any law enforcement officer when demanded. Dealers in scrap metals, except gold and silver, shall not be included in the provisions of this section.

Source: Laws 1899, c. 10, § 5, p. 65; R.S.1913, § 540; C.S.1922, § 432; C.S.1929, § 69-205; R.S.1943, § 69-205; Laws 1981, LB 44, § 5.

69-206 Pawned or secondhand goods; restrictions on disposition; jewelry defined.

No personal property received or purchased by any pawnbroker, dealer in secondhand goods, or junk dealer, shall be sold or permitted to be taken from the place of business of such person for fourteen days or, in the case of secondhand jewelry, for five days, after the copy of the card or ledger entry required to be delivered to the police department or sheriff's office shall have been delivered as required by section 69-205. Secondhand jewelry shall not be destroyed, damaged, or in any manner defaced for a period of seventy-two hours after the time of its purchase or receipt. For purposes of this section, jewelry shall mean any ornament which is intended to be worn on or about the body and which is made in whole or in part of any precious metal, including gold, silver, platinum, copper, brass, or pewter.

All property accepted as collateral security or purchased by a pawnbroker shall be kept segregated from all other property in a separate area for a period of forty-eight hours after its receipt or purchase, except that valuable articles may be kept in a safe with other property if grouped according to the day of purchase or receipt. Notwithstanding the provisions of this section, a pawnbroker may return any property to the person pawning the same after the expiration of such forty-eight-hour period or when permitted by the chief of police, sheriff, or other authorized law enforcement officer.

Source: Laws 1899, c. 10, § 6, p. 66; R.S.1913, § 541; C.S.1922, § 433; C.S.1929, § 69-206; R.S.1943, § 69-206; Laws 1981, LB 44, § 6.

69-207 Repealed. Laws 1981, LB 44, § 10.

69-208 Violation; penalty; permit; suspension or revocation; procedure.

Every broker, agent, or dealer mentioned in sections 69-201 to 69-210 who shall violate any of the provisions thereof, shall be guilty of a Class V misdemeanor.

In addition, any permit issued pursuant to section 69-202 may be revoked or suspended if the holder of such permit violates any provision of state law classified as a misdemeanor or felony. Before any permit may be revoked or suspended the holder shall be given notice of the date and time for a hearing before the governing body or delegated officer or agency which issued the permit to show cause why the permit should not be revoked or suspended. Such hearing shall be held within seven days of the date of the notice.

Source: Laws 1899, c. 10, § 8, p. 66; R.S.1913, § 543; C.S.1922, § 435; C.S.1929, § 69-208; R.S.1943, § 69-208; Laws 1981, LB 44, § 7.

69-209 Pawnbroker; limitation on sale of goods.

It shall be unlawful for any pawnbroker to sell any goods purchased or received as described in section 69-201, during the period of four months from the date of purchasing or receiving such goods.

Source: Laws 1899, c. 10, § 9, p. 66; R.S.1913, § 544; C.S.1922, § 436; C.S.1929, § 69-209; R.S.1943, § 69-209; Laws 1959, c. 314, § 1, p. 1155; Laws 1961, c. 333, § 1, p. 1042; Laws 1961, c. 334, § 1, p. 1043; Laws 1981, LB 44, § 8.

69-210 Pawnbrokers; customer fingerprint required; restrictions on property accepted.

(1) All persons who shall be engaged in the business of pawnbroker shall, in addition to the requirements of section 69-204, obtain and keep a single legible fingerprint of each person pawning, pledging, mortgaging, or selling any goods or articles. The fingerprint shall be taken from the right index finger or, if the right index finger is missing, from the left index finger. Each pawnbroker shall display a notice to customers, in a prominent location, stating that such pawnbroker is required by state law to fingerprint every person pawning or selling an item.

(2) No pawnbroker shall accept as collateral security or purchase any property:

(a) From any person who is under eighteen years of age, or who appears to be under the influence of alcohol, narcotic drug, stimulant, or depressant, or who appears to be mentally incompetent; or

(b) On which the serial numbers or other identifying insignia have been destroyed, removed, altered, covered, or defaced.

Source: Laws 1976, LB 431, § 1; Laws 1981, LB 44, § 9.

69-211 Repealed. Laws 1981, LB 44, § 10.

ARTICLE 3

MAIL ORDER CONTACT LENS ACT

Section
69-301. Act, how cited.
69-302. Terms, defined.
69-303. Ophthalmic provider; contact lens prescription.
69-304. Ophthalmic provider; registration; requirements.
69-305. Fees; disposition.
69-306. Act; enforcement.
69-307. Rules and regulations.

69-301 Act, how cited.

Sections 69-301 to 69-307 shall be known and may be cited as the Mail Order Contact Lens Act.

Source: Laws 2001, LB 398, § 86.

69-302 Terms, defined.

For purposes of the Mail Order Contact Lens Act:

(1) Contact lens prescription means a written order bearing the original signature of an optometrist or physician or an oral or electromagnetic order

issued by an optometrist or physician that authorizes the dispensing of contact lenses to a patient and meets the requirements of section 69-303;

(2) Department means the Department of Health and Human Services;

(3) Mail-order ophthalmic provider means an entity that ships, mails, or in any manner delivers dispensed contact lenses to Nebraska residents;

(4) Optometrist means a person licensed to practice optometry pursuant to the Optometry Practice Act; and

(5) Physician means a person licensed to practice medicine and surgery pursuant to the Medicine and Surgery Practice Act.

Source: Laws 2001, LB 398, § 87; Laws 2007, LB296, § 294; Laws 2007, LB463, § 1176.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Optometry Practice Act, see section 38-2601.

69-303 Ophthalmic provider; contact lens prescription.

(1) A mail-order ophthalmic provider may dispense contact lenses in Nebraska or to a Nebraska resident if the contact lens prescription is valid. Such prescription is valid if it (a) contains the patient's name, date ordered, expiration date, instructions for use, optometrist or physician identifying information, date of patient's last examination, fabrication, and related information and (b) has not expired.

(2) Each contact lens prescription shall be valid for the duration of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Upon expiration, an optometrist or physician may extend the prescription without further examination.

(3) An optometrist or physician shall offer the prescription to a patient following the fitting process and payment of all fees for services rendered. The patient shall mail the prescription or send a copy by facsimile or other electronic means to the mail-order ophthalmic provider.

Source: Laws 2001, LB 398, § 88.

69-304 Ophthalmic provider; registration; requirements.

The department shall require and provide for an annual registration for all mail-order ophthalmic providers located outside of this state, including those providing services via the Internet, that dispense contact lenses to Nebraska residents. The department shall grant a mail-order ophthalmic provider's registration upon the disclosure and certification by such provider of the following:

(1) That it is licensed or registered to dispense contact lenses in the state where the dispensing facility is located and from where the contact lenses are dispensed, if required;

(2) The location, names, and titles of all principal corporate officers and the person who is responsible for overseeing the dispensing of contact lenses to Nebraska residents;

(3) That it complies with directions and appropriate requests for information from the regulating agency of each state where it is licensed or registered;

(4) That it will respond directly and within a reasonable period of time to all communications from the department concerning emergency circumstances arising from the dispensing of contact lenses to Nebraska residents;

(5) That it maintains its records of contact lenses dispensed to Nebraska residents so that such records are readily retrievable;

(6) That it will cooperate with the department in providing information to the regulatory agency of any state where it is licensed or registered concerning matters related to the dispensing of contact lenses to Nebraska residents;

(7) That it conducts business in a manner that conforms to the requirements of section 69-303;

(8) That it provides a toll-free telephone service for responding to patient questions and complaints during its regular hours of operation and agrees to (a) include the toll-free number in literature provided with mailed contact lenses and (b) refer all questions relating to eye care for the lenses prescribed back to the contact lens prescriber; and

(9) That it provides the following, or substantially equivalent, written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS, REMOVE YOUR LENSES IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

Source: Laws 2001, LB 398, § 89.

69-305 Fees; disposition.

The mail-order ophthalmic provider shall pay a fee equivalent to the annual fee for an initial or renewal permit to operate a pharmacy in Nebraska as established in and at the times provided for in the Health Care Facility Licensure Act. Such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 2001, LB 398, § 90; Laws 2003, LB 242, § 12; Laws 2007, LB296, § 295.

Cross References

Health Care Facility Licensure Act, see section 71-401.

69-306 Act; enforcement.

The department, upon the recommendation of the Board of Pharmacy, the Board of Optometry, or the Board of Medicine and Surgery, shall notify the Attorney General of any possible violations of the Mail Order Contact Lens Act. If the Attorney General has reason to believe that an out-of-state person is operating in violation of the act, the Attorney General may commence an action in the district court of Lancaster County to enjoin such person from further mailing, shipping, or otherwise delivering contact lenses into Nebraska.

Source: Laws 2001, LB 398, § 91.

69-307 Rules and regulations.

The department, upon the joint recommendation of the Board of Pharmacy, Board of Optometry, and Board of Medicine and Surgery, may adopt and

promulgate rules and regulations for enforcement of the Mail Order Contact Lens Act.

Source: Laws 2001, LB 398, § 92.

ARTICLE 4
SCRAP METAL RECYCLING

Section
69-401. Terms, defined.
69-402. Secondary metals recycler; purchase of regulated metals property; information required; duration; receipt.
69-403. Peace officer; right to inspect property and records.
69-404. Secondary metals recycler; limitations on payment.
69-405. Seller; age restriction; identification required.
69-406. Limitation on metal beer keg purchase or receipt.
69-407. Exemptions.
69-408. Violation; penalty.
69-409. Sections; how construed.
69-410. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-411. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-412. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-413. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-414. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-415. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-416. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-417. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-418. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-419. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-420. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-421. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-422. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-423. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-424. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-425. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-426. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-427. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-428. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-429. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-430. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-431. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-432. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-433. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-434. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-435. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-436. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-437. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-438. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-439. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-440. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-441. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-442. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-443. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-444. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-445. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-446. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-447. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-448. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-449. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-450. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-451. Repealed. Laws 1963, c. 544, art. 10, § 1.

Section
69-452. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-453. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-454. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-455. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-456. Repealed. Laws 1963, c. 544, art. 10, § 1.
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69-462. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-463. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-464. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-465. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-466. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-467. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-468. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-469. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-470. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-471. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-472. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-473. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-474. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-475. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-476. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-477. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-478. Repealed. Laws 1963, c. 544, art. 10, § 1.

69-401 Terms, defined.

For purposes of sections 69-401 to 69-409:

(1) Regulated metals property means catalytic converters, all nonferrous metal except gold and silver, or metal beer kegs, including those kegs made of stainless steel; and

(2) Secondary metals recycler means any person, firm, or corporation in this state that:

(a) Is engaged in the business of gathering or obtaining regulated metals property that has served its original economic purpose; or

(b) Is in the business of or has facilities for performing the manufacturing process by which regulated metals property is converted into raw material products consisting of prepared grades and having an existing or potential economic value by methods including, but not limited to, processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metals, but not including the exclusive use of hand tools.

Source: Laws 2008, LB766, § 1.

69-402 Secondary metals recycler; purchase of regulated metals property; information required; duration; receipt.

(1) A secondary metals recycler shall maintain a record, either as a hard copy or electronically, of all purchase transactions in which the secondary metals recycler purchases regulated metals property.

(2) The following information shall be maintained for transactions in which a secondary metals recycler purchases regulated metals property:

(a) The name and address of the secondary metals recycler;

(b) The name and signature of the individual entering the information;

(c) The date and time of the transaction;

(d) The weight and grade of the regulated metals property purchased;

(e) The description made in accordance with the custom of the trade of the type of regulated metals property purchased;

(f) The amount of consideration given for the regulated metals property, if any;

(g) The name, signature, and address of the vendor of the regulated metals property;

(h) The motor vehicle operator's license number, state identification card number, or federal government-issued identification card number of the person delivering the regulated metals property to the secondary metals recycler;

(i) A photocopy of the current motor vehicle operator's license, state-issued identification card, or federal government-issued identification card of the person delivering the regulated metals property to the secondary metals recycler;

(j) A fingerprint from the person, but only if the person is delivering copper or catalytic converters. The fingerprint shall be taken from the right index finger, but if the right index finger is missing, the fingerprint shall be taken from the left index finger; and

(k) A date-and-time-stamped photograph or a date-and-time-stamped video recording of the regulated metals property.

(3) The vendor of the regulated metals property shall receive at no charge a plain written or printed receipt of the recorded transaction containing a copy of the entries required by this section.

(4) A secondary metals recycler shall keep and maintain the information required under this section for not less than one year after the date of the purchase of the regulated metals property.

Source: Laws 2008, LB766, § 2.

69-403 Peace officer; right to inspect property and records.

During the usual and customary business hours of a secondary metals recycler, any peace officer shall have the right to inspect:

(1) Any and all purchased regulated metals property in the possession of the secondary metals recycler; and

(2) Any and all records required to be maintained under section 69-402.

Source: Laws 2008, LB766, § 3.

69-404 Secondary metals recycler; limitations on payment.

No secondary metals recycler shall purchase regulated metals property for cash consideration unless the purchase total is not more than twenty-five dollars. Purchases made from the same person within a four-hour period shall be considered a single transaction. Payment shall be made payable only to the individual named on the identification presented pursuant to section 69-402. Payment for copper and catalytic converters shall be by check.

Source: Laws 2008, LB766, § 4.

69-405 Seller; age restriction; identification required.

No secondary metals recycler shall purchase or receive regulated metals property:

(1) From any person who is under the age of majority; or

(2) From any person who does not possess a valid form of personal identification or current motor vehicle operator's license required under section 69-402 at the time of the recorded transaction.

Source: Laws 2008, LB766, § 5.

69-406 Limitation on metal beer keg purchase or receipt.

No secondary metals recycler shall purchase or receive a metal beer keg, including those kegs made of stainless steel, if the serial number or other identifying insignia has been destroyed, removed, altered, covered, or defaced.

Source: Laws 2008, LB766, § 6.

69-407 Exemptions.

Sections 69-401 to 69-409 do not apply to:

(1) Purchases of regulated metals property from a manufacturing, industrial, or other commercial vendor that generates or sells regulated metals property in the ordinary course of its business;

(2) The collection or purchase of regulated metals property in the form of beverage or food cans; or

(3) Recycling or neighborhood cleanup programs contracted or sponsored by the state or any political subdivision.

Source: Laws 2008, LB766, § 7.

69-408 Violation; penalty.

Any person violating any of the provisions of sections 69-401 to 69-409 is guilty of a Class II misdemeanor.

Source: Laws 2008, LB766, § 8.

69-409 Sections; how construed.

Nothing in sections 69-401 to 69-409 shall be construed to abrogate or affect the provisions of any lawful rule, regulation, resolution, ordinance, or statute which is more restrictive than sections 69-401 to 69-409.

Source: Laws 2008, LB766, § 9.

69-410 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-411 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-412 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-413 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-414 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-415 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-416 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-417 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-418 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-419 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-420 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-421 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-422 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-423 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-424 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-425 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-426 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-427 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-428 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-429 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-430 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-431 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-432 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-433 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-434 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-435 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-436 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-437 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-438 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-439 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-440 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-441 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-442 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-443 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-444 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-445 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-446 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-447 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-448 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-449 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-450 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-451 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-452 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-453 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-454 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-455 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-456 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-457 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-458 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-459 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-460 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-461 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-462 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-463 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-464 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-465 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-466 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-467 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-468 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-469 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-470 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-471 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-472 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-473 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-474 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-475 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-476 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-477 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-478 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 5

REDUCED CIGARETTE IGNITION PROPENSITY ACT

Section
69-501. Act, how cited.
69-502. Terms, defined.
69-503. Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.
69-504. Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.
69-505. Marking; inspections.
69-506. Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.
69-507. Tax Commissioner; power to inspect; notice to State Fire Marshal.
69-508. Attorney General; enforcement powers.
69-509. Act; exemptions.
69-510. Termination of act; conditions; preemption of local law.
69-511. State Fire Marshal; rules and regulations.

69-501 Act, how cited.

Sections 69-501 to 69-511 shall be known and may be cited as the Reduced Cigarette Ignition Propensity Act.

Source: Laws 2009, LB198, § 1.

69-502 Terms, defined.

For purposes of the Reduced Cigarette Ignition Propensity Act:

(1) Agent means any person authorized by the Tax Commissioner to purchase and affix stamps or cigarette tax meter impressions on packages of cigarettes under sections 77-2601 to 77-2615;

(2) Cigarette has the same meaning as in section 77-2601;

(3) Consumer testing means an assessment of cigarettes that is conducted by a manufacturer, or under the control or direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes;

(4) Manufacturer means:

(a) Any entity which manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere that such manufacturer intends to sell in this state, including cigarettes intended to be sold in the United States through an importer;

(b) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(c) Any entity that becomes a successor of an entity described in subdivision (4)(a) or (b) of this section;

(5) Quality control and quality assurance program means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the testing. Such a program ensures that the testing repeatability

remains within the required repeatability values stated in section 69-503 for all test trials used to certify cigarettes in accordance with the act;

(6) Repeatability means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

(7) Retail dealer means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

(8) Sale means any transfer for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means whatsoever;

(9) Sell means to sell or to offer or agree to do the same; and

(10) Wholesale dealer means any person, other than a manufacturer, who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates, or maintains one or more cigarette or tobacco product vending machines in, at, or upon premises owned or occupied by any other person.

Source: Laws 2009, LB198, § 2.

69-503 Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

(1) Except as provided in subsection (7) of this section, no cigarettes may be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless the cigarettes have been tested in accordance with the following test method and meet the performance standard specified in this section, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with section 69-504, and the cigarettes have been marked in accordance with section 69-505. Testing shall be as follows:

(a) Testing of cigarettes shall be conducted in accordance with the American Society of Testing and Materials Standard E2187-04, Standard Test Method for Measuring the Ignition Strength of Cigarettes;

(b) Testing shall be conducted on ten layers of filter paper;

(c) No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this subsection shall exhibit full-length burns. Forty replicate tests shall comprise a complete test trial for each cigarette tested;

(d) The performance standard required by this subsection shall only be applied to a complete test trial;

(e) Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standard required by the State Fire Marshal;

(f) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19;

(g) This subsection does not require additional testing if cigarettes are tested consistent with the Reduced Cigarette Ignition Propensity Act for any other purpose; and

(h) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this subsection.

(2) Each cigarette listed in a certification submitted pursuant to section 69-504 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

(3) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test method prescribed in subdivision (1)(a) of this section shall propose a test method and performance standard for the cigarette to the State Fire Marshal. If the State Fire Marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Reduced Cigarette Ignition Propensity Act and the State Fire Marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the State Fire Marshal demonstrates a reasonable basis why the alternative test should not be accepted under the act. All other applicable requirements of this section shall apply to the manufacturer.

(4) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within sixty days after receiving a written request shall be subject to a civil penalty not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make such copies available.

(5) The State Fire Marshal may adopt a subsequent American Society of Testing and Materials Standard Test Method for Measuring the Ignition Strength of Cigarettes upon a finding that such subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American Society of Testing and Materials Standard E2187-04 and the performance standard in subdivision (1)(c) of this section.

(6) The State Fire Marshal shall review the effectiveness of this section and report every three years to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effective-

ness of this section. The report and legislative recommendations shall be submitted no later than November 15 each three-year period.

(7) The requirements of subsection (1) of this section shall not prohibit wholesale or retail dealers from selling their existing inventory of cigarettes on or after January 1, 2010, if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to such date and if the wholesale or retail dealer can establish that the inventory was purchased prior to such date in comparable quantity to the inventory purchased during the same period of the prior year.

(8) The Reduced Cigarette Ignition Propensity Act shall be implemented in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009.

Source: Laws 2009, LB198, § 3.

69-504 Manufacturer; written certification; contents; fee; Reduced Cigarette Ignition Propensity Fund; created; use; investment; altered cigarettes; retesting required.

(1) Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

(a) Each cigarette listed in the certification has been tested in accordance with section 69-503; and

(b) Each cigarette listed in the certification meets the performance standard set forth in section 69-503.

(2) Each cigarette listed in the certification shall be described with the following information:

(a) Brand or trade name on the package;

(b) Style, such as light or ultra light;

(c) Length in millimeters;

(d) Circumference in millimeters;

(e) Flavor, such as menthol or chocolate, if applicable;

(f) Filter or nonfilter;

(g) Package description, such as soft pack or box;

(h) Marking pursuant to section 69-505;

(i) The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(j) The date that the testing occurred.

(3) The State Fire Marshal shall make the certifications available to the Attorney General for purposes consistent with the Reduced Cigarette Ignition Propensity Act and the Department of Revenue for the purposes of ensuring compliance with this section.

(4) Each cigarette certified under this section shall be recertified every four years.

(5) At the time a manufacturer submits a written certification under this section, the manufacturer shall pay to the State Fire Marshal a fee of one thousand dollars for each brand family of cigarettes identified in the certification. The fee paid shall apply to all cigarettes listed in the brand family

identified in the certification and shall include any new cigarette certified within the brand family during the four-year certification period.

(6) The Reduced Cigarette Ignition Propensity Fund is created. The fund shall consist of all certification fees submitted by manufacturers in addition to any other funds made available for such purpose. The State Fire Marshal shall use the fund to carry out the act. Fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the fund. 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.

(7) If a manufacturer has certified a cigarette pursuant to this section and thereafter makes any change to such cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Reduced Cigarette Ignition Propensity Act, such cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette in accordance with the testing standards set forth in section 69-503 and maintains records of that retesting as required by section 69-503. Any altered cigarette which does not meet the performance standard set forth in section 69-503 shall not be sold in this state.

Source: Laws 2009, LB198, § 4.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

69-505 Marking; inspections.

(1) Cigarettes that are certified by a manufacturer in accordance with section 69-504 shall be marked to indicate compliance with the requirements of section 69-503. The marking shall be either:

(a) Any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes as such standards existed on January 1, 2009; or

(b) The letters ''FSC'' which signifies Fire Standards Compliant.

(2) The marking shall appear in eight-point type or larger and be permanently printed, stamped, engraved, or embossed on the package at or near the Universal Product Code.

(3) A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons, and cases, and brands marketed by that manufacturer.

(4) Manufacturers certifying cigarettes in accordance with section 69-504 shall provide a copy of the certifications to all wholesale dealers and agents to which they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking utilized by the manufacturer pursuant to this section for each retail dealer to which the wholesale dealers or agents sell cigarettes. Wholesale dealers and agents shall provide a copy of these package markings received from manufacturers to all retail dealers to which they sell cigarettes. Wholesale dealers, agents, and retail dealers shall permit the State Fire Marshal, the Department of Revenue, and their employees or peace

officers of this state to inspect markings of cigarette packaging marked in accordance with this section.

Source: Laws 2009, LB198, § 5.

69-506 Violations; civil penalty; seizure and destruction; additional remedies; Attorney General; powers and duties.

(1) A manufacturer, wholesale dealer, agent, or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 69-503, shall be liable to a civil penalty not to exceed ten thousand dollars per each sale of such cigarettes for a first offense and shall be liable to a civil penalty not to exceed twenty-five thousand dollars for any subsequent offense per each sale of such cigarettes, except that this penalty against any such person or entity shall not exceed one hundred thousand dollars during any thirty-day period.

(2) A retail dealer who knowingly sells or offers to sell fewer than one thousand cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed five hundred dollars for a first offense and shall be liable to a civil penalty not to exceed two thousand dollars for any subsequent offense for each such sale or offer for sale of such cigarettes. A retail dealer who knowingly sells or offers to sell one thousand or more cigarettes in violation of section 69-503 shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense per each such sale or offer of sale of such cigarettes. The penalty against any retail dealer under this subsection shall not exceed twenty-five thousand dollars during any thirty-day period.

(3) In addition to any civil penalty, any corporation, partnership, sole proprietor, limited partnership, limited liability company, limited liability partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 69-504 shall be liable to a civil penalty of seventy-five thousand dollars for the first false certification and shall be liable to a civil penalty not to exceed one hundred fifty thousand dollars for each subsequent false certification.

(4) Any person violating any other provision of the Reduced Cigarette Ignition Propensity Act shall be liable to a civil penalty not to exceed one thousand dollars for a first offense and shall be liable to a civil penalty not to exceed five thousand dollars for any subsequent offense.

(5) Whenever any peace officer of this state or duly authorized representative of the State Fire Marshal or Tax Commissioner discovers any cigarettes (a) for which no certification has been filed as required by section 69-504 or (b) that have not been marked as required by section 69-505, such peace officer or representative may seize and take possession of such cigarettes. Cigarettes seized pursuant to this subsection shall be destroyed, except that prior to the destruction of any cigarette seized pursuant to this subsection the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarette.

(6) In addition to any other remedy provided by law, the Attorney General may file an action in a court of competent jurisdiction for a violation of the Reduced Cigarette Ignition Propensity Act, including petitioning (a) for preliminary or permanent injunctive relief against any manufacturer, importer, wholesale dealer, retail dealer, agent, or other person or entity to enjoin such entity

from selling, offering to sell, or affixing tax stamps or cigarette tax meter impressions to any cigarette that does not comply with the requirements of the Reduced Cigarette Ignition Propensity Act or (b) to recover any costs or damages suffered by the state because of a violation of the act, including enforcement costs relating to the specific violation and attorney's fees. Each violation of the act or of rules or regulations adopted and promulgated under the act constitutes a separate civil violation for which the Attorney General may obtain relief. Upon obtaining judgment for injunctive relief under this subsection, the Attorney General shall provide a copy of the judgment to all wholesale dealers and agents to which the cigarette has been sold.

Source: Laws 2009, LB198, § 6.

69-507 Tax Commissioner; power to inspect; notice to State Fire Marshal.

The Tax Commissioner, in the regular course of conducting inspections of wholesale dealers, agents, and retail dealers, as authorized under section 77-2605, may inspect cigarettes to determine if the cigarettes are marked as required by section 69-505. If the cigarettes are not marked as required, the Tax Commissioner shall notify the State Fire Marshal.

Source: Laws 2009, LB198, § 7.

69-508 Attorney General; enforcement powers.

To enforce the provisions of the Reduced Cigarette Ignition Propensity Act, the Attorney General may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, stored, sold, or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale shall give the Attorney General the means, facilities, and opportunity for the examinations authorized by the act.

Source: Laws 2009, LB198, § 8.

69-509 Act; exemptions.

Nothing in the Reduced Cigarette Ignition Propensity Act shall be construed to prohibit:

(1) Any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 69-503 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this state; or

(2) The use of cigarettes solely for the purpose of consumer testing utilizing only the quantity of cigarettes that is reasonably necessary for the assessment.

Source: Laws 2009, LB198, § 9.

69-510 Termination of act; conditions; preemption of local law.

(1) The Reduced Cigarette Ignition Propensity Act shall terminate if a federal reduced cigarette ignition propensity standard that preempts the act is adopted and becomes effective.

(2) The Reduced Cigarette Ignition Propensity Act preempts any local law on the subject and no political subdivision shall enact or enforce any ordinance or other local law or regulation conflicting with any provision of the act or with any policy of this state expressed by the act, whether the policy is expressed by inclusion of a provision in the act or by exclusion of that subject from the act.

Source: Laws 2009, LB198, § 10.

69-511 State Fire Marshal; rules and regulations.

The State Fire Marshal may adopt and promulgate rules and regulations necessary to carry out the Reduced Cigarette Ignition Propensity Act in accordance with the Administrative Procedure Act.

Source: Laws 2009, LB198, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 6
ASSIGNMENT OF ACCOUNTS RECEIVABLE

Section

69-601 Repealed. Laws 1967, c. 417, § 1.

69-602 Repealed. Laws 1967, c. 417, § 1.

69-603 Repealed. Laws 1967, c. 417, § 1.

69-604 Repealed. Laws 1967, c. 417, § 1.

69-605 Repealed. Laws 1967, c. 417, § 1.

69-606 Repealed. Laws 1967, c. 417, § 1.

69-607 Repealed. Laws 1967, c. 417, § 1.

69-608 Repealed. Laws 1967, c. 417, § 1.

69-609 Repealed. Laws 1967, c. 417, § 1.

69-610 Repealed. Laws 1967, c. 417, § 1.

69-611 Repealed. Laws 1967, c. 417, § 1.

69-612 Repealed. Laws 1967, c. 417, § 1.

69-613 Repealed. Laws 1967, c. 417, § 1.

69-614 Repealed. Laws 1967, c. 417, § 1.

69-615 Repealed. Laws 1967, c. 417, § 1.

69-616 Repealed. Laws 1967, c. 417, § 1.

69-617 Repealed. Laws 1967, c. 417, § 1.

69-618 Repealed. Laws 1967, c. 417, § 1.

69-619 Repealed. Laws 1967, c. 417, § 1.

69-620 Repealed. Laws 1967, c. 417, § 1.

69-621 Repealed. Laws 1967, c. 417, § 1.

ARTICLE 7

UNIFORM TRUST RECEIPTS ACT

Section
69-701. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-701.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-701.02. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-701.03. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-702. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-702.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-702.02. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-702.03. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-702.04. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-703. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-703.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-704. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-705. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-706. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-707. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-708. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-709. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-709.01. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-710. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-711. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-712. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-713. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-714. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-715. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-716. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-717. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-718. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-719. Repealed. Laws 1963, c. 544, art. 10, § 1.
69-720. Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.02 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-701.03 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.02 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.03 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-702.04 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-703 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-703.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-704 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-705 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-706 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-707 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-708 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-709 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-709.01 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-710 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-711 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-712 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-713 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-714 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-715 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-716 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-717 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-718 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-719 Repealed. Laws 1963, c. 544, art. 10, § 1.

69-720 Repealed. Laws 1963, c. 544, art. 10, § 1.

ARTICLE 8
PUBLIC AUCTIONS

Section
69-801. Repealed. Laws 1972, LB 1410, § 3.

Section
69-802. Repealed. Laws 1972, LB 1410, § 3.
69-803. Repealed. Laws 1972, LB 1410, § 3.
69-804. Repealed. Laws 1972, LB 1410, § 3.
69-805. Repealed. Laws 1972, LB 1410, § 3.
69-806. Repealed. Laws 1972, LB 1410, § 3.
69-807. Repealed. Laws 1972, LB 1410, § 3.
69-808. Repealed. Laws 1972, LB 1410, § 3.
69-809. Repealed. Laws 1972, LB 1410, § 3.
69-810. Repealed. Laws 1972, LB 1410, § 3.
69-811. Repealed. Laws 1972, LB 1410, § 3.
69-812. Repealed. Laws 1972, LB 1410, § 3.
69-813. Repealed. Laws 1972, LB 1410, § 3.
69-814. Repealed. Laws 1972, LB 1410, § 3.
69-815. Repealed. Laws 1972, LB 1410, § 3.
69-816. Repealed. Laws 1972, LB 1410, § 3.
69-817. Repealed. Laws 1972, LB 1410, § 3.

69-801 Repealed. Laws 1972, LB 1410, § 3.

69-802 Repealed. Laws 1972, LB 1410, § 3.

69-803 Repealed. Laws 1972, LB 1410, § 3.

69-804 Repealed. Laws 1972, LB 1410, § 3.

69-805 Repealed. Laws 1972, LB 1410, § 3.

69-806 Repealed. Laws 1972, LB 1410, § 3.

69-807 Repealed. Laws 1972, LB 1410, § 3.

69-808 Repealed. Laws 1972, LB 1410, § 3.

69-809 Repealed. Laws 1972, LB 1410, § 3.

69-810 Repealed. Laws 1972, LB 1410, § 3.

69-811 Repealed. Laws 1972, LB 1410, § 3.

69-812 Repealed. Laws 1972, LB 1410, § 3.

69-813 Repealed. Laws 1972, LB 1410, § 3.

69-814 Repealed. Laws 1972, LB 1410, § 3.

69-815 Repealed. Laws 1972, LB 1410, § 3.

69-816 Repealed. Laws 1972, LB 1410, § 3.

69-817 Repealed. Laws 1972, LB 1410, § 3.

ARTICLE 9
SALES ON SUNDAY

Section
69-901. Repealed. Laws 1972, LB 1410, § 3.
69-902. Repealed. Laws 1972, LB 1410, § 3.
69-903. Repealed. Laws 1972, LB 1410, § 3.
69-904. Repealed. Laws 1972, LB 1410, § 3.

Section
69-905. Repealed. Laws 1972, LB 1410, § 3.
69-906. Repealed. Laws 1972, LB 1410, § 3.
69-907. Repealed. Laws 1972, LB 1410, § 3.
69-908. Repealed. Laws 1972, LB 1410, § 3.

69-901 Repealed. Laws 1972, LB 1410, § 3.

69-902 Repealed. Laws 1972, LB 1410, § 3.

69-903 Repealed. Laws 1972, LB 1410, § 3.

69-904 Repealed. Laws 1972, LB 1410, § 3.

69-905 Repealed. Laws 1972, LB 1410, § 3.

69-906 Repealed. Laws 1972, LB 1410, § 3.

69-907 Repealed. Laws 1972, LB 1410, § 3.

69-908 Repealed. Laws 1972, LB 1410, § 3.

ARTICLE 10
COMMERCIAL CHICKS AND POULTRY

Section
69-1001. Terms, defined.
69-1002. Sale at auction; containers; labels; statement required.
69-1003. Sale at auction; false statements; liability.
69-1004. Sale at auction by carrier; when act inapplicable.
69-1005. Violations; penalty.
69-1006. Poultry; sales record; exceptions.
69-1007. Poultry; sales record; violation; penalty.
69-1008. Poultry; sale or delivery; false representations; penalty.

69-1001 Terms, defined.

For the purpose of sections 69-1001 to 69-1008, unless the context otherwise requires:

(1) Commercial hatchery shall mean a place where chicks are hatched for the purpose of resale or where chicks are hatched for hire; and

(2) Commercial chicks shall mean any domestic fowl produced in a commercial hatchery, under the age of six weeks or not to exceed one pound in weight, and which are offered for resale by the hatchery or owner of chicks.

Source: Laws 1967, c. 414, § 1, p. 1279.

69-1002 Sale at auction; containers; labels; statement required.

When commercial chicks are offered for sale or sold at public auction, each box, crate, coop, or other container, shall be labeled with the sworn statement of the owner offering such chicks for sale at public auction, designating the number of live chicks in each such container, the breed and variety, the date on which such chicks were hatched, and the name and location of the commercial hatchery where hatched, whether such chicks were sexed, or unsexed, and if sexed, such sworn statement shall designate whether contents are cockerel chicks or pullet chicks, and any other representation made at or prior to the

time of the sale relative to the breed and variety, and such tests as shall have been made on the parent stock for pullorum disease.

Source: Laws 1967, c. 414, § 2, p. 1279.

69-1003 Sale at auction; false statements; liability.

The owner of commercial chicks desiring to sell them at public auction shall furnish to the person who conducts the sale a duplicate of the sworn statement required by section 69-1002, which shall be retained by the person conducting the sale. When such copy of the sworn statement has been furnished to him, the person conducting the sale shall be relieved from any responsibility or liability concerning incorrect or false statements made in regard to such commercial chicks.

Source: Laws 1967, c. 414, § 3, p. 1280.

69-1004 Sale at auction by carrier; when act inapplicable.

The provisions of sections 69-1001 to 69-1005 shall not apply to baby chicks in the custody of a common carrier upon which the freight has been prepaid, and which must be sold at public auction because delivery thereof cannot be effected beyond the control of such common carrier.

Source: Laws 1967, c. 414, § 4, p. 1280.

69-1005 Violations; penalty.

Any person, firm, partnership, limited liability company, or corporation who violates any of the provisions of sections 69-1001 to 69-1005 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 5, p. 1280; Laws 1977, LB 39, § 130; Laws 1993, LB 121, § 409.

69-1006 Poultry; sales record; exceptions.

Whenever any chickens, ducks, geese, turkeys, or other domestic fowls or poultry, whether alive or dressed, shall be sold to any public buyer, a record of the same shall be taken by the purchaser, and signed by the seller. Such record shall be in a simple form, and for convenience may be made in book form in units of fifty or more, and a duplicate thereof made and furnished at the option of the parties. Such records shall provide for showing at least the number of birds or poultry purchased, and the kind or breed of poultry purchased, the name of the person or persons who raised the birds or poultry purchased, and if not raised by the seller, where he procured them. It is further provided that the wholesale dealer is exempt from the provisions of sections 69-1006 to 69-1008 upon purchase made by him from a retail dealer or a regular local agent, but not upon purchase made direct from a producer or an individual who procured the same from a producer. Regular local agents of a wholesaler, and retail dealers selling to the wholesaler, are likewise exempt from the provisions relating to the selling of poultry.

Source: Laws 1967, c. 414, § 6, p. 1280.

69-1007 Poultry; sales record; violation; penalty.

Every failure, neglect or refusal to comply with the provisions of section 69-1006 shall constitute a separate violation of such section, and for each separate offense the purchaser may be guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 7, p. 1281; Laws 1977, LB 39, § 131.

69-1008 Poultry; sale or delivery; false representations; penalty.

Any person selling, bartering or delivering poultry to such retail or wholesale dealer therein, who shall fail, refuse or neglect to furnish full, complete and truthful information for such a receipt as provided in section 69-1006 and shall render a false statement in such a receipt concerning who raised the poultry described therein, or where and from whom he secured such poultry, shall be guilty of a violation of the provisions of this section, and shall, for each separate offense, be guilty of a Class V misdemeanor.

Source: Laws 1967, c. 414, § 8, p. 1281; Laws 1977, LB 39, § 132.

ARTICLE 11

BINDER TWINE

Section
69-1101. Labels required.
69-1102. Violations; penalty.

69-1101 Labels required.

A stamp or label shall be placed on every ball of binder twine sold, exposed or offered for sale in this state, giving the name of the manufacturer or importer, the number of feet to the pound in such ball, the material from which it is made, the tensile strength, the percent of oil it contains, and the date of manufacture. The deficiency in length shall not exceed five percent of the amount as stated on the label or stamp.

Source: Laws 1967, c. 415, § 1, p. 1281.

69-1102 Violations; penalty.

Every manufacturer, importer or dealer who fails to comply with the provisions of section 69-1101 shall be guilty of a Class V misdemeanor for each and every such ball sold, offered or exposed for sale.

Source: Laws 1967, c. 415, § 2, p. 1282; Laws 1977, LB 39, § 133.

ARTICLE 12

DEBT MANAGEMENT

Section
69-1201. Terms, defined.
69-1202. Debt management; exceptions to act.
69-1203. License; required.
69-1204. License; application; fees; bond; expiration; copy of contract.
69-1205. License; application; investigation; issuance.
69-1206. License; renewal; fee; bond.
69-1207. License; Secretary of State; deny; revoke; suspend; nontransferable.
69-1208. Rules and regulations; promulgation.
69-1209. Licensee; contract with debtor required; contents.
69-1210. Licensee; bank account; separate; books and records.
69-1211. Licensee; examination; cost; payment.

Section
69-1212. Licensee; debtor; fee; agreement; limitations.
69-1213. Licensee; duties.
69-1214. Licensee; acts forbidden.
69-1215. Unlawful acts; penalty.
69-1216. Limitation of actions.
69-1217. Fees; disposition.

69-1201 Terms, defined.

As used in sections 69-1201 to 69-1217, unless the context otherwise requires:

(1) Debt management shall mean the planning and management of the financial affairs of a debtor for a fee from the debtor and the receiving therefrom of money or evidences thereof for the purpose of distributing the same to his or her creditors in payment or partial payment of his or her obligations;

(2) Licensee shall mean any individual, partnership, limited liability company, unincorporated association, or corporation licensed under such sections;

(3) Secretary shall mean the Secretary of State;

(4) Debtor shall mean a wage earner whose principal income is derived from wages, salary, or commission;

(5) Office shall mean each location by street number, building number, city, and state where any person engages in debt management; and

(6) Creditor shall mean a person for whose benefit money is being collected and disbursed by licensees.

Source: Laws 1967, c. 377, § 1, p. 1179; Laws 1993, LB 121, § 410.

69-1202 Debt management; exceptions to act.

Any person engaged in debt management shall be deemed to be rendering financial planning service, but sections 69-1201 to 69-1217 shall not apply to the following when engaged in the regular course of their respective businesses and professions:

(1) Attorneys at law;

(2) Banks, fiduciaries, financing and lending institutions, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) Title insurers and abstract companies, while doing an escrow business;

(4) Employees of licensees under sections 69-1201 to 69-1217; or

(5) Judicial officers or others acting under court orders.

Source: Laws 1967, c. 377, § 2, p. 1180.

69-1203 License; required.

After January 1, 1969, it shall be unlawful for any person to engage in the business of debt management without first obtaining a license as required in sections 69-1201 to 69-1217.

Source: Laws 1967, c. 377, § 3, p. 1180.

69-1204 License; application; fees; bond; expiration; copy of contract.

Any person desiring to obtain a license to engage in the debt management business in this state shall file with the secretary an application in writing, under oath, setting forth his or her business name, his or her social security number if the applicant is an individual, the exact location of his or her office, names and addresses of all officers and directors if an association or a corporation, if a partnership, the partnership name and the names and addresses of all partners, and if a limited liability company, the company name and the names and addresses of all members, and a copy of the certificate of registration of trade name, certificate of partnership, articles of organization, or articles of incorporation. At the time of filing the application the applicant shall pay to the secretary a license fee of two hundred dollars for the main office within each county and one hundred dollars for each additional office. An initial investigation fee of two hundred dollars shall also be paid to the secretary at the time of filing the application. At the time of filing the application the applicant shall furnish a bond to the people of the state in the sum of ten thousand dollars, conditioned upon the faithful accounting of all money collected upon accounts entrusted to such person engaged in debt management, and their employees and agents. The aggregate liability of the surety to all claimants doing business with the office for which the bond is filed shall in no event exceed the amount of such bond. The bond or bonds shall be approved by the secretary and filed in the office of the Secretary of State. No person, firm, limited liability company, or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of sections 69-1201 to 69-1217.

Each licensee shall furnish with his or her application a blank copy of the contract he or she intends to use between himself or herself and the debtor and shall notify the secretary of all changes and amendments thereto within thirty days of such changes and amendments.

The license issued under sections 69-1201 to 69-1217 shall expire on December 31 next following its issuance unless sooner surrendered, revoked, or suspended, but may be renewed as provided in such sections.

Source: Laws 1967, c. 377, § 4, p. 1180; Laws 1982, LB 928, § 50; Laws 1983, LB 447, § 83; Laws 1993, LB 121, § 411; Laws 1997, LB 752, § 155.

69-1205 License; application; investigation; issuance.

Upon the filing of the application and the payment of the fees and the approval of the bond, the secretary shall investigate the facts and if he or she finds that the financial responsibility, experience, character, and general fitness of the applicant and of the members thereof, if the applicant is a partnership, a limited liability company, or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the community to warrant belief that the business will be operated fairly and honestly within the purposes of sections 69-1201 to 69-1217 and that the applicant or the applicant and the members thereof or the applicant and the officers and directors thereof have not been convicted of a felony, or that such person has not had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, the secretary shall issue the applicant a license to engage in the debt management business in accordance with sections 69-1201 to 69-1217.

The secretary may require as part of the application a credit report and other information.

Source: Laws 1967, c. 377, § 5, p. 1181; Laws 1993, LB 121, § 412.

69-1206 License; renewal; fee; bond.

Each licensee on or before December 1 may make application to the secretary for renewal of its license. The application shall be on the form prescribed by the secretary, and shall be accompanied by a fee of one hundred dollars, together with a bond as in the case of an original application. A separate application shall be made for each office.

Source: Laws 1967, c. 377, § 6, p. 1182; Laws 1982, LB 928, § 51.

69-1207 License; Secretary of State; deny; revoke; suspend; nontransferable.

(1) The secretary may deny, revoke or suspend any license issued or applied for under sections 69-1201 to 69-1217 for the following causes:

(a) Conviction of a felony;

(b) For violating any of the provisions of sections 69-1201 to 69-1217;

(c) For fraud or deceit in procuring the issuance of a license under sections 69-1201 to 69-1217;

(d) For indulging in a continuous course of unfair conduct; or

(e) For insolvency, being adjudicated a bankrupt, being placed in receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under sections 69-1201 to 69-1217.

(2) The denial, revocation or suspension shall only be made upon specific charges in writing, under oath, filed with the secretary, whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than ten days nor more than thirty days prior to the hearing.

(3) No license shall be transferable or assignable.

Source: Laws 1967, c. 377, § 7, p. 1182.

69-1208 Rules and regulations; promulgation.

Rules and regulations issued by the secretary under sections 69-1201 to 69-1217 shall be promulgated in accordance with the provisions of the Administrative Procedure Act.

Source: Laws 1967, c. 377, § 8, p. 1182.

Cross References

Administrative Procedure Act, see section 84-920.

69-1209 Licensee; contract with debtor required; contents.

Each licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the debtor's obligations to be adjusted, a complete list of the creditors holding such obligations, the total charges agreed upon for the services of the licensee and the beginning and

expiration date of the contract. No contract shall extend for a period longer than thirty-six months.

Source: Laws 1967, c. 377, § 9, p. 1182.

69-1210 Licensee; bank account; separate; books and records.

A licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from debtors for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor, creditor, or the licensee for fees. Every licensee shall keep, and use in his business, books, accounts and records which will enable the secretary to determine whether such licensee is complying with the provisions of sections 69-1201 to 69-1217 and with the rules and regulations of the secretary. Every licensee shall preserve such books, accounts and records for at least five years after making the final entry on any transaction recorded therein.

Source: Laws 1967, c. 377, § 10, p. 1183.

69-1211 Licensee; examination; cost; payment.

The secretary may examine without notice the condition and affairs of each licensee. In connection with any examination, the secretary may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The secretary shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations issued thereunder. The licensee shall pay the actual cost of the examination as determined by the secretary, which fee shall be deposited in the state treasury to the credit of the General Fund. Failure to pay the examination fee within thirty days of receipt of demand from the secretary shall automatically suspend the license until the fee is paid.

In the investigation of alleged violations of sections 69-1201 to 69-1217, the secretary may compel the attendance of any person or the production of any books, accounts, records and files used therein, and may examine under oath all persons in attendance pursuant thereto.

Source: Laws 1967, c. 377, § 11, p. 1183.

69-1212 Licensee; debtor; fee; agreement; limitations.

The fee of the licensee to be charged the debtor shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated in the contract. The total fee to be charged by the licensee shall not be more than fifteen percent of the amount of money agreed to be paid through the licensee. Fees shall be amortized over the length of the contract and no more than the monthly amortized amount may be applied to charges while the contract is in full force and effect, except that the licensee may require an initial payment by the debtor of an amount not to exceed twenty-five dollars which shall be credited to the total fee to be charged. In the event of cancellation, the licensee shall be entitled to receive not more than twenty-five percent of the remaining unamortized fee agreed upon in the contract. No licensee shall be entitled to any fee or charge against the debtor upon any contract until the debt management program is arranged and approved by the debtor. A contract shall not be

effective until a debtor has made a payment to the licensee for distribution to his creditors.

Source: Laws 1967, c. 377, § 12, p. 1183.

69-1213 Licensee; duties.

Each licensee shall:

(1) Keep complete and adequate records during the term of the contract and for a period of five years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements and charges, which records shall be open to inspection by the secretary and his duly appointed agents during normal business hours;

(2) Make remittances to creditors within fifteen days after receipt of any funds, and within seven days if such funds are in the form of cash, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain. In no case may the licensee retain funds longer than thirty-five days after receipt from the debtor;

(3) Upon request furnish the debtor a written statement of his account each ninety days, or a verbal accounting at any time the debtor may request it during normal business hours;

(4) Accept no account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the payments required by the budget analysis; and

(5) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of that compromise.

Source: Laws 1967, c. 377, § 13, p. 1184.

69-1214 Licensee; acts forbidden.

No licensee shall:

(1) Purchase from a creditor any obligation of a debtor;

(2) Operate as a collection agent and as a licensee as to the same debtor's account;

(3) Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished;

(4) Receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, either as to real or personal property;

(5) Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor shall he accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason; or

(6) Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever wherein is made any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made therefor.

Source: Laws 1967, c. 377, § 14, p. 1185.

69-1215 Unlawful acts; penalty.

Any person, partnership, limited liability company, association, corporation, or other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent, or representative thereof who willfully or knowingly engages in the business of debt management without the license required by sections 69-1201 to 69-1217 shall be guilty of a Class II misdemeanor.

Source: Laws 1967, c. 377, § 15, p. 1185; Laws 1977, LB 39, § 134; Laws 1993, LB 121, § 413.

69-1216 Limitation of actions.

All actions in any of the courts of this state under the provisions of sections 69-1201 to 69-1217 shall be commenced within two years next after the cause of action shall accrue.

Source: Laws 1967, c. 377, § 16, p. 1185.

69-1217 Fees; disposition.

All fees collected under the provisions of sections 69-1201 to 69-1217 shall be paid promptly into the state treasury to the credit of the General Fund.

Source: Laws 1967, c. 377, § 17, p. 1186.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

Cross References

County judge, payment of unclaimed funds to State Treasurer, see section 25-2717.
Horseracing licensees, exempt from act, see section 2-1223.
Liquidated insurer, disposition of unclaimed amounts under the act, see section 44-4845.
Lottery licensees, exempt from act, see section 9-645.

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

Section
69-1301. Terms, defined.
69-1302. Property held or owing by a banking or financial organization or business association; presumed abandoned; when.
69-1303. Unclaimed funds held and owing by a life insurance corporation; presumed abandoned; when.
69-1304. Funds held or owing by any utility; presumed abandoned; when.
69-1305. Stock, shareholding, or other intangible ownership interest; presumed abandoned; when.
69-1305.01. Stock or other intangible ownership interest; applicability of act; conditions.
69-1305.02. Credit memo; presumed abandoned; when.
69-1305.03. Gift certificate or gift card; presumed abandoned; when.
69-1306. Intangible personal property distributable in voluntary dissolution; presumed abandoned; when.
69-1307. Intangible personal property and increment held in a fiduciary capacity; presumed abandoned; when.
69-1307.01. Intangible personal property held by court, public entities, or political subdivision; presumed abandoned; when.
69-1307.02. Unpaid wages; presumed abandoned; when.
69-1307.03. Retirement funds; presumed abandoned; when.
69-1307.04. Mineral rights and proceeds; presumed abandoned; when.
69-1307.05. Intangible personal property held by life insurance corporation; presumed abandoned; when.

Section

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

69-1301 Terms, defined.

As used in the Uniform Disposition of Unclaimed Property Act unless the context otherwise requires:

(a) Banking organization means any bank, trust company, savings bank, industrial bank, land bank, or safe deposit company.

(b) Business association means any corporation, joint-stock company, business trust, partnership, limited liability company, or association for business purposes of two or more individuals, but does not include a public corporation.

(c) Financial organization means any savings and loan association, building and loan association, credit union, cooperative bank, or investment company, doing business in this state.

(d) General-use prepaid card means a plastic card or other electronic payment device usable with multiple, unaffiliated sellers of goods or services.

(e) Holder means any person in possession of property subject to the act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to the act.

(f) Life insurance corporation means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not limited to, endowments and annuities.

(g) Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to the act, or his or her legal representative.

(h) Person means any individual, business association, governmental or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(i) Utility means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

Source: Laws 1969, c. 611, § 1, p. 2478; Laws 1992, Third Spec. Sess., LB 26, § 3; Laws 1993, LB 121, § 414; Laws 2003, LB 131, § 34; Laws 2006, LB 173, § 1.

The State Board of Agriculture while operating parimutuel betting is a business association, as contemplated by the Uniform Disposition of Unclaimed Property Act. State ex rel. Marsh v. Nebraska St. Bd. of Agr., 217 Neb. 622, 350 N.W.2d 535 (1984).

69-1302 Property held or owing by a banking or financial organization or business association; presumed abandoned; when.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings, or matured time deposit that is not automatically renewable made in this state with a banking organization, together with any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has, within five years:

(1) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest or dividends; or

(2) Corresponded in writing with the banking organization concerning the deposit; or

(3) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking organization; or

(4) Owned other property to which subdivision (a)(1), (2), or (3) applies and if the banking organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (a) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the banking organization concerning which the owner has:

(i) Corresponded in writing with the banking organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking organization and if the banking organization corresponds in writing with the owner with regard to the property that would

otherwise be abandoned under subdivision (a) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(b) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit that is not automatically renewable, including a certificate of indebtedness that is not automatically renewable, made therewith in this state, and any interest or dividends thereon, excluding any charges that may lawfully be withheld, unless the owner has within five years:

(1) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(2) Corresponded in writing with the financial organization concerning the funds or deposit; or

(3) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum or other record on file with the financial organization; or

(4) Owned other property to which subdivision (b)(1), (2), or (3) applies and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (b) of this section at the address to which correspondence regarding the other property regularly is sent; or

(5) Had another relationship with the financial organization concerning which the owner has:

(i) Corresponded in writing with the financial organization; or

(ii) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the financial organization and if the financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under this subdivision (b) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(c) A holder may not, with respect to property described in subdivision (a) or (b) of this section, impose any charges solely due to dormancy or cease payment of interest solely due to dormancy unless there is a written contract between the holder and the owner of the property pursuant to which the holder may impose reasonable charges or cease payment of interest or modify the imposition of such charges and the conditions under which such payment may be ceased. A holder of such property who imposes charges solely due to dormancy may not increase such charges with respect to such property during the period of dormancy. The contract required by this subdivision may be in the form of a signature card, deposit agreement, or similar agreement which contains or incorporates by reference (1) the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased or (2) the holder's rules and regulations setting forth the holder's schedule of charges and the conditions, if any, under which the payment of interest may be ceased.

(d)(1) Any time deposit that is automatically renewable, including a certificate of indebtedness that is automatically renewable, made in this state with a banking or financial organization, together with any interest thereon, seven years after the expiration of the initial time period or any renewal time period unless the owner has, during such initial time period or renewal time period:

(i) Increased or decreased the amount of the deposit, or presented an appropriate record or other similar evidence of the deposit for the crediting of interest;

(ii) Corresponded in writing with the banking or financial organization concerning the deposit;

(iii) Otherwise indicated an interest in the deposit as evidenced by a memorandum or other record on file with the banking or financial organization;

(iv) Owned other property to which subdivision (d)(1)(i), (ii), or (iii) of this section applies and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be presumed abandoned under subdivision (d) of this section at the address to which correspondence regarding the other property regularly is sent; or

(v) Had another relationship with the banking or financial organization concerning which the owner has:

(A) Corresponded in writing with the banking or financial organization; or

(B) Otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization and if the banking or financial organization corresponds in writing with the owner with regard to the property that would otherwise be abandoned under subdivision (d) of this section at the address to which correspondence regarding the other relationship regularly is sent.

(2) If, at the time provided for delivery in section 69-1310, a penalty or forfeiture in the payment of interest would result from the delivery of a time deposit subject to subdivision (d) of this section, the time for delivery shall be extended until the time when no penalty or forfeiture would result.

(e) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, certificates of deposit that are not automatically renewable, drafts, money orders, and traveler's checks, that, with the exception of money orders and traveler's checks, has been outstanding for more than five years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of (i) money orders, that has been outstanding for more than seven years from the date of issuance and (ii) traveler's checks, that has been outstanding for more than fifteen years from the date of issuance, unless the owner has within five years, or within seven years in the case of money orders and within fifteen years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the banking or financial organization or business association.

(f) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box in this state on which the lease or rental period has expired due to nonpayment of rental charges or other reason, or any surplus amounts arising from the sale thereof pursuant to law, that have been unclaimed by the owner for more than five years from the date on which the lease or rental period expired.

(g) For the purposes of this section failure of the United States mails to return a letter, duly deposited therein, first-class postage prepaid, to the last-known address of an owner of tangible or intangible property shall be deemed correspondence in writing and shall be sufficient to overcome the presumption

of abandonment created herein. A memorandum or writing on file with such banking or financial organization shall be sufficient to evidence such failure.

Source: Laws 1969, c. 611, § 2, p. 2479; Laws 1977, LB 305, § 1; Laws 1992, Third Spec. Sess., LB 26, § 4.

The State Board of Agriculture while operating parimutuel betting is a business association, as contemplated by the Uniform Disposition of Unclaimed Property Act. State ex rel. Marsh v. Nebraska St. Bd. of Agr., 217 Neb. 622, 350 N.W.2d 535 (1984).

69-1303 Unclaimed funds held and owing by a life insurance corporation; presumed abandoned; when.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last-known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last-known address of the person entitled to the funds is the same as the last-known address of the insured or annuitant according to the records of the corporation.

(b) Unclaimed funds, as used in this section, means all money held and owing by any life insurance corporation unclaimed and unpaid for more than five years after the money became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding five years, (1) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Money otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

Source: Laws 1969, c. 611, § 3, p. 2480; Laws 1977, LB 305, § 2; Laws 1992, Third Spec. Sess., LB 26, § 5.

69-1304 Funds held or owing by any utility; presumed abandoned; when.

The following funds held or owing by any utility are presumed abandoned:

(a) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than three years after the termination of the services for which the deposit or advance payment was made.

(b) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than three years

after the date it became payable in accordance with the final determination or order providing for the refund.

Source: Laws 1969, c. 611, § 4, p. 2481; Laws 1977, LB 305, § 3; Laws 1992, Third Spec. Sess., LB 26, § 6.

69-1305 Stock, shareholding, or other intangible ownership interest; presumed abandoned; when.

(a) Any stock, shareholding, or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if:

(1) The interest in the association is owned by a person who for more than five years has not claimed a dividend, distribution, or other sum payable as a result of the interest or has not communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association; and

(2) The association does not know the location of the owner at the end of the five-year period.

(b) The return of official shareholder notifications or communications by the postal service as undeliverable shall be evidence that the association does not know the location of the owner.

(c) The Uniform Disposition of Unclaimed Property Act shall be applicable to both the underlying stock, shareholdings, or other intangible ownership interests of an owner, and any stock, shareholdings, or other intangible ownership interest of which the business association is in possession of the certificate or other evidence or indicia of ownership, and to the stock, shareholdings, or other intangible ownership interests of dividend- and non-dividend-paying business associations whether or not the interest is represented by a certificate.

Source: Laws 1969, c. 611, § 5, p. 2482; Laws 1986, LB 212, § 1; Laws 1992, Third Spec. Sess., LB 26, § 7; Laws 1994, LB 1048, § 1.

69-1305.01 Stock or other intangible ownership interest; applicability of act; conditions.

The Uniform Disposition of Unclaimed Property Act does not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within five years communicated in any manner described in subdivision (a)(1) of section 69-1305; or

(b) Five years have elapsed since the location of the owner became unknown to the business association as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable and the owner has not within those five years communicated in any manner described in subdivision (a)(1) of section 69-1305. The five-year period from the return of

official shareholder notifications or communications shall commence from the return of the notification or communication.

Source: Laws 1994, LB 1048, § 2.

69-1305.02 Credit memo; presumed abandoned; when.

A credit memo that remains unredeemed for more than three years after issuance is presumed abandoned and the amount presumed abandoned is the amount credited, as shown on the memo itself.

Source: Laws 1994, LB 1048, § 3; Laws 2006, LB 173, § 2.

69-1305.03 Gift certificate or gift card; presumed abandoned; when.

(a) A gift certificate or gift card which is not assessed any fees and does not have an expiration date shall not be presumed to be abandoned.

(b) A gift certificate or gift card which contains an expiration date or requires any type of post-sale finance charge or fee which is unredeemed for a period of three years from the date of issuance shall be presumed abandoned.

(c) A gift certificate or gift card issued prior to November 2, 2006, which contains an expiration date or requires any type of post-sale finance charge or fee and has not been redeemed shall not be presumed abandoned if the issuer's policy and practice as of July 1, 2006, is to waive all post-sale charges or fees and to honor such gift certificate or gift card, at no additional cost to the holder whenever presented at full face value or the value remaining after any applicable purchases, expiration date notwithstanding. A written notice of such policy and practice shall be posted conspicuously by July 1, 2006, in not smaller than ten-point type, at each site in all Nebraska locations at which the issuer distributes or redeems a gift certificate or gift card.

(d) In the case of a gift certificate or gift card, the amount presumed abandoned is the face amount of the certificate or card itself, less the total amount of any applicable purchases and fees.

(e) A gift certificate or gift card subject to a fee shall contain a statement clearly and conspicuously printed on it stating whether there is a fee, the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift certificate or gift card, and when the fee will be assessed. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(f) A gift certificate or gift card subject to an expiration date shall contain a statement clearly and conspicuously printed on the gift certificate or gift card stating the expiration date. The statement may appear on the front or back of the gift certificate or gift card in a location where it is visible to a purchaser prior to the purchase.

(g) This section does not apply to a general-use prepaid card.

Source: Laws 2006, LB 173, § 3; Laws 2008, LB668, § 1.

69-1306 Intangible personal property distributable in voluntary dissolution; presumed abandoned; when.

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by

the owner within two years after the date for distribution, is presumed abandoned.

Source: Laws 1969, c. 611, § 6, p. 2482; Laws 1992, Third Spec. Sess., LB 26, § 8.

69-1307 Intangible personal property and increment held in a fiduciary capacity; presumed abandoned; when.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within five years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(a) If the property is held by a banking organization or a financial organization, or by a business association organized under the laws of or created in this state; or

(b) If it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last-known address of the person entitled thereto is in this state; or

(c) If it is held in this state by any other person.

Source: Laws 1969, c. 611, § 7, p. 2482; Laws 1992, Third Spec. Sess., LB 26, § 9.

69-1307.01 Intangible personal property held by court, public entities, or political subdivision; presumed abandoned; when.

Except as otherwise provided by law, all intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than three years is presumed abandoned.

Source: Laws 1992, Third Spec. Sess., LB 26, § 10.

69-1307.02 Unpaid wages; presumed abandoned; when.

Unpaid wages, including wages represented by payroll checks owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable, are presumed abandoned.

Source: Laws 1992, Third Spec. Sess., LB 26, § 11.

69-1307.03 Retirement funds; presumed abandoned; when.

All intangible property and any income or increment derived therefrom held in an individual retirement account, a retirement plan for self-employed individuals, or similar account or plan established pursuant to the internal revenue laws of the United States, which has not been paid or distributed for more than thirty days after the earliest of the following: (a) The actual date of distribution or attempted distribution; (b) the date contracted for distribution in the plan or trust agreement governing the account or plan; or (c) the date specified in the internal revenue law of the United States by which distribution must begin in order to avoid a tax penalty, is presumed abandoned unless the owner or

beneficiary within the five years preceding any such date has made additional payments or transfers of property to the account or plan, was paid or received a distribution, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the account or plan fiduciary.

Source: Laws 1994, LB 1048, § 4.

69-1307.04 Mineral rights and proceeds; presumed abandoned; when.

(a) For purposes of this section, unless the context otherwise requires:

(1) Mineral means oil, gas, uranium, sulphur, lignite, coal, and any other substance that is ordinarily and naturally considered a mineral, regardless of the depth at which the oil, gas, uranium, sulphur, lignite, coal, or other substance is found; and

(2) Mineral proceeds includes:

(i) All obligations to pay resulting from the production and sale of minerals, including net revenue interest, royalties, overriding royalties, production payments, and joint operating agreements; and

(ii) All obligations for the acquisition and retention of a mineral lease, including bonuses, delay rentals, shut-in royalties, and minimum royalties.

(b) Any sum payable as mineral proceeds and the underlying right to receive mineral proceeds are presumed abandoned if any sum payable as mineral rights has remained unclaimed by the owner for more than three years after it became payable or distributable. At the time an owner's underlying right to receive mineral proceeds is presumed abandoned, any mineral proceeds then owing to the owner and any proceeds accruing after that time are presumed abandoned.

(c) A holder may not deduct any amount from mineral proceeds unless:

(1) There is an enforceable written contract between the holder and the owner of the mineral proceeds pursuant to which the holder may impose a charge;

(2) For mineral proceeds in excess of five dollars, the holder, no more than three months before the initial imposition of those charges, has mailed written notice to the owner of the amount of those charges at the last-known address of the owner stating that those charges will be imposed, but the notice provided in this section need not be given with respect to charges imposed before July 16, 1994; and

(3) The holder regularly imposes such charges and in no instance reverses or otherwise cancels them.

(d) Charges imposed pursuant to subsection (c) of this section may be made and collected monthly, quarterly, or annually. However, beginning with July 16, 1994, the cumulative amount of charges shall not exceed twelve dollars per year, and shall only be charged for a maximum of two calendar years.

Source: Laws 1994, LB 1048, § 5.

69-1307.05 Intangible personal property held by life insurance corporation; presumed abandoned; when.

All intangible personal property distributable in the course of a demutualization or related reorganization of a life insurance corporation that remains

unclaimed is presumed abandoned two years after the date of the distribution of the property.

Source: Laws 2003, LB 424, § 2.

69-1308 Other intangible property; general-use prepaid card; presumed abandoned; when.

(a) Except as provided in subsection (b) of this section, all intangible personal property, not otherwise covered by the Uniform Disposition of Unclaimed Property Act, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable, is presumed abandoned.

(b) The unredeemed value of a general-use prepaid card, including any income or increment thereon after deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after the last transaction initiated by the card owner, is presumed abandoned.

Source: Laws 1969, c. 611, § 8, p. 2483; Laws 1992, Third Spec. Sess., LB 26, § 12; Laws 2006, LB 173, § 4.

69-1309 Owner in another state; property not presumed abandoned; when.

If specific property which is subject to the provisions of sections 69-1302 and 69-1305 to 69-1308 is held for or owed or distributable to an owner whose last-known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 69-1301 to 69-1329 if:

(a) It may be claimed as abandoned or escheated under the laws of such other state; and

(b) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or distributable to an owner whose last-known address is within this state by a holder who is subject to the jurisdiction of this state.

Source: Laws 1969, c. 611, § 9, p. 2483.

69-1310 Property presumed abandoned; reports to State Treasurer; contents; filing date; property accompany report; prevent abandonment, when; verification.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under the Uniform Disposition of Unclaimed Property Act shall report to the State Treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last-known address, if any, of each person appearing from the records of the holder to be the owner of any property presumed abandoned under the act;

(2) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his or her last-known address according to the life insurance corporation's records;

(3) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of less than twenty-five dollars may be reported in the aggregate;

(4) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) Other information which the State Treasurer may prescribe by rule as necessary for the administration of the act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his or her name while holding the property, he or she shall file with his or her report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. A one-time supplemental report shall be filed by life insurance corporations with regard to property subject to section 69-1307.05 before November 1, 2003, as of December 31, 2002, as if section 69-1307.05 had been in effect before January 1, 2003. The property must accompany the report unless excused by the State Treasurer for good cause. The State Treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under the act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by a limited liability company, by a member; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Source: Laws 1969, c. 611, § 10, p. 2483; Laws 1977, LB 305, § 4; Laws 1992, Third Spec. Sess., LB 26, § 13; Laws 1993, LB 121, § 415; Laws 1994, LB 1048, § 6; Laws 2003, LB 424, § 3.

69-1311 Report of property presumed abandoned; notices; time; contents; exceptions.

(a) Between March 1 and March 10 of each year the State Treasurer shall cause notice to be published once in an English language legal newspaper of general circulation in the county in this state in which is located the last-known address of any person to be named in the notice. If no address is known, then the notice shall be published in a legal newspaper having statewide circulation.

(b) The published notice shall be entitled Notice to Owners of Abandoned Property, and shall contain:

(1) The names in alphabetical order and counties of last-known addresses, if any, of persons listed in the report and entitled to notice as provided in subsection (a) of this section.

(2) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the State Treasurer.

(c) The State Treasurer is not required to publish in such notice any item of less than twenty-five dollars unless he or she deems such publication to be in the public interest.

(d) Within one hundred twenty days from the receipt of the report required by section 69-1310, the State Treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under the Uniform Disposition of Unclaimed Property Act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Treasurer, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is presented by the owner to the State Treasurer, arrangements will be made to transfer the property to the owner as provided by law.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 69-1302.

Source: Laws 1969, c. 611, § 11, p. 2485; Laws 1971, LB 648, § 1; Laws 1977, LB 305, § 5; Laws 2005, LB 476, § 1.

69-1312 Delivery of property to State Treasurer; exceptions.

Every person who has filed a report under section 69-1310, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 69-1302, shall pay or deliver to the State Treasurer all abandoned property specified in this report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 69-1311, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the State Treasurer, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Source: Laws 1969, c. 611, § 12, p. 2486; Laws 1977, LB 305, § 6.

69-1313 Property; delivery to State Treasurer; custodian; holder relieved of liability; reimbursement.

Upon the payment or delivery of abandoned property to the State Treasurer or upon payment or delivery of property to the State Treasurer pursuant to section 69-1321, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the State Treasurer under the Uniform Disposition of Unclaimed Property Act

or who pays or delivers property to the State Treasurer pursuant to section 69-1321 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid money to the State Treasurer pursuant to the act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the State Treasurer shall forthwith reimburse the holder for the payment.

Source: Laws 1969, c. 611, § 13, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 14.

Cross References

State Treasurer, credit to the State Treasurer Administrative Fund, see section 84-617.

69-1314 Property paid or delivered to State Treasurer; owner not entitled to income.

When property is paid or delivered to the State Treasurer under sections 69-1301 to 69-1329, the owner is not entitled to receive income or other increments accruing thereafter.

Source: Laws 1969, c. 611, § 14, p. 2487.

69-1315 Limitation of action; claim; effect.

(a) The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by the Uniform Disposition of Unclaimed Property Act or to pay or deliver abandoned property to the State Treasurer. Holders shall not be required to report or to pay or to deliver abandoned property or unclaimed funds as to which the statute of limitations applicable to the enforcement of any claim to such property shall have expired prior to December 25, 1969.

(b) No action or proceeding may be commenced by the State Treasurer with respect to any duty of a holder under the act more than seven years after the holder files a report for the period in which the duty arose. This subsection shall not apply to holders described in section 69-1307.01.

Source: Laws 1969, c. 611, § 15, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 15.

69-1316 Abandoned property; State Treasurer; sell; when; notice; title.

(a) Except as provided in section 69-1321, all abandoned property other than money, securities, bonds, or similar property delivered to the State Treasurer under the Uniform Disposition of Unclaimed Property Act shall be sold by him or her to the highest bidder at public sale in whatever city in the state affords in his or her judgment the most favorable market for the property involved. The State Treasurer shall hold the sale whenever he or she decides, but a sale must be conducted at least once every five years. The State Treasurer may decline the highest bid and reoffer the property for sale if he or she considers the price bid insufficient. He or she need not offer any property for sale if, in his or her opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

(c) The purchaser at any sale conducted by the State Treasurer pursuant to the act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The State Treasurer shall execute all documents necessary to complete the transfer of title.

(d) Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or by another commercially reasonable method. All securities presumed abandoned under the act and delivered to the State Treasurer shall be held for at least three years before he or she sells them. A person making a claim under this section is entitled to receive either the securities delivered to the State Treasurer by the holder, if they still remain in the hands of the State Treasurer, or the proceeds received from the sale, but no person has any claim under this section against the state, the holder, any transfer agent, any registrar, or any other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the State Treasurer.

Source: Laws 1969, c. 611, § 16, p. 2487; Laws 1992, Third Spec. Sess., LB 26, § 16; Laws 1994, LB 1048, § 7.

69-1317 Abandoned property; trust funds; record; professional finder's fee; information withheld; when; proceeds of sale; transfers; Unclaimed Property Cash Fund; created; investment.

(a)(1) Except as otherwise provided in this subdivision, all funds received under the Uniform Disposition of Unclaimed Property Act, including the proceeds from the sale of abandoned property under section 69-1316, shall be deposited by the State Treasurer in a separate trust fund from which he or she shall make prompt payment of claims allowed pursuant to the act and payment of any auditing expenses associated with the receipt of abandoned property. All funds received under section 69-1307.05 shall be deposited by the State Treasurer in a separate life insurance corporation demutualization trust fund, which is hereby created, from which he or she shall make prompt payment of claims regarding such funds allowed pursuant to the act. Transfers from the separate life insurance corporation demutualization trust fund to the General Fund may be made at the direction of the Legislature. Before making the deposit he or she shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the abandoned property, the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record shall be available for public inspection during business hours.

The record shall not be subject to public inspection or available for copying, reproduction, or scrutiny by commercial or professional locators of property presumed abandoned who charge any service or finders' fee until twenty-four months after the names from the holders' reports have been published or officially disclosed. Records concerning the social security number, date of birth, amount due, and last-known address of an owner shall be treated as

confidential and subject to the same confidentiality as tax return information held by the Department of Revenue, except that the Auditor of Public Accounts shall have unrestricted access to such records.

A professional finders' fee shall be limited to ten percent of the total dollar amount of the property presumed abandoned. To claim any such fee, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property was reported to the State Treasurer, and provide notice that the property may be claimed by the owner from the State Treasurer free of charge. To claim any such fee if the property has not yet been abandoned, the finder shall disclose to the owner the nature, location, and value of the property, provide notice of when such property will be reported to the State Treasurer, if known, and provide notice that, upon receipt of the property by the State Treasurer, such property may be claimed by the owner from the State Treasurer free of charge.

(2) The unclaimed property records of the State Treasurer, the unclaimed property reports of holders, and the information derived by an unclaimed property examination or audit of the records of a person or otherwise obtained by or communicated to the State Treasurer may be withheld from the public. Any record or information that may be withheld under the laws of this state or of the United States when in the possession of such a person may be withheld when revealed or delivered to the State Treasurer. Any record or information that is withheld under any law of another state when in the possession of that other state may be withheld when revealed or delivered by the other state to the State Treasurer.

Information withheld from the general public concerning any aspect of unclaimed property shall only be disclosed to an apparent owner of the property or to the escheat, unclaimed, or abandoned property administrators or officials of another state if that other state accords substantially reciprocal privileges to the State Treasurer.

(b)(1) On or after October 6, 1992, the State Treasurer shall periodically transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the General Fund no less frequently than on or before November 1 and May 1 of each year, except that the total amount of all such transfers shall not exceed five million dollars.

(2)(i) On the next succeeding November 1 after five million dollars has been transferred to the General Fund in the manner described in subdivision (b)(1) of this section or (ii) on November 1, 1996, whichever occurs first, and on or before November 1 of each year thereafter, the State Treasurer shall transfer any balance in excess of an amount not to exceed five hundred thousand dollars from the separate trust fund to the permanent school fund.

(3) On July 15, 2003, the State Treasurer shall transfer two hundred thousand dollars from the separate trust fund to the General Fund and one hundred thousand dollars from the separate trust fund to the Treasury Management Cash Fund. On September 15, 2004, the State Treasurer shall transfer five hundred thousand dollars from the separate trust fund to the General Fund.

(c) Before making any deposit to the credit of the permanent school fund or the General Fund, the State Treasurer may deduct (1) any costs in connection with sale of abandoned property, (2) any costs of mailing and publication in connection with any abandoned property, and (3) reasonable service charges and place such funds in the Unclaimed Property Cash Fund which is hereby

created. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Unclaimed Property Cash 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.

Source: Laws 1969, c. 611, § 17, p. 2488; Laws 1971, LB 648, § 2; Laws 1977, LB 305, § 7; Laws 1978, LB 754, § 1; Laws 1986, LB 212, § 2; Laws 1992, Third Spec. Sess., LB 26, § 17; Laws 1994, LB 1048, § 8; Laws 1994, LB 1049, § 1; Laws 1994, LB 1066, § 63; Laws 1995, LB 7, § 67; Laws 1997, LB 57, § 1; Laws 2003, LB 424, § 4; Laws 2009, LB432, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

69-1318 Person claiming interest in property delivered to state; claim; filing.

Any person claiming an interest in any property delivered to the state under sections 24-345, and 69-1301 to 69-1329 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the State Treasurer.

Source: Laws 1969, c. 611, § 18, p. 2489; Laws 1980, LB 572, § 3.

69-1318.01 Payment with respect to support order obligor authorized.

The State Treasurer may make payment on a claim filed under the Uniform Disposition of Unclaimed Property Act by a person who is not the owner of the property, or by a legal representative of such person, when the owner is an obligor, as defined in section 43-3341, and the person filing the claim is an obligee, as defined in such section. Such payments shall only be made to credit an arrearage of an obligor.

Source: Laws 2006, LB 771, § 1.

69-1319 Claim; hearing; decision; payment.

(a) The State Treasurer shall consider any claim filed under sections 69-1301 to 69-1329 and may hold a hearing and receive evidence concerning it. If a hearing is held he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

(b) If the claim is allowed, the State Treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

Source: Laws 1969, c. 611, § 19, p. 2489.

69-1320 Claim; appeal; procedure.

Any person aggrieved by a decision of the State Treasurer or as to whose claim the State Treasurer has failed to act within ninety days after the filing of the claim may appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1969, c. 611, § 20, p. 2489; Laws 1988, LB 352, § 110.

Cross References

Administrative Procedure Act, see section 84-920.

69-1321 Abandoned property; State Treasurer; decline to accept; when; other payments or delivery authorized.

(a) The State Treasurer, after receiving reports of property deemed abandoned pursuant to the Uniform Disposition of Unclaimed Property Act, may decline to receive any property reported which he or she deems to have a value less than the cost of giving notice and holding sale, or he or she may, if he or she deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within one hundred twenty days after filing the report required under section 69-1310, the State Treasurer shall be deemed to have elected to receive the custody of the property.

(b) A holder may pay or deliver property before the property is presumed abandoned with written consent of the State Treasurer and upon conditions and terms prescribed by the State Treasurer. Property paid or delivered under this subsection shall be held by the State Treasurer and is not presumed abandoned until such time as it otherwise would be presumed abandoned under the act.

Source: Laws 1969, c. 611, § 21, p. 2489; Laws 1992, Third Spec. Sess., LB 26, § 18.

69-1322 Failure to report property; State Treasurer; powers and duties; holder; duties.

(a) If the State Treasurer has reason to believe that any person has failed to report property in accordance with the Uniform Disposition of Unclaimed Property Act, the State Treasurer may demand that such person file a verified report or otherwise comply with the act within thirty days of the demand.

(b) The State Treasurer may at reasonable times and upon reasonable notice examine the records of any person if he or she has reason to believe that such person has failed to report property that should have been reported pursuant to the act.

(c) If an examination of the records of a person results in the disclosure of property reportable under the act, the State Treasurer may assess the cost of the examination against the holder but in no case may the charges exceed the value of the property found to be reportable.

(d)(1) Every holder required to file a report under section 69-1310, as to any property for which it has obtained the last-known address of the owner, shall maintain a record of the name and last-known address of the owner for seven years after the property becomes reportable, except to the extent that a shorter time is provided in subdivision (2) of this subsection or by rule of the State Treasurer.

(2) Any holder that sells in this state its travelers checks, money orders, or other similar written instruments on which the holder is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable.

Source: Laws 1969, c. 611, § 22, p. 2489; Laws 1992, Third Spec. Sess., LB 26, § 19.

69-1323 Refusal to deliver property; action to enforce delivery.

If any person refuses to deliver property to the State Treasurer as required under sections 69-1301 to 69-1329, he shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

Source: Laws 1969, c. 611, § 23, p. 2490.

69-1324 Failing to render report or refusing to pay or deliver property; penalty.

(a) A person who fails to pay or deliver property within the time prescribed by the Uniform Disposition of Unclaimed Property Act shall be required to pay to the State Treasurer interest calculated pursuant to section 45-103 as such section was in effect on the date the property should have been paid or delivered on the value of the property from the date the property should have been paid or delivered.

(b) A person who willfully fails to render any report or perform other duties required under the act shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars.

(c) A person who willfully fails to pay or deliver property to the State Treasurer as required under the act shall pay a civil penalty equal to twenty-five percent of the value of the property that should have been paid or delivered.

(d) The interest or penalty or any portion thereof as imposed by subsections (a), (b), or (c) of this section may be waived or remitted by the State Treasurer for good cause shown.

(e) Any person who willfully refuses to pay or deliver abandoned property to the State Treasurer as required under the act shall be guilty of a Class II misdemeanor.

Source: Laws 1969, c. 611, § 24, p. 2490; Laws 1977, LB 39, § 135; Laws 1992, Third Spec. Sess., LB 26, § 20.

69-1325 State Treasurer; rules and regulations; adopt.

The State Treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 69-1301 to 69-1329.

Source: Laws 1969, c. 611, § 25, p. 2490.

69-1326 Property exempt from act.

Sections 69-1301 to 69-1329 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to December 25, 1969.

Source: Laws 1969, c. 611, § 26, p. 2490; Laws 1978, LB 859, § 1.

69-1327 Act; severability.

If any provision of sections 69-1301 to 69-1329 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of sections 69-1301 to 69-1329 are severable.

Source: Laws 1969, c. 611, § 27, p. 2490.

69-1328 Act, how construed.

Sections 69-1301 to 69-1329 shall be so construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1969, c. 611, § 28, p. 2490.

69-1329 Act, how cited.

Sections 69-1301 to 69-1329 shall be known and may be cited as the Uniform Disposition of Unclaimed Property Act.

Source: Laws 1969, c. 611, § 29, p. 2490; Laws 1992, Third Spec. Sess., LB 26, § 21; Laws 1994, LB 1048, § 9; Laws 2003, LB 424, § 5; Laws 2006, LB 173, § 5; Laws 2006, LB 771, § 2.

(b) PROPERTY IN POSSESSION OF COUNTY SHERIFF

69-1330 Certain unclaimed property; disposition.

Any property that shall come into the possession of the county sheriff of any county by virtue of his or her office, the disposition of which is not otherwise provided for by law, and which appears to be abandoned or unclaimed, may be sold at auction or disposed of as provided in sections 69-1330 to 69-1332.

Source: Laws 1981, LB 280, § 1.

69-1331 Unclaimed property; sale; disposal; procedure.

If the property described in section 69-1330 shall remain unclaimed for a period of not less than one hundred eighty days, the county sheriff may sell such property at auction. Prior to such sale the county sheriff shall cause a list of all property subject to sale to be published once a week for three consecutive weeks in a newspaper of general circulation in the county in which he or she holds office. If such property is not bid upon at sale, or the county sheriff reasonably believes that such property has little or no sale value, he or she may dispose of such property. Before the county sheriff may dispose of such property he or she shall submit a plan for disposing of such property to the county board for its approval. Upon the approval of the board, the county sheriff may dispose of such property in the manner approved and shall be exempt from any civil liability for such action.

Source: Laws 1981, LB 280, § 2.

69-1332 Unclaimed property; sale proceeds; disposition.

The county sheriff shall pay over to the county treasurer the proceeds of any sale authorized by sections 69-1330 to 69-1332, less the reasonable expenses of such sale. The county treasurer shall hold such proceeds for a period of two years from the date of sale. If at the end of such period no person has presented a lawful claim to the proceeds of such sale, the county treasurer shall deposit such proceeds, including any interest thereon, to the general fund of the county and any claims thereon shall be extinguished.

Source: Laws 1981, LB 280, § 3.

ARTICLE 14
REFERRAL SALES AND LEASES

Section
69-1401. Repealed. Laws 1974, LB 327, § 16.
69-1402. Repealed. Laws 1974, LB 327, § 16.

69-1401 Repealed. Laws 1974, LB 327, § 16.

69-1402 Repealed. Laws 1974, LB 327, § 16.

ARTICLE 15
RETAIL FARM IMPLEMENTS

Section
69-1501. Retailer; contract; termination; reimbursement for implements, machinery, and parts.
69-1502. Prices for implements, machinery, and parts; how determined.
69-1503. Manufacturer, wholesaler, or distributor; failure to furnish or make payment; liability; damages.
69-1504. Retail dealer; majority stockholder; death; settlement with heirs.

69-1501 Retailer; contract; termination; reimbursement for implements, machinery, and parts.

Whenever any person, firm, or corporation engaged in the business of selling and retailing farm implements and repair parts for farm implements enters into a written contract evidenced by a franchised agreement whereby such retailer agrees to maintain a stock of parts or complete or whole machines or attachments with any wholesaler, manufacturer, or distributor of farm implements or machinery or repair parts therefor and either such wholesaler, manufacturer, or distributor or the retailer desires to cancel or discontinue the contract, such wholesaler, manufacturer, or distributor shall pay to such retailer, unless the retailer desires to keep such merchandise, a sum equal to one hundred percent of the net cost of all new unused complete farm implements, machinery, and attachments, including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts, listed in a current price list or catalog which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract. Such sums shall be due within sixty days of receipt of such farm implements, machinery, or attachments or repair parts therefor by such wholesaler, manufacturer, or distributor from such retailer. An interest rate of fourteen percent per annum shall be assessed on such sums which are delinquent. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one hundred percent of the net cost of such farm implements, machinery, and attachments, plus transportation charges, and eighty-five percent of the current net prices on repair parts, plus five percent handling, packing, and loading costs on repair parts only, plus freight charges which have been paid by the retailer, the title to such farm implements, farm machinery, and repair parts, or parts therefor, shall pass to the manufacturer, wholesaler, or distributor mak-

ing such payment and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such farm implements or repair parts therefor.

The provisions of this section relating to a retailer's right to cancel or discontinue a contract and receive payment for machines, attachments, and parts returned shall apply to all contracts entered into or renewed after July 1, 1971, but before May 2, 1991, which have expiration dates, except that the provisions for a retailer to receive payment for machines, attachments, and parts returned shall apply only to machines, attachments, and parts purchased after August 27, 1971. Any contract in force and effect on July 1, 1971, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to August 27, 1971. Sections 69-1501 to 69-1504 shall not apply to any contract to which the Equipment Business Regulation Act applies.

Source: Laws 1971, LB 699, § 1; Laws 1988, LB 826, § 1; Laws 1991, LB 123, § 12.

Cross References

Equipment Business Regulation Act, see section 87-701.

69-1502 Prices for implements, machinery, and parts; how determined.

The prices of farm implements, machinery, and repair parts therefor, required to be paid to any retail dealer as provided in section 69-1501, shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, and eighty-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's or distributor's price lists or catalogs in effect at the time such contract is canceled or discontinued.

Source: Laws 1971, LB 699, § 2.

69-1503 Manufacturer, wholesaler, or distributor; failure to furnish or make payment; liability; damages.

In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery and farm implements, or of repair parts therefor, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as required by section 69-1501, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements, or repair parts therefor, to any retailer of such products who may have a retail sales contract with such manufacturer, wholesaler, or distributor dated after July 1, 1971, but before May 2, 1991, which has an expiration date, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for one hundred percent of the net cost of such farm implements, machinery, and attachments, plus transportation charges which have been paid by the retailer and eighty-five percent of the current net price of repair parts, plus five percent for handling, packing, and loading plus freight charges which have been paid by the retailer.

Source: Laws 1971, LB 699, § 3; Laws 1991, LB 123, § 13.

69-1504 Retail dealer; majority stockholder; death; settlement with heirs.

In the event of the death of the retail dealer or majority stockholder in a corporation operating a retail dealership in the business of selling and retailing farm implements or repair parts for farm implements, the wholesaler, distributor, or manufacturer who supplied such merchandise shall repurchase from the heir or heirs of such retail dealer or majority stockholder such merchandise at a sum equal to one hundred percent of the net cost of all current unused complete farm implements including transportation charges which have been paid by such retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts, listed in current price lists or catalogs, plus a sum equal to five percent of the current net price of all parts returned for handling, packing, and loading of such parts, unless such heir or heirs agree to continue to operate such retail dealership. In the event such heir or heirs do not agree to continue to operate such retail dealership, it shall be deemed a cancellation or discontinuance of contract by the retailer under the provisions of section 69-1501, and as such the heir or heirs may exercise any rights and privileges under the provisions of sections 69-1501 to 69-1504.

Source: Laws 1971, LB 699, § 4.

ARTICLE 16
HOME SOLICITATION SALES

Cross References

Unsolicited goods or merchandise, by mail, see section 69-2201.

Section

69-1601 Terms, defined.

For purposes of sections 69-1601 to 69-1607, unless the context otherwise requires:

(1) Home solicitation sale shall mean a sale, lease, or rental of consumer goods or services with a purchase price of twenty-five dollars or more, whether under a single or multiple contract, in which the seller or his or her representative personally solicits the sale, including those in response to or following the invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term home solicitation sale shall not include a transaction:

(a) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis;

(b) In which the consumer is accorded the right to rescission by the provisions of the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., or regulations issued pursuant thereto;

(c) In which the buyer has initiated the contact, the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and

the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three business days;

(d) Conducted and consummated entirely by mail or telephone and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services;

(e) In which the buyer has initiated the contact and specifically requested the seller to visit his or her home for the purpose of repairing or performing maintenance upon the buyer's personal property. If, in the course of such a visit, the seller sells the buyer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of such additional goods or services shall not fall within this exclusion;

(f) Pertaining to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; or

(g) Defined as a consumer rental purchase agreement in the Consumer Rental Purchase Agreement Act;

(2) Buyer shall mean both actual and prospective purchasers or lessees of any goods or services offered through home solicitation selling; and

(3) Seller shall mean a person or organization who advertises, offers, or deals in goods or services for the purpose of home solicitation selling or provides or exercises supervision, direction, or control over sales practices used in the home solicitation sale but shall not include banks, savings and loan associations, insurance companies, public utilities, licensed motor vehicle dealers, or licensed real estate brokers or salespersons with respect to real estate listings or the sale or leasing of real estate, but seller shall include a supplier or distributor if:

(a) The seller is a subsidiary or affiliate of the supplier or distributor;

(b) The seller interchanges personnel or maintains common or overlapping officers or directors with the supplier or distributor; or

(c) The supplier or distributor provides or exercises supervision, direction, or control over the selling practices of the seller.

Source: Laws 1974, LB 212, § 1; Laws 1989, LB 681, § 17.

Cross References

Consumer Rental Purchase Agreement Act, see section 69-2101.

69-1602 Disclosure obligations.

In a home solicitation sale the seller shall, at the outset, clearly and expressly disclose the seller's individual name, the name of the business firm or organization he represents, and the identity or kind of goods or services he offers to sell.

Source: Laws 1974, LB 212, § 2.

69-1603 Right to cancel; manner of cancellation.

(1) In addition to any right otherwise to revoke an offer, to rescind the transaction or to exercise any remedy for the seller's breach, a buyer may cancel a home solicitation sale until midnight of the third business day after the seller has given notice to the buyer in accordance with section 69-1604.

(2) Notice of cancellation shall be by mail addressed to the seller and shall be considered given at the time mailed.

(3) Notice of cancellation by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by such home solicitation sale.

Source: Laws 1974, LB 212, § 3.

69-1604 Notice of right to cancel; form; foreign language; when delivered; time; exception.

(1) Whenever a buyer has the right to cancel a home solicitation sale, the seller's contract shall contain a notice to be printed in capital and lowercase letters of not less than ten-point boldface type and appear under the conspicuous caption: BUYER'S RIGHT TO CANCEL; which shall read as follows: You may cancel this agreement by mailing a written notice to (Insert name and mailing address of seller) before midnight of the third business day after you signed this agreement. If you wish, you may use this page as that notice by writing ''I hereby cancel'' and adding your name and address.

(2) A home solicitation sales contract which contains the Notice of Cancellation form and content provided in the Federal Trade Commission's trade regulation rule providing a cooling-off period shall be deemed as complying with the requirements of subsection (1) of this section, so long as the Federal Trade Commission language provides at least equal information to the consumer concerning his right to cancel as is required by sections 69-1601 to 69-1607.

(3) A seller who in the ordinary course of business regularly uses a language other than English in any advertising or other solicitation of customers or in any printed forms for use by buyers or in any face-to-face negotiations with buyers, shall give the notice described in this section to a buyer whose principal language is such other language, both in English and in the other language.

(4) The notice required under this section shall be delivered either after all the credit cost disclosures have been made to the buyer as required by the federal Consumer Credit Protection Act and the buyer has signed the writing evidencing the transaction, or contemporaneously therewith, but not before.

(5) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel. The three-business-day period prescribed by sections 69-1601 to 69-1607 shall begin to run from the time the seller complies with this section.

(6) The notice provisions under this section shall not be required in a transaction involving an order for goods to be delivered at one time if: (a) The order is evidenced only by a sales ticket or invoice, a copy of which must be provided to the buyer, which clearly and unmistakably sets forth on the face or reverse side of the sales ticket or invoice the buyer's right to cancel the order, refuse delivery or return the goods without obligation or charge; (b) the goods are not delivered within three business days of the date of the order; and (c) the buyer may refuse to accept the goods when they are delivered without incurring any obligation to pay for them or the expenses associated with the transaction, including mailing or shipping charges, or the buyer may, upon inspecting the goods after delivery, return them within three business days to the seller and

receive a full refund for any amounts the buyer has paid including mailing and shipping charges.

Source: Laws 1974, LB 212, § 4.

69-1605 Cancellation, effect.

(1) Within ten days after a home solicitation sale has been canceled, the seller shall cause any money paid by the buyer, including a downpayment, to be returned to the buyer and shall take appropriate action to reflect the termination of the transaction including any security interest created as a result.

(2) Upon cancellation, as allowed by sections 69-1601 to 69-1607, the buyer shall not be liable for any finance or other charge and the transaction, including any security interest, shall be void.

(3) If the seller receives any property from the buyer, he shall return such property in substantially as good condition as it was when it was given within twenty days after cancellation of the transaction. If such property is not returned within such time, the buyer may recover the property or the greater of its agreed or fair market value at retail.

Source: Laws 1974, LB 212, § 5.

69-1606 Duty of buyer; failure of seller to take possession; performance of service, how treated.

(1) The buyer shall take reasonable care of any property received pursuant to the home solicitation sale in his possession before cancellation and for a reasonable time after tender, not to exceed twenty days.

(2) Upon the performance of the seller's obligations under section 69-1605, the buyer shall tender such property to the seller except that if the return of such property to the seller is inequitable, the buyer shall tender its reasonable value.

(3) Tender shall be made at the location of the property or at the residence of the buyer at the option of the buyer.

(4) If the seller does not take possession of such property within twenty days after tender by the buyer, ownership of such property shall vest in the buyer without obligation on his part to pay for it.

(5) If a seller performs any services pursuant to a home solicitation sale prior to its cancellation, the seller shall not be entitled to compensation.

Source: Laws 1974, LB 212, § 6.

69-1607 Sale made in violation of sections; buyer recovery.

Any sale made in violation of sections 69-1601 to 69-1607 shall entitle the buyer to recover any sums paid to the seller pursuant to the transaction along with the actual damages, including any incidental and consequential damages, sustained by the buyer by reason of the violation, together with the costs of the suit, including a reasonable attorney's fee.

Source: Laws 1974, LB 212, § 7.

ARTICLE 17
ADVERTISING SIGNS

69-1701 Outdoor advertising sign; removal by public body; compensation; how determined; exception.

(1) Before an outdoor advertising sign, display, or device is removed, taken, or appropriated through the use of zoning or any other power or authority possessed by the state, a state agency, or a political subdivision of the state:

(a) The value of the sign, display, or device shall be determined by the taking entity without the use of any amortization schedule; and

(b) The owners of the sign, display, or device shall be paid the fair and reasonable market value for such removal, taking, or appropriation, which fair and reasonable market value shall be based upon the depreciated reproduction cost of such sign, display, or device using as a guideline the Nebraska Sign Schedule developed and used by the Department of Roads, except that, when feasible, the taking entity may elect to relocate such sign, display, or device, in which event the owners of the sign, display, or device shall be paid the actual and necessary relocation cost therefor.

(2) Subsection (1) of this section shall not apply to:

(a) Actions taken by the Department of Roads pursuant to sections 39-212 to 39-226 and 39-1320; and

(b) The removal, taking, or appropriation of a sign, display, or device which (i) is insecurely fixed or inadequately maintained such that the sign, display, or device constitutes a danger to the public health or safety, or (ii) has been abandoned or no longer used by the owners for at least six months.

Source: Laws 1981, LB 241, § 1; Laws 1995, LB 264, § 35.

69-1702 Nonconforming advertising sign; conformance required; when.

If a nonconforming advertising sign, display, or device is located on premises leased or owned for the purpose of conducting a business or on commercial or industrial premises leased for the purpose of sign erection, such sign, display, or device shall be required to conform to existing codes and regulations, when such sign, display, or device is changed or altered as a result of either transfer of ownership of the premises or business or a change in the type of business or use of the premises. Such sign, display, or device may be allowed to remain as a nonconforming use subject to applicable normal nonreplacement and nonalteration standards as determined by the state, a state agency, or political subdivision of the state.

Source: Laws 1981, LB 241, § 2.

ARTICLE 18
AMERICAN INDIAN ARTS AND CRAFTS SALES ACT

Section
69-1802. Act, purpose.
69-1803. Terms, defined.
69-1804. Manufacturer; provide information.
69-1805. Supplier of turquoise; provide information.
69-1806. Sellers; duties.
69-1807. Prohibited acts.
69-1808. Violations; penalty.

69-1801 Act, how cited.

Sections 69-1801 to 69-1808 shall be known and may be cited as the American Indian Arts and Crafts Sales Act.

Source: Laws 1986, LB 275, § 1.

69-1802 Act, purpose.

The purpose of the American Indian Arts and Crafts Sales Act is protection of the consumer and protection of American Indian craftpersons from false representation in the offering for sale, sale, trade, or purchase of authentic American Indian arts and crafts and natural and unnatural turquoise.

Source: Laws 1986, LB 275, § 2.

69-1803 Terms, defined.

As used in the American Indian Arts and Crafts Sales Act, unless the context otherwise requires:

(1) American Indian shall mean any person of at least one-quarter American Indian blood who is enrolled or is a lineal descendant of an American Indian enrolled upon enrollment listing of the federal Bureau of Indian Affairs;

(2) Imitation American Indian arts and crafts shall mean any American-Indian-style arts and crafts which are made by machine, made of synthetic or artificial material, or made by persons who are not American Indians;

(3) Authentic American Indian arts and crafts shall mean any arts and crafts which are handcrafted by American Indians and made of natural materials;

(4) Machine-made shall mean the manufacture of American-Indian-style arts and crafts in mass production by mechanically stamping, casting, shaping, or weaving;

(5) Handcrafted arts and crafts shall mean any arts and crafts produced by individual hand labor through the use of findings, hand tools, and equipment for buffing, polishing, grinding, or drilling;

(6) Findings shall mean only those pieces that come under the category of clips, pins, stems, hooks, and toggles and other materials used in joining two or more parts of a single handcrafted product, but shall not mean bench-made beads, machine-made beads, or other machine-made components;

(7) Spin cast shall mean the casting of jewelry components other than findings by means of centrifugal force;

(8) Natural turquoise shall mean an unadulterated mineral consisting of hydrous basic copper aluminum phosphate which has not been chemically altered or discolored other than by natural alteration or discoloration; and

(9) Unnatural turquoise shall mean any mineral, compound, or substance which is not natural turquoise, including the following: Stabilized turquoise

which is turquoise of a soft, porous nature which has been chemically hardened, but not adulterated so as to change the coloration of the natural mineral; treated turquoise which is turquoise which has been chemically altered to produce a change in the coloration of the natural mineral; reconstituted turquoise which is turquoise dust and particles which have been mixed with plastic resins and compressed into a solid form so as to resemble natural turquoise; imitation turquoise which is any artificial compound or other mineral manufactured or treated so as to closely resemble natural turquoise in composition and color; and any other mineral which is represented as turquoise but is not natural turquoise.

Source: Laws 1986, LB 275, § 3.

69-1804 Manufacturer; provide information.

Any person engaged in manufacturing or producing American Indian arts and crafts shall provide accurate information to wholesale and retail sellers concerning the methods and materials used in manufacturing and producing such arts and crafts.

Source: Laws 1986, LB 275, § 4.

69-1805 Supplier of turquoise; provide information.

Any person engaged in supplying natural turquoise, unnatural turquoise, or both for use in the manufacture or production of American Indian arts and crafts or for sale to consumers shall provide accurate information concerning the source and quality of the turquoise being supplied.

Source: Laws 1986, LB 275, § 5.

69-1806 Sellers; duties.

Any person selling or offering for sale to consumers any American Indian arts and crafts shall make inquiry of manufacturers and producers of such arts and crafts concerning the methods and materials used in the manufacture and production of such arts and crafts for the purpose of determining whether such arts and crafts are authentic or imitation.

Source: Laws 1986, LB 275, § 6.

69-1807 Prohibited acts.

It shall be unlawful for any person engaged in the manufacture, production, wholesale selling, or retail selling of American Indian arts and crafts to:

(1) Sell or offer for sale any products as being authentic American Indian arts and crafts unless such products are made in accordance with the definition of authentic American Indian arts and crafts in the American Indian Arts and Crafts Sales Act;

(2) Sell or offer for sale any authentic American Indian arts and crafts purporting to be made of silver unless such products are made of coin silver or sterling silver;

(3) Sell or offer for sale any imitation American Indian arts and crafts unless such products are clearly designated as such by a tag attached to each product and containing the words Indian imitation in letters of a size of not less than fourteen-point type, except that if the imitation American Indian arts and crafts

can be clearly labeled by the use of a display card in lieu of tagging each article, the person may label such arts and crafts with a printed display card in letters not less than one and one-half inches in height and containing the words Indian imitation;

(4) Sell or offer for sale spin-cast components of American Indian jewelry, except findings, or use such spin-cast components in jewelry unless such jewelry is stamped as being so cast in its manufacture; or

(5) Sell or offer for sale unnatural turquoise unless represented by a display card or tag as being unnatural turquoise.

Source: Laws 1986, LB 275, § 7.

69-1808 Violations; penalty.

Any person who violates any provision of the American Indian Arts and Crafts Sales Act shall be guilty of a Class IV misdemeanor.

Source: Laws 1986, LB 275, § 8.

ARTICLE 19
SMOKELESS TOBACCO PRODUCTS

Section
69-1901. Legislative intent.
69-1902. Terms, defined.
69-1903. Distribution for promotional purposes prohibited.
69-1904. Enforcement; penalty.

69-1901 Legislative intent.

The Legislature hereby finds that the state prohibits the use of smokeless tobacco products by minors and the furnishing of smokeless tobacco products to minors and that the enforcement of an age-related restriction on the promotional distribution of smokeless tobacco products is impractical and ineffective. It is the intent of the Legislature to control the distribution of these products and discourage illegal activity by prohibiting all promotional distribution.

Source: Laws 1989, LB 48, § 1.

69-1902 Terms, defined.

For purposes of sections 69-1901 to 69-1904:

(1) Distribute shall mean to give smokeless tobacco products to the general public at no cost or at nominal cost or to give coupons or rebate offers with the products; and

(2) Smokeless tobacco product shall mean (a) loose tobacco or a flat compressed cake of tobacco that may be chewed or held in the mouth or (b) a small amount of shredded, powdered, or pulverized tobacco that may be inhaled through the nostrils, chewed, or held in the mouth.

Source: Laws 1989, LB 48, § 2.

69-1903 Distribution for promotional purposes prohibited.

(1) Manufacturers, wholesalers, or retailers, or their representatives, of smokeless tobacco products shall not distribute for promotional purposes.

(2) Evidence of distribution of smokeless tobacco products to the general public shall be prima facie evidence of distribution for promotional purposes.

Source: Laws 1989, LB 48, § 3.

69-1904 Enforcement; penalty.

(1) The Attorney General shall apply for an injunction in the district court in the county in which any violation of section 69-1903 occurs to enjoin the defendant from engaging in any practice which violates such section. Notice shall be given by certified mail to the defendant at least five days prior to the hearing on such injunction.

(2) The Attorney General may bring a civil action against any person violating section 69-1903. A civil penalty shall be imposed on such person in an amount of five hundred dollars for the first offense and in an amount of not less than six hundred dollars nor more than three thousand dollars for a second or subsequent offense. Each distribution of a single package to an individual member of the general public shall be considered a separate violation under section 69-1903.

Source: Laws 1989, LB 48, § 4.

ARTICLE 20

DEGRADABLE PRODUCTS

Section
69-2001. Act, how cited.
69-2002. Definitions, where found.
69-2003. Biodegradable, defined.
69-2004. Degradable, defined.
69-2005. Photodegradable, defined.
69-2006. Recyclable, defined.
69-2007. Retail, defined.
69-2008. Beverage container connectors; requirements.
69-2009. Garbage bags; requirements.
69-2010. Grocery or shopping bags; requirements.
69-2011. Disposable diapers; requirements; Director of Environmental Quality; duties.
69-2012. Violations; penalty.

69-2001 Act, how cited.

Sections 69-2001 to 69-2012 shall be known and may be cited as the Degradable Products Act.

Source: Laws 1989, LB 325, § 1.

69-2002 Definitions, where found.

For purposes of the Degradable Products Act, the definitions found in sections 69-2003 to 69-2007 shall be used.

Source: Laws 1989, LB 325, § 2.

69-2003 Biodegradable, defined.

Biodegradable shall mean degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gases and organic compounds.

Source: Laws 1989, LB 325, § 3.

69-2004 Degradable, defined.

Degradable shall mean capable of decomposing or deteriorating through a natural chemical process into harmless components after exposure to natural elements for not more than one year.

Source: Laws 1989, LB 325, § 4.

69-2005 Photodegradable, defined.

Photodegradable shall mean degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

Source: Laws 1989, LB 325, § 5.

69-2006 Recyclable, defined.

Recyclable shall mean suitable for any process of separating, cleaning, treating, and reconstituting waste or other discarded materials for the purpose of recovering or reusing the resources contained therein.

Source: Laws 1989, LB 325, § 6.

69-2007 Retail, defined.

Retail shall mean sale for use or consumption and not for resale in any form.

Source: Laws 1989, LB 325, § 7.

69-2008 Beverage container connectors; requirements.

On and after January 1, 1991, a person shall not sell or offer for sale at retail any beverage for human consumption if the beverage container is connected to another beverage container by a device which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 8; Laws 1992, LB 1257, § 72.

69-2009 Garbage bags; requirements.

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for grass clippings, garbage, yard waste, or leaves which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 9; Laws 1992, LB 1257, § 73.

69-2010 Grocery or shopping bags; requirements.

On and after January 1, 1992, a person shall not sell or offer for sale at retail any bag used for or intended to be used for groceries or shopping which is constructed of a material which is not biodegradable, photodegradable, or recyclable.

Source: Laws 1989, LB 325, § 10.

69-2011 Disposable diapers; requirements; Director of Environmental Quality; duties.

On and after October 1, 1993, a person shall not sell or offer for sale at retail any disposable diaper which is constructed of a material which is not biodegradable or photodegradable if the Director of Environmental Quality deter-

mines that biodegradable or photodegradable disposable diapers are readily available at a comparable price and quality. The determination of quality shall include a study of the environmental impact and fate of such disposable diapers. The director shall issue his or her determination to the Legislature on or before October 1, 1992. For purposes of this section (1) readily available shall mean available for purchase in sufficient quantities to meet demand through usual retail channels throughout the state and (2) comparable price and quality shall mean at a cost not in excess of five percent above the average price for products of comparable quality which are not biodegradable or photodegradable.

Source: Laws 1989, LB 325, § 11; Laws 1993, LB 3, § 42.

69-2012 Violations; penalty.

Any person violating sections 69-2008 to 69-2011 shall be guilty of a Class III misdemeanor.

Source: Laws 1989, LB 325, § 12.

ARTICLE 21

CONSUMER RENTAL PURCHASE AGREEMENTS

Section

69-2101 Act, how cited.

Sections 69-2101 to 69-2119 shall be known and may be cited as the Consumer Rental Purchase Agreement Act.

Source: Laws 1989, LB 681, § 1; Laws 1993, LB 111, § 1.

69-2102 Legislative findings.

The Legislature finds that a significant number of consumers have sought to acquire ownership of personal property through consumer rental purchase agreements. Often consumer rental purchase agreements have been offered without adequate cost disclosures. It is the purpose of the Consumer Rental Purchase Agreement Act to assure meaningful disclosure of the terms of consumer rental purchase agreements, to make consumers aware of the total

cost attendant with such agreements, to inform the consumer when ownership will transfer, and to assure accurate disclosures of rental purchase terms in advertising.

Source: Laws 1989, LB 681, § 2.

69-2103 Terms, defined.

For purposes of the Consumer Rental Purchase Agreement Act:

(1) Advertisement means a commercial message in any medium that aids, promotes, or assists directly or indirectly a consumer rental purchase agreement but does not include in-store merchandising aids such as window signs and ceiling banners;

(2) Cash price means the price at which the lessor would have sold the property to the consumer for cash on the date of the consumer rental purchase agreement for the property;

(3) Consumer means a natural person who rents property under a consumer rental purchase agreement;

(4) Consumer rental purchase agreement means an agreement which is for the use of property by a consumer primarily for personal, family, or household purposes, which is for an initial period of four months or less, whether or not there is any obligation beyond the initial period, which is automatically renewable with each payment, and which permits the consumer to become the owner of the property. A consumer rental purchase agreement in compliance with the act shall not be construed to be a lease or agreement which constitutes a credit sale as defined in 12 C.F.R. 226.2(a)(16), as such regulation existed on September 1, 2001, and 15 U.S.C. 1602(g), as such section existed on September 1, 2001, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(e), as such regulation existed on September 1, 2001. Consumer rental purchase agreement does not include:

(a) Any lease for agricultural, business, or commercial purposes;

(b) Any lease made to an organization;

(c) A lease or agreement which constitutes an installment sale or installment contract as defined in section 45-335;

(d) A security interest as defined in subdivision (35) of section 1-201, Uniform Commercial Code; and

(e) A home solicitation sale as defined in section 69-1601;

(5) Consummation means the occurrence of an event which causes a consumer to become contractually obligated on a consumer rental purchase agreement;

(6) Department means the Department of Banking and Finance;

(7) Lease payment means a payment to be made by the consumer for the right of possession and use of the property for a specific lease period but does not include taxes imposed on such payment;

(8) Lease period means a week, month, or other specific period of time, during which the consumer has the right to possess and use the property after paying the lease payment and applicable taxes for such period;

(9) Lessor means a person who in the ordinary course of business operates a commercial outlet which regularly leases, offers to lease, or arranges for the leasing of property under a consumer rental purchase agreement;

(10) Property means any property that is not real property under the laws of this state when made available for a consumer rental purchase agreement; and

(11) Total of payments to acquire ownership means the total of all charges imposed by the lessor and payable by the consumer as a condition of acquiring ownership of the property. Total of payments to acquire ownership includes lease payments and any initial nonrefundable administrative fee or required delivery charge but does not include taxes, late charges, reinstatement fees, or charges for optional products or services.

Source: Laws 1989, LB 681, § 3; Laws 1993, LB 111, § 2; Laws 2001, LB 641, § 1; Laws 2005, LB 570, § 3.

69-2104 Lessor; disclosures required.

(1) Before entering into any consumer rental purchase agreement, the lessor shall disclose to the consumer the following items as applicable:

(a) A brief description of the leased property sufficient to identify the property to the consumer and lessor;

(b) The number, amount, and timing of all payments included in the total of payments to acquire ownership;

(c) The total of payments to acquire ownership;

(d) A statement that the consumer will not own the property until the consumer has paid the total of payments to acquire ownership plus applicable taxes;

(e) A statement that the total of payments to acquire ownership does not include other charges such as taxes, late charges, reinstatement fees, or charges for optional products or services the consumer may have elected to purchase and that the consumer should see the rental purchase agreement for an explanation of these charges;

(f) A statement that the consumer is responsible for the fair market value, remaining rent, early purchase option amount, or cost of repair of the property, whichever is less, if it is lost, stolen, damaged, or destroyed;

(g) A statement indicating whether the property is new or used. A statement that indicates that new property is used shall not be a violation of the Consumer Rental Purchase Agreement Act;

(h) A statement of the cash price of the property. When the agreement involves a lease for two or more items, a statement of the aggregate cash price of all items shall satisfy the requirement of this subdivision;

(i) The total amount of the initial payments required to be paid before consummation of the agreement or delivery of the property, whichever occurs later, and an itemization of the components of the initial payment, including any initial nonrefundable administrative fee or delivery charge, lease payment, taxes, or fee or charge for optional products or services;

(j) A statement clearly summarizing the terms of the consumer's options to purchase, including a statement that at any time after the first periodic payment is made the consumer may acquire ownership of the property by tendering an amount which may not exceed fifty-five percent of the difference

between the total of payments to acquire ownership and the total of lease payments the consumer has paid on the property at that time;

(k) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility and a statement that if any part of a manufacturer's warranty covers the leased property at the time the consumer acquires ownership of the property, such warranty shall be transferred to the consumer if allowed by the terms of the warranty; and

(l) The date of the transaction and the names of the lessor and the consumer.

(2) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act existed on September 1, 2001, compliance with such act shall satisfy the requirements of this section.

(3) Subsection (1) of this section shall not apply to a lessor who complies with the disclosure requirements of the Consumer Credit Protection Act, 15 U.S.C. 1667a, as such section existed on September 1, 2001, with respect to a consumer rental purchase agreement entered into with a consumer.

Source: Laws 1989, LB 681, § 4; Laws 2001, LB 641, § 2.

69-2105 Disclosures; how made; rules and regulations; agreement; contents.

(1) In a consumer rental purchase agreement involving more than one consumer, a lessor need disclose the items required by the Consumer Rental Purchase Agreement Act to only one of the consumers who is primarily obligated. In a consumer rental purchase agreement involving more than one lessor, only one lessor need make the required disclosures.

(2) The disclosures required under the act shall be made at or before consummation of the consumer rental purchase agreement.

(3) The disclosures shall be made using words and phrases of common meaning in a form that the consumer may keep. For purposes of satisfying the disclosure requirements of the act, the terms lease and rent shall be considered synonymous. The required disclosures shall be set forth clearly and conspicuously. The disclosures shall be placed all together on the front side of the consumer rental purchase agreement or on a separate form. The form setting forth the required disclosures shall contain spaces for the consumer's signature and the date appearing immediately below the disclosures. If the disclosures are made on more than one page, each page shall be signed by the consumer. The requirements of this section shall not have been complied with unless the consumer signs the statement and receives at the time the disclosures are made a legible copy of the signed statement. The inclusion in the required disclosures of a statement that the consumer received a legible copy of those disclosures shall create a rebuttable presumption of receipt.

(4) Information required to be disclosed may be given in the form of estimates. Estimates shall be identified as such.

(5) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement after delivery of the required disclosures, the resulting inaccuracy shall not be a violation of the act.

(6) Information in addition to that required by section 69-2104 may be disclosed if the additional information is not stated, utilized, or placed in a manner which will contradict, obscure, or detract attention from the required information.

(7) The department shall adopt and promulgate rules and regulations establishing requirements for the order, acknowledgment by initialing, and conspicuous placement of the disclosures set forth in section 69-2104. Such rules and regulations may allow the disclosures to be made in accordance with model forms prepared by the department.

(8) The terms of the consumer rental purchase agreement, except as otherwise provided in the Consumer Rental Purchase Agreement Act, shall be set forth in not less than eight-point standard type or such similar type as prescribed in rules and regulations adopted and promulgated by the department.

(9) Every consumer rental purchase agreement shall contain, immediately above or adjacent to the place for the signature of the consumer, a clear, conspicuous, printed or typewritten notice, in boldface, ten-point type, in substantially the following language:

NOTICE TO CONSUMER — READ BEFORE SIGNING

a. DO NOT SIGN THIS BEFORE YOU READ THE ENTIRE AGREEMENT, INCLUDING ANY WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED.

b. DO NOT SIGN THIS IF IT CONTAINS ANY BLANK SPACES.

c. YOU ARE ENTITLED TO AN EXACT COPY OF ANY AGREEMENT YOU SIGN.

Source: Laws 1989, LB 681, § 5; Laws 2001, LB 641, § 3.

69-2106 Written receipt; required; when.

The lessor shall furnish the consumer upon request with an itemized written receipt for payment in cash or any other method of payment which itself does not provide evidence of payment.

Source: Laws 1989, LB 681, § 6.

69-2107 Agreements; prohibited provisions.

A consumer rental purchase agreement may not contain a provision:

(1) Requiring a confession of judgment;

(2) Requiring a garnishment of wages;

(3) Granting authorization to the lessor or a person acting on the lessor's behalf to enter unlawfully upon the consumer's premises or to commit any breach of the peace in the repossession of property;

(4) Requiring the consumer to waive any defense, counterclaim, or right of action against the lessor or a person acting on the lessor's behalf in collection of payment under the consumer rental purchase agreement or in the repossession of property; or

(5) Requiring purchase of insurance from the lessor to cover the property.

Source: Laws 1989, LB 681, § 7.

69-2108 Agreement; contents.

Each consumer rental purchase agreement shall:

(1) Provide that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property upon expiration of any lease term; and

(2) Contain a provision for reinstatement which shall include, but not be limited to:

(a) Permitting a consumer who fails to make a timely lease payment to reinstate the agreement without losing any rights or options which exist under the agreement by the payment of all past-due lease charges, the reasonable costs of pickup, redelivery, and any refurbishing, and any applicable late fee within five business days of the renewal date of the agreement if the consumer pays monthly or within three business days of the renewal date of the agreement if the consumer pays more frequently than monthly; and

(b) Permitting the consumer to reinstate the agreement during a period of not less than thirty days after the date of the return of the property if the consumer promptly returns or voluntarily surrenders the property upon request by the lessor or its agent. In the event the consumer has paid not less than sixty percent and not more than eighty percent of the total of payments to acquire ownership, the reinstatement period shall be extended to a total of ninety days after the date of the return of the property. In the event the consumer has paid eighty percent or more of the total of payments to acquire ownership, the reinstatement period shall be extended to a total of one hundred eighty days after the date of the return of the property.

Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

Source: Laws 1989, LB 681, § 8; Laws 2001, LB 641, § 4.

69-2109 Lessor; prohibited acts.

A lessor shall not:

(1) Charge a penalty for early termination of a consumer rental purchase agreement or for the return of an item at any point except for those charges authorized by section 69-2110;

(2) Require payment by a cosigner of the consumer rental purchase agreement of any fees or charges which could not be imposed upon the consumer as part of the consumer rental purchase agreement;

(3) Require payment of any charges unless specifically authorized by subsection (1) of section 69-2110; or

(4) Increase the lease payment or the total of payments to acquire ownership as a result of a consumer's declining to purchase liability damage waiver.

Source: Laws 1989, LB 681, § 9; Laws 1993, LB 111, § 3; Laws 2001, LB 641, § 5.

69-2110 Fees; deposits; charges.

(1) The lessor may contract for and receive:

(a) An initial nonrefundable administrative fee of not more than ten dollars;

(b) A security deposit, if the amount of the deposit and the conditions under which all or a part of the deposit will be returned is disclosed with the disclosures required by sections 69-2104 and 69-2105;

(c) A delivery charge of not more than ten dollars or, in the case of a consumer rental purchase agreement covering more than five items, a delivery charge of not more than twenty-five dollars, if (i) the lessor actually delivers the items to the place designated by the consumer, (ii) the delivery charge is disclosed with the disclosures required by sections 69-2104 and 69-2105, and (iii) such charge is in lieu of and not in addition to the administrative fee in subsection (1) of this section;

(d) Late fees as follows:

(i) For consumer rental purchase agreements with monthly renewal dates, a late fee of not more than five dollars may be assessed on any payment not made within five business days after the payment is due;

(ii) For consumer rental purchase agreements with more frequent than monthly renewal dates, a late fee of not more than three dollars may be assessed on any payment not made within three business days after payment is due; and

(iii) A late fee on a consumer rental purchase agreement may be collected only once on any accrued payment no matter how long such payment remains unpaid, may be collected at the time it accrues or at any time thereafter, and shall not be assessed against a payment that is timely made even though an earlier late fee has not been paid in full; and

(e) In addition to any applicable late fee, a reinstatement fee of not more than five dollars which may be assessed only if the consumer exercises the reinstatement provision of the agreement.

(2) The parties may contract for fees for liability damage waiver or similar products or services if:

(a) Purchasing the product or service is optional and is not a factor in the approval of the lessor of the consumer rental purchase transaction and such facts are clearly disclosed in writing to the consumer; and

(b) The consumer has signed or initialed an affirmative written request to purchase the product or service after receiving a written disclosure of the cost of such product or service.

(3) In addition to the requirements in subsection (2) of this section a contract containing fees for liability damage waiver shall include the following:

(a) For a consumer rental purchase agreement with scheduled lease payments more frequent than monthly, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or two dollars for each scheduled lease payment, whichever is greater; and

(b) For a consumer rental purchase agreement with monthly lease payments, the amount of the liability damage waiver shall not exceed eight percent of any lease payment or five dollars for each scheduled lease payment, whichever is greater.

(4) The parties may contract for other products or services incidental to the consumer rental purchase transaction which do not evade the provisions of the Consumer Rental Purchase Agreement Act.

Source: Laws 1989, LB 681, § 10; Laws 1993, LB 111, § 4; Laws 2001, LB 641, § 6.

69-2111 Renegotiation; when; extension; effect.

(1) A renegotiation shall be deemed to occur when an existing consumer rental purchase agreement is satisfied and replaced by a new agreement undertaken by the same consumer. A renegotiation shall be considered a new agreement requiring new disclosures. Renegotiation shall not include:

(a) The addition or return of property in a multiple-item agreement or the substitution of leased property if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;

(b) Deferral or extension of one or more periodic payments or portions of a periodic payment;

(c) A reduction in charges in the agreement;

(d) An agreement involving a court proceeding; and

(e) Any other event described in rules and regulations adopted and promulgated by the department.

(2) No disclosures shall be required for any extension of a consumer rental purchase agreement.

Source: Laws 1989, LB 681, § 11.

69-2112 Advertisement; requirements.

(1) Any advertisement for a consumer rental purchase agreement which refers to or states the amount of any payment or the right to acquire ownership for any specific item shall also state clearly and conspicuously the following if applicable:

(a) That the transaction advertised is a consumer rental purchase agreement;

(b) The total of payments to acquire ownership; and

(c) That the consumer acquires no ownership rights until the total of payments to acquire ownership is paid.

(2) Any owner or employee of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) Subsection (1) of this section shall not apply to an advertisement which does not refer to a specific item of property, which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or any similar directory of business.

(4) With respect to matters specifically governed by the Consumer Credit Protection Act, 15 U.S.C. 1635 et seq., as such act existed on September 1, 2001, compliance with such act shall satisfy the requirements of this section.

Source: Laws 1989, LB 681, § 12; Laws 2001, LB 641, § 7.

69-2113 Lessor; liability; offset, not permitted; lessor; preserve evidence.

(1) A lessor who fails to comply with the requirements of sections 69-2104 to 69-2110 with respect to a consumer shall be liable to the consumer for:

(a) The greater of the actual damages sustained by the consumer as a result of the violation or, in the case of an individual action, twenty-five percent of the total of payments to acquire ownership but not less than one hundred dollars nor more than one thousand dollars; and

(b) The costs of the action and reasonable attorney's fees.

(2) In the case of an advertisement, any lessor who fails to comply with the requirements of section 69-2112 with regard to any person shall be liable to that person for actual damages suffered from the violation, the costs of the action, and reasonable attorney's fees.

(3) When there is more than one lessor, liability shall be imposed only on the lessor who made the disclosures. When no disclosures have been made, liability shall be imposed jointly and severally on all lessors.

(4) When there is more than one consumer, there shall be only one recovery of damages under subsection (1) of this section for a violation of the Consumer Rental Purchase Agreement Act.

(5) Multiple violations in connection with a single consumer rental purchase agreement shall entitle the consumer to a single recovery under this section.

(6) A consumer shall not take any action to offset any amount for which a lessor is potentially liable under subsection (1) of this section against any amount owed by the consumer unless the amount of the lessor's liability has been determined by judgment of a court of competent jurisdiction in an action to which the lessor was a party. This subsection shall not bar a consumer then in default on the obligation from asserting a violation of the act as an original action or as a defense or counterclaim to an action brought by the lessor to collect an amount owed by the consumer.

(7) In connection with any transaction covered under the act, the lessor shall preserve evidence of compliance with the provisions of the act for not less than two years from the date of consummation of the agreement.

Source: Laws 1989, LB 681, § 13; Laws 1990, LB 1217, § 1; Laws 2001, LB 641, § 8.

69-2114 Actions; statute of limitations.

An action under the Consumer Rental Purchase Agreement Act may be brought in any court of competent jurisdiction within one year of the date of the occurrence of any violation or within six months of the time the consumer rental purchase agreement and any renewal or extension of the agreement cease to be in effect, whichever occurs later. Notwithstanding the provisions of this section, an action under the act may be maintained by way of recoupment or counterclaim in an action brought against the consumer by the lessor or the lessor's assignee.

Source: Laws 1989, LB 681, § 14.

69-2115 Lessor; not liable; when.

(1) A lessor shall not be liable for a violation under section 69-2113 if the lessor proves by a preponderance of the evidence that the violation was not intentional, that the violation resulted from a bona fide error, and that the lessor maintained procedures reasonably adapted to avoid such an error. A bona fide error shall include, but not be limited to, clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to requirements of the Consumer Rental Purchase Agreement Act shall not be considered a bona fide error.

(2) A lessor shall not be liable under the act for any act done or omitted in good faith in conformity with any rule, regulation, or interpretation issued, adopted, or promulgated by the Attorney General, by the department, or by an

official duly authorized by the Attorney General or the department even if after the act or omission has occurred the rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(3) With respect to the dollar amount of any disclosure required by the act, a lessor shall not be liable if the dollar amount actually disclosed is greater than the dollar amount required to be disclosed by the act.

Source: Laws 1989, LB 681, § 15; Laws 2001, LB 641, § 9.

69-2116 Director of Banking and Finance; investigations; other proceedings; powers.

(1)(a) The Director of Banking and Finance in his or her discretion may make such investigations within or without this state as he or she deems necessary to determine whether any person has violated or is about to violate the Consumer Rental Purchase Agreement Act or to aid in the enforcement of the act or in the adopting and promulgating of rules, regulations, and forms under the act. In the discretion of the director, the actual expense of any such investigation may be charged to the person who is the subject of the investigation.

(b) The director may publish information concerning any violation of the act or any rule, regulation, or order of the director.

(c) For the purpose of any investigation or proceeding under the act, the director or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him or her to appear before the director or the officer designated by the director to produce documentary evidence if so ordered or to give evidence touching on the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court. The request for an order of compliance may be addressed to either (a) the district court of Lancaster County or the district court in the county where service may be obtained on the person refusing to testify or produce, if the person is within this state, or (b) the appropriate district court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this state.

Source: Laws 1993, LB 111, § 5.

69-2117 Cease and desist order; fine; injunction; procedures; appeal.

(1) The Director of Banking and Finance may summarily order a lessor to cease and desist from the use of certain forms or practices relating to consumer rental purchase agreements if he or she finds that (a) there has been a substantial failure to comply with any of the provisions of the Consumer Rental Purchase Agreement Act or (b) the continued use of certain forms or practices relating to consumer rental purchase agreements would constitute misrepresentation to or deceit or fraud on the consumer.

(2) If the director believes, whether or not based upon an investigation conducted under section 69-2116, that any person or lessor has engaged in or is about to engage in any act or practice constituting a violation of any provision of the Consumer Rental Purchase Agreement Act or any rule, regulation, or order under the act, the director may:

(a) Issue a cease and desist order;

(b) Impose a fine of not to exceed one thousand dollars per violation, in addition to costs of the investigation; or

(c) Initiate an action in any court of competent jurisdiction to enjoin such acts or practices and to enforce compliance with the act or any order under the act.

(3) Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The director shall not be required to post a bond.

(4) Any fine and costs imposed pursuant to this section shall be in addition to all other penalties imposed by the laws of this state and shall be collected by the director and remitted to the State Treasurer. Costs shall be credited to the Securities Act Cash Fund, and fines shall be credited to the permanent school fund. If a person fails to pay the fine or costs of the investigation referred to in this subsection, a lien in the amount of the fine and costs shall be imposed upon all of the assets and property of such person in this state and may be recovered by suit by the director. Failure of the person to pay a fine and costs shall constitute a separate violation of the act.

(5) Upon entry of an order pursuant to this section, the director shall promptly notify all persons to whom such order is directed that it has been entered and of the reasons for such order and that any person to whom the order is directed may request a hearing in writing within fifteen business days of the issuance of the order. Upon a receipt of a written request, the matter shall be set down for hearing to commence within thirty business days after the receipt unless the parties consent to a later date or the hearing officer sets a later date for good cause. If a hearing is not requested within fifteen business days and none is ordered by the director, the order shall automatically become final and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice and hearing shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order.

(6) The director may vacate or modify a cease and desist order if he or she finds that the conditions which caused its entry have changed or that it is otherwise in the public interest to do so.

(7) Any person aggrieved by a final order of the director may appeal the order. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1993, LB 111, § 6; Laws 2001, LB 53, § 111.

Cross References

Administrative Procedure Act, see section 84-920.

69-2118 Examination of books and records.

To aid in the enforcement of the Consumer Rental Purchase Agreement Act, the Director of Banking and Finance may examine the books and records of

any lessor at least once a year. The expense of the examination shall be assessed against such lessor.

Source: Laws 1993, LB 111, § 7.

69-2119 Personal jurisdiction over lessor.

Leasing or offering to lease or arrange for a leasing of property under a consumer rental purchase agreement in this state shall constitute sufficient contact with this state for the exercise of personal jurisdiction over the lessor in any action arising under the Consumer Rental Purchase Agreement Act.

Source: Laws 1993, LB 111, § 8.

ARTICLE 22

UNSOLICITED GOODS OR MERCHANDISE

Section
69-2201. Unsolicited goods or merchandise; disposal.

69-2201 Unsolicited goods or merchandise; disposal.

Unless otherwise agreed, where unsolicited goods or merchandise are sent through the mail to a person, he has a right to refuse to accept delivery of the goods or merchandise and is not bound to return such goods or merchandise to the sender. If such unsolicited goods or merchandise are either addressed to or intended for the recipient, they shall be deemed a gift to the recipient who may use them or dispose of them in any manner without any obligations to the sender.

Source: Laws 1967, c. 358, § 1, p. 949; R.S.1943, (1986), § 63-104.

Cross References

Home solicitation sales, see Chapter 69, article 16.

ARTICLE 23

DISPOSITION OF PERSONAL PROPERTY LANDLORD AND TENANT ACT

Section
69-2301. Act, how cited.
69-2302. Terms, defined.
69-2303. Personal property remaining on premises; landlord; duties; notice; contents; delivery.
69-2304. Notice; statement required.
69-2305. Notice; form.
69-2306. Landlord; property; removal and storage; liability.
69-2307. Landlord; release of personal property; when.
69-2308. Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.
69-2309. Release or disposition of personal property; liability of landlord.
69-2310. Costs of storage; how assessed.
69-2311. Residential landlord; surrender personal property to residential tenant; conditions; applicability of section.
69-2312. Landlord retaining personal property; civil action authorized.
69-2313. Lost personal property; disposition; liability.
69-2314. Remedy; not exclusive.

69-2301 Act, how cited.

Sections 69-2301 to 69-2314 shall be known and may be cited as the Disposition of Personal Property Landlord and Tenant Act.

Source: Laws 1991, LB 36, § 1.

69-2302 Terms, defined.

For purposes of the Disposition of Personal Property Landlord and Tenant Act:

(1) Landlord shall mean the owner, lessor, or sublessor of furnished or unfurnished premises, including self-service storage units or facilities, for rent or his or her agent or successor in interest;

(2) Owner shall mean one or more persons, jointly or severally, in whom is vested (a) all or part of the legal title to property or (b) all or part of the beneficial ownership and a right to present use and enjoyment of premises and shall include a mortgagee in possession;

(3) Premises shall mean a building or a distinct portion of a building, the facilities and appurtenances in such building, and the grounds, areas, and facilities held out for the use of tenants generally or the use of which is promised to the tenants;

(4) Reasonable belief shall mean the knowledge or belief a prudent person should have without making an investigation, including any investigation of public records, except that when the landlord has specific information indicating that such an investigation would more probably than not reveal pertinent information and the cost of such an investigation would be reasonable in relation to the probable value of the personal property involved, reasonable belief shall include the actual knowledge or belief a prudent person would have if such investigation were made;

(5) Reasonable costs of storage shall include:

(a) Reasonable costs actually incurred, the reasonable value of labor actually provided, or both in removing personal property from its original location on the vacated premises to the place of storage, including disassembly and transportation; and

(b) Reasonable storage costs actually incurred which shall not exceed the fair rental value of the space reasonably required for the storage of the personal property; and

(6) Tenant shall mean a person entitled under a rental agreement to occupy any premises for rent or storage uses to the exclusion of others whether such premises are used as a dwelling unit or self-service storage unit or facility or not.

Source: Laws 1991, LB 36, § 2; Laws 1993, LB 617, § 1.

69-2303 Personal property remaining on premises; landlord; duties; notice; contents; delivery.

(1) When personal property remains on the premises after a tenancy has terminated or expired and the premises have been vacated by the tenant, the landlord shall give written notice as provided in subsection (2) of this section to such tenant and to any other person the landlord reasonably believes to be the owner of the property.

(2)(a) The notice required by subsection (1) of this section shall describe the property in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not protect the landlord from any liability arising from the disposition of property not described in the notice, except that a trunk, valise, box, or other container which is locked, fastened, or tied in a manner which deters immediate access to its contents may be described as such without describing its contents.

(b) The notice shall state that reasonable costs of storage may be charged before the property is returned, the location where the property may be claimed, and the date on or before which such property must be claimed.

(c) The date specified in the notice shall be a date not less than seven days after the notice is personally delivered or, if mailed, not less than fourteen days after the notice is deposited in the mail.

(d) The notice shall be given within six months of the date of expiration of the lease of the property or the date of discovery of the abandonment, whichever is later.

(3) The notice shall be personally delivered or sent by first-class mail, postage prepaid, to the person to be notified at his or her last-known address and, if there is reason to believe that the notice sent to that address will not be received by him or her, also delivered or sent to such other address, if any, known to the landlord at which such person may reasonably be expected to receive the notice.

Source: Laws 1991, LB 36, § 3; Laws 1995, LB 175, § 1.

69-2304 Notice; statement required.

A notice given pursuant to section 69-2303 shall contain one of the following statements, as appropriate:

(1) ''If you fail to reclaim the property, it will be sold at a public sale after notice of the sale has been given by publication. You have the right to bid on the property at this sale. After the property is sold and the costs of storage, advertising, and sale are deducted, the remaining money will be turned over to the State Treasurer pursuant to the Uniform Disposition of Unclaimed Property Act. You may claim the remaining money from the office of the State Treasurer as provided in such act.''; or

(2) ''Because this property is believed to be worth less than two hundred fifty dollars, it may be kept, sold, or destroyed without further notice if you fail to reclaim it within the time indicated in this notice.''.

Source: Laws 1991, LB 36, § 4.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

69-2305 Notice; form.

(1) A notice given to a former tenant which is in substantially the following form shall satisfy the requirements of section 69-2303:

Notice of Right to Reclaim Abandoned Property

To: .....

(Name of former tenant)

. . . . . .

(Address of former tenant)

When you vacated the premises at

. . . . . ,

(Address of premises, including room or apartment number, if any)

the following personal property remained:

. . . . . .

(Insert description of the personal property)

You may claim this property at . . . . . .

. . . . . .

(Address where property may be claimed)

Unless you pay the reasonable costs of storage for all the above-described property and take possession of the property which you claim not later than . . . . . , (insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in the mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section 69-2304)

Dated: . . . . . .

. . . . . .

(Signature of landlord)

. . . . . .

(Type or print name of landlord)

. . . . . .

(Telephone number)

. . . . . .

(Address)

(2) A notice which is in substantially the following form given to a person other than a former tenant whom the landlord reasonably believes to be the owner of personal property shall satisfy the requirements of section 69-2303:

Notice of Right to Reclaim Abandoned Property

To: . . . . . .

(Name)

. . . . . .

(Address)

When . . . . . vacated the premises at

(Name of former tenant)

. . . . . ,

(Address of premises, including room or apartment number, if any)

the following personal property remained:

. . . . . .

(Insert description of the personal property)

If you own any of this property, you may claim it at .....

.....

(Address where property may be claimed)

Unless you pay the reasonable costs of storage and take possession of the property to which you are entitled not later than ..... (insert date not less than seven days after notice is personally delivered or, if mailed, not less than fourteen days after notice is deposited in mail) this property may be disposed of pursuant to the Disposition of Personal Property Landlord and Tenant Act.

(Insert here the statement required by section 69-2304)

Dated: .....

.....

(Signature of landlord)

.....

(Type or print name of landlord)

.....

(Telephone number)

.....

(Address)

Source: Laws 1991, LB 36, § 5.

69-2306 Landlord; property; removal and storage; liability.

A landlord may leave personal property on the vacated premises or may remove and store the property in a place of safekeeping until the landlord either releases or disposes of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall exercise reasonable care in storing the property but shall not be liable to the tenant or any other owner for any loss unless such loss is caused by the landlord's intentional or negligent act.

Source: Laws 1991, LB 36, § 6.

69-2307 Landlord; release of personal property; when.

(1) A landlord shall release personal property left on the vacated premises to the former tenant or to any person reasonably believed by the landlord to be the owner if such tenant or other person pays the reasonable costs of storage and advertising and takes possession of the property not later than the date specified in the notice for taking possession.

(2) When personal property is not released pursuant to subsection (1) of this section and the notice has stated that the personal property will be sold at a public sale, the landlord shall release the personal property to the former tenant or other person if he or she claims the property prior to sale and pays the reasonable costs of storage, advertising, and preparation for sale incurred prior to such claim and payment.

Source: Laws 1991, LB 36, § 7.

69-2308 Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

(1) If the personal property is not released pursuant to section 69-2307, it shall be sold at public sale by competitive bidding, except that if the landlord reasonably believes that the total resale value of the property not released is less than two hundred fifty dollars, he or she may retain such property for his or her own use or dispose of it in any manner he or she chooses. At such time as the decision to sell or to retain is made, any locked trunk, valise, box, or other container shall be opened, if practicable, with as little damage as possible, and its contents evaluated. Nothing in this section shall be construed to preclude the landlord or the tenant from bidding on the property at the public sale. The successful bidder's title shall be subject to ownership rights, liens, and security interests which have priority by law.

(2) Notice of the time and place of the public sale shall be given by advertisement of the sale published once a week for two consecutive weeks in a newspaper of general circulation in the county where the sale is to be held. If there is no newspaper of general circulation in the county where the sale is to be held, the advertisement shall be posted no fewer than ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale. The sale shall be held at the nearest suitable place to the place where the personal property is held or stored. The advertisement shall include a description of the goods, the name of the former tenant, and the time and place of the sale. The sale shall take place no sooner than ten days after the first publication. The last publication shall be no less than five days before the sale is to be held. Notice of sale may be published before the last of the dates specified for taking possession of the property in any notice given pursuant to section 69-2303.

(3) The notice of the sale shall describe the property to be sold in a manner reasonably adequate to permit the owner of the property to identify it. The notice may describe all or a portion of the property, but the limitation of liability provided by section 69-2309 shall not release the landlord from any liability arising from the disposition of property not described in the notice.

(4) After deduction of the reasonable costs of storage, advertising, and sale, any proceeds of the sale not claimed by the former tenant, an owner other than such tenant, or another person having an interest in the proceeds shall, not later than thirty days after the date of sale, be remitted to the State Treasurer for disposition pursuant to the Uniform Disposition of Unclaimed Property Act. The former tenant, other owner, or other person having interest in the proceeds may claim the proceeds by complying with the act. If the State Treasurer pays the proceeds or any part thereof to a claimant, neither the State Treasurer nor any employee thereof shall be liable to any other claimant as to the amount paid.

Source: Laws 1991, LB 36, § 8.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

69-2309 Release or disposition of personal property; liability of landlord.

(1) If the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated, the landlord shall not be liable to any person with respect to such property.

(2) If the landlord releases property pursuant to section 69-2307 to a person who is not the former tenant and who is reasonably believed by the landlord to

be the owner of the property, the landlord shall not be liable with respect to such property to:

(a) Any person to whom notice was given pursuant to section 69-2303; and

(b) Any person to whom notice was not given pursuant to section 69-2303 unless such person proves that, prior to releasing the property, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

(3) When property is disposed of pursuant to section 69-2308, the landlord shall not be liable with respect to that property to:

(a) Any person to whom notice was given pursuant to section 69-2303; and

(b) Any person to whom notice was not given pursuant to section 69-2303 unless such person proves that, prior to disposing of the property pursuant to section 69-2308, the landlord believed or reasonably should have believed that such person had an interest in the property and also that the landlord knew or should, upon reasonable investigation, have known the address of such person.

Source: Laws 1991, LB 36, § 9.

69-2310 Costs of storage; how assessed.

(1) Costs of storage for which payment may be required shall be assessed in the following manner:

(a) When a former tenant claims property pursuant to section 69-2307, he or she may be required to pay the reasonable costs of storage for all the personal property remaining on the premises at the termination of the tenancy; and

(b) When an owner other than the former tenant claims property pursuant to section 69-2307, he or she may be required to pay the reasonable costs of storage for only the property in which he or she claims an interest.

(2) In determining the costs to be assessed under subsection (1) of this section, the landlord may not charge more than one person for the same costs.

Source: Laws 1991, LB 36, § 10.

69-2311 Residential landlord; surrender personal property to residential tenant; conditions; applicability of section.

A residential landlord shall surrender to a residential tenant or to a residential tenant's duly authorized representative any personal property not owned by the landlord which has been left on the premises after the tenant has vacated the residential premises and the return of which has been requested by the tenant or by the authorized representative of the tenant if:

(1) The tenant requests in writing, within fourteen days of vacating the premises, the surrender of the personal property and the request includes a description of the personal property held by the landlord and specifies the mailing address of the tenant;

(2) The landlord or the landlord's agent has control or possession of such personal property at the time the request is received;

(3) The tenant, prior to the surrender of the personal property by the landlord and upon written demand by the landlord, tenders payment of all reasonable costs associated with the landlord's removal and storage of the personal property. The landlord's demand for payment of reasonable costs associated

with the removal and storage of personal property shall be in writing and shall either be mailed to the tenant at the address provided pursuant to subdivision (1) of this section or shall be personally presented to the tenant or to the tenant's authorized representative within five days after the actual receipt of the tenant's request for surrender of the personal property, unless the property is returned first. The demand shall itemize all charges, specifying the nature and amount of each item of cost; and

(4) The tenant agrees to claim and remove the personal property at a reasonable time mutually agreed upon by the landlord and tenant but not later than seventy-two hours after the tender provided for under subdivision (3) of this section.

This section shall not apply to the rental of a self-service storage unit or facility.

Source: Laws 1991, LB 36, § 11; Laws 1993, LB 617, § 2.

69-2312 Landlord retaining personal property; civil action authorized.

Any landlord who retains personal property in violation of the Disposition of Personal Property Landlord and Tenant Act shall be liable to the tenant in a civil action for:

(1) Actual damages not to exceed the value of the personal property if such property is not surrendered: (a) Within a reasonable time after the tenant requests surrender of the personal property; or (b) if the landlord has demanded payment of reasonable costs associated with removal and storage and the tenant has complied with the requirements of section 69-2311. Three days shall be presumed to be a reasonable time in the absence of evidence to the contrary; and

(2) Reasonable attorney's fees and costs.

Source: Laws 1991, LB 36, § 12.

69-2313 Lost personal property; disposition; liability.

Personal property which the landlord reasonably believes to have been lost shall be disposed of as otherwise provided by law, but if the appropriate law enforcement agency or other governmental agency refuses to accept custody of such property, the landlord may dispose of the property pursuant to the Disposition of Personal Property Landlord and Tenant Act. The landlord shall not be liable to the owner of the property if he or she disposes of such property in compliance with the act.

Source: Laws 1991, LB 36, § 13.

69-2314 Remedy; not exclusive.

The remedy provided by the Disposition of Personal Property Landlord and Tenant Act shall not be exclusive and shall not preclude the landlord or the tenant from pursuing any other remedy provided by law.

Source: Laws 1991, LB 36, § 14.

ARTICLE 24
GUNS

(a) HANDGUNS

(b) FIREARM INFORMATION

(c) CONCEALED HANDGUN PERMIT ACT

Section

(a) HANDGUNS

69-2401 Legislative findings and declarations.

The Legislature hereby finds and declares that the state has a valid interest in the regulation of the purchase, lease, rental, and transfer of handguns and that requiring a certificate prior to the purchase, lease, rental, or transfer of a handgun serves a valid public purpose.

Source: Laws 1991, LB 355, § 1.

69-2402 Terms, defined.

For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol shall mean any handgun or pistol, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898 and any replica of such a handgun or pistol if such replica (a) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (b) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(2) Criminal history record check shall include a check of the criminal history records of the Nebraska State Patrol and a check of the Federal Bureau of Investigation's National Instant Criminal Background Check System; and

(3) Handgun shall mean any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand.

Source: Laws 1991, LB 355, § 25; Laws 1996, LB 1055, § 2; Laws 2006, LB 1227, § 1.

69-2403 Sale, lease, rental, and transfer; certificate required; exceptions.

Except as provided in section 69-2409, a person shall not purchase, lease, rent, or receive transfer of a handgun until he or she has obtained a certificate in accordance with section 69-2404. Except as provided in section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate. The certificate shall not be required if:

(1) The person acquiring the handgun is a licensed firearms dealer under federal law;

(2) The handgun is an antique handgun;

(3) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(4) The transfer is a temporary transfer of a handgun and the transferee remains (a) in the line of sight of the transferor or (b) within the premises of an established shooting facility; or

(5) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent.

Source: Laws 1991, LB 355, § 2.

69-2404 Certificate; application; fee.

Any person desiring to purchase, lease, rent, or receive transfer of a handgun shall apply with the chief of police or sheriff of the applicant's place of residence for a certificate. The application may be made in person or by mail. The application form and certificate shall be made on forms approved by the Superintendent of Law Enforcement and Public Safety. The application shall include the applicant's full name, address, date of birth, and country of citizenship. If the applicant is not a United States citizen, the application shall include the applicant's place of birth and his or her alien or admission number. If the application is made in person, the applicant shall also present a current Nebraska motor vehicle operator's license, state identification card, or military identification card, or if the application is made by mail, the application form shall describe the license or card used for identification and be notarized by a notary public who has verified the identification of the applicant through such a license or card. An applicant shall receive a certificate if he or she is twenty-one years of age or older and is not prohibited from purchasing or possessing a handgun by 18 U.S.C. 922. A fee of five dollars shall be charged for each application for a certificate to cover the cost of a criminal history record check.

Source: Laws 1991, LB 355, § 3; Laws 2006, LB 1227, § 2; Laws 2009, LB63, § 33.

69-2405 Application; chief of police or sheriff; duties; immunity.

Upon the receipt of an application for a certificate, the chief of police or sheriff shall issue a certificate or deny a certificate and furnish the applicant the specific reasons for the denial in writing. The chief of police or sheriff shall be permitted up to three days in which to conduct an investigation to determine whether the applicant is prohibited by law from purchasing or possessing a handgun. If the certificate or denial is mailed to the applicant, it shall be mailed to the applicant's address by first-class mail within the three-day period. If it is determined that the purchase or possession of a handgun by the applicant would be in violation of applicable federal, state, or local law, the chief of police or sheriff shall deny the certificate. In computing the three-day period, the day of receipt of the application shall not be included and the last day of the three-day period shall be included. The three-day period shall expire at 11:59 p.m. of the third day unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until 11:59 p.m. of the next day which is not a Saturday, Sunday, or legal holiday. No later than the end of the three-day period the chief of police or sheriff shall issue or deny such certificate and, if the certificate is denied, furnish the applicant the specific reasons for denial in writing. No civil liability shall arise to any law enforcement agency if such law

enforcement agency complies with sections 69-2401, 69-2403 to 69-2408, and 69-2409.01.

Source: Laws 1991, LB 355, § 4; Laws 1996, LB 1055, § 3; Laws 2006, LB 1227, § 3.

69-2406 Certificate; denial or revocation; appeal; filing fee.

Any person who is denied a certificate, whose certificate is revoked, or who has not been issued a certificate upon expiration of the three-day period may appeal within ten days of receipt of the denial or revocation to the county court of the county of the applicant's place of residence. The applicant shall file with the court the specific reasons for the denial or revocation by the chief of police or sheriff and a filing fee of ten dollars in lieu of any other filing fee required by law. The court shall issue its decision within thirty days of the filing of the appeal.

Source: Laws 1991, LB 355, § 5; Laws 2006, LB 1227, § 4.

69-2407 Certificate; contents; term; revocation.

A certificate issued in accordance with section 69-2404 shall contain the holder's name, address, and date of birth and the effective date of the certificate. A certificate shall authorize the holder to acquire any number of handguns during the period that the certificate is valid. The certificate shall be valid throughout the state and shall become invalid three years after its effective date. If the chief of police or sheriff who issued the certificate determines that the applicant has become disqualified for the certificate under section 69-2404, he or she may immediately revoke the certificate and require the holder to surrender the certificate immediately. Revocation may be appealed pursuant to section 69-2406.

Source: Laws 1991, LB 355, § 6; Laws 2009, LB63, § 34.

69-2408 False information on application; other violations; penalties; confiscation of handgun.

Any person who willfully provides false information on an application form for a certificate under section 69-2404 shall, upon conviction, be guilty of a Class IV felony, and any person who intentionally violates any other provision of sections 69-2401, 69-2403 to 69-2407, and 69-2409.01 shall, upon conviction, be guilty of a Class I misdemeanor. As a part of the judgment of conviction, the court may order the confiscation of the handgun.

Source: Laws 1991, LB 355, § 7; Laws 1996, LB 1055, § 4.

69-2409 Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.

It is the intent of the Legislature that the Nebraska State Patrol implement an expedited program of upgrading Nebraska's automated criminal history files to be utilized for, among other law enforcement purposes, an instant criminal history record check on handgun purchasers when buying a handgun from a licensed importer, manufacturer, or dealer so that such instant criminal history record check may be implemented as soon as possible on or after January 1, 1995.

The patrol's automated arrest and conviction records shall be reviewed annually by the Superintendent of Law Enforcement and Public Safety who shall report the status of such records within thirty days of such review to the Governor and the Clerk of the Legislature. The instant criminal history record check system shall be implemented by the patrol on or after January 1, 1995, when, as determined by the Superintendent of Law Enforcement and Public Safety, eighty-five percent of the Nebraska arrest and conviction records since January 1, 1965, available to the patrol are included in the patrol's automated system. Not less than thirty days prior to implementation and enforcement of the instant check system, the patrol shall send written notice to all licensed importers, manufacturers, and dealers outlining the procedures and toll-free number described in sections 69-2410 to 69-2423.

Upon implementation of the instant criminal history record check system, a person who desires to purchase, lease, rent, or receive transfer of a handgun from a licensed importer, manufacturer, or dealer may elect to obtain such handgun either under sections 69-2401, 69-2403 to 69-2408, and 69-2409.01 or under sections 69-2409.01 and 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 8; Laws 1996, LB 1055, § 5.

69-2409.01 Mental health treatment data base; created; disclosure; limitation; liability; prohibited act; violation; penalty.

(1) For purposes of sections 69-2401 to 69-2425, the Nebraska State Patrol shall be furnished upon the patrol's request with only such information as may be necessary for the sole purpose of determining whether an individual is disqualified from purchasing or possessing a handgun pursuant to state or federal law. Such information shall be furnished by the Department of Health and Human Services. The clerks of the various courts shall furnish to the Department of Health and Human Services, within thirty days after the order of commitment or finding and the discharge, all information necessary to set up and maintain the data base required by this section. This information shall include (a) information regarding those persons who are currently receiving mental health treatment pursuant to a commitment order of a mental health board or who have been discharged and (b) information regarding those persons who have been committed to treatment pursuant to section 29-3702. The Department of Health and Human Services shall also maintain in the data base a listing of persons committed to treatment pursuant to section 29-3702. Information regarding mental health board commitments and commitments pursuant to section 29-3702 shall not be retained in the data base maintained by the department on persons who have been discharged from those commitments more than five years previously. Any such information maintained or disclosed under this subsection shall remain privileged and confidential and shall not be redisclosed or utilized for any other purpose. The procedures for furnishing such information shall guarantee that no information is released beyond what is necessary for purposes of this section.

(2) In order to comply with sections 69-2401 and 69-2403 to 69-2408 and this section, the Nebraska State Patrol shall provide to the chief of police or sheriff of an applicant's place of residence or a licensee in the process of a criminal history record check pursuant to section 69-2411 only the information regarding whether or not the applicant is disqualified from purchasing or possessing a handgun.

(3) Any person, agency, or mental health board participating in good faith in the reporting or disclosure of records and communications under this section is immune from any liability, civil, criminal, or otherwise, that might result by reason of the action.

(4) Any person who intentionally causes the Nebraska State Patrol to request information pursuant to this section without reasonable belief that the named individual has submitted a written application under section 69-2404 or has completed a consent form under section 69-2410 shall be guilty of a Class II misdemeanor in addition to other civil or criminal liability under state or federal law.

Source: Laws 1996, LB 1055, § 1; Laws 1997, LB 307, § 112.

69-2410 Importer, manufacturer, or dealer; sale or delivery; duties.

No importer, manufacturer, or dealer licensed pursuant to 18 U.S.C. 923 shall sell or deliver any handgun to another person other than a licensed importer, manufacturer, dealer, or collector until he or she has:

(1)(a) Inspected a valid certificate issued to such person pursuant to sections 69-2401, 69-2403 to 69-2408, and 69-2409.01; and

(b) Inspected a valid identification containing a photograph of such person which appropriately and completely identifies such person; or

(2)(a) Obtained a completed consent form from the potential buyer or transferee, which form shall be established by the Nebraska State Patrol and provided by the licensed importer, manufacturer, or dealer. The form shall include the name, address, date of birth, gender, race, and country of citizenship of such potential buyer or transferee. If the potential buyer or transferee is not a United States citizen, the completed consent form shall contain the potential buyer's or transferee's place of birth and his or her alien or admission number;

(b) Inspected a valid identification containing a photograph of the potential buyer or transferee which appropriately and completely identifies such person;

(c) Requested by toll-free telephone call or other electromagnetic communication that the Nebraska State Patrol conduct a criminal history record check; and

(d) Received a unique approval number for such inquiry from the Nebraska State Patrol indicating the date and number on the consent form.

Source: Laws 1991, LB 355, § 9; Laws 1996, LB 1055, § 6; Laws 2006, LB 1227, § 5; Laws 2009, LB63, § 35.

69-2411 Request for criminal history record check; Nebraska State Patrol; duties; fee.

(1) Upon receipt of a request for a criminal history record check, the Nebraska State Patrol shall as soon as possible during the licensee's telephone call or by return telephone call:

(a) Check its criminal history records and check the Federal Bureau of Investigation's National Instant Criminal Background Check System to determine if the potential buyer or transferee is prohibited from receipt or possession of a handgun pursuant to state or federal law; and

(b) Either (i) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (ii) provide the licensee with a unique approval number.

(2) In the event of electronic failure or similar emergency beyond the control of the Nebraska State Patrol, the patrol shall immediately notify a requesting licensee of the reason for and estimated length of such delay. In any event, no later than the end of the next business day the Nebraska State Patrol shall either (a) inform the licensee that its records demonstrate that the potential buyer or transferee is prohibited from receipt or possession of a handgun or (b) provide the licensee with a unique approval number. If the licensee is not informed by the end of the next business day that the potential buyer is prohibited from receipt or possession of a handgun, and regardless of whether the unique approval number has been received, the licensee may complete the sale or delivery and shall not be deemed to be in violation of sections 69-2410 to 69-2423 with respect to such sale or delivery.

(3) A fee of three dollars shall be charged for each request of a criminal history record check required pursuant to section 69-2410, which amount shall be transmitted monthly to the Nebraska State Patrol. Such amount shall be for the purpose of covering the costs of the criminal history record check.

Source: Laws 1991, LB 355, § 10; Laws 2006, LB 1227, § 6.

69-2412 Records; confidentiality; destruction.

(1) Any records which are created by the Nebraska State Patrol to conduct the criminal history record check containing any of the information set forth in subdivision (2)(a) of section 69-2410 pertaining to a potential buyer or transferee who is not prohibited from receipt or transfer of a handgun by reason of state or federal law shall be confidential and may not be disclosed by the patrol or any officer or employee thereof to any person. The Nebraska State Patrol shall destroy any such records as soon as possible after communicating the unique approval number, and in any event, such records shall be destroyed within forty-eight hours after the date of receipt of the licensee's request.

(2) Notwithstanding the provisions of this section, the Nebraska State Patrol shall only maintain a log of dates of requests for criminal history record checks and unique approval numbers corresponding to such dates for not to exceed one year.

(3) Nothing in this section shall be construed to allow the state to maintain records containing the names of licensees who receive unique approval numbers or to maintain records of handgun transactions, including the names or other identification of licensees and potential buyers or transferees including persons not otherwise prohibited by law from the receipt or possession of handguns.

Source: Laws 1991, LB 355, § 11.

69-2413 Nebraska State Patrol; toll-free telephone number; personnel.

The Nebraska State Patrol shall establish a toll-free telephone number which shall be operational seven days a week between 8 a.m. and 10 p.m. for purposes of responding to requests under section 69-2410. The Nebraska State Patrol

shall employ and train such personnel as is necessary to expeditiously administer the provisions of sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 12.

69-2414 Records; amendment; procedure.

Any person who is denied the right to purchase or receive a handgun as a result of procedures established by sections 69-2410 to 69-2423 may request amendment of the record pertaining to him or her by petitioning the Nebraska State Patrol. If the Nebraska State Patrol fails to amend the record within seven days, the person requesting the amendment may petition the county court of the county in which he or she resides for an order directing the patrol to amend the record. If the person proves by a preponderance of the evidence that the record should be amended, the court shall order the record be amended. If the record demonstrates that such person is not prohibited from receipt or possession of a handgun by state or federal law, the Nebraska State Patrol shall destroy any records it maintains which contain any information derived from the criminal history record check.

Source: Laws 1991, LB 355, § 13.

69-2415 Records; rules and regulations.

The Nebraska State Patrol shall adopt and promulgate rules and regulations to ensure the identity, confidentiality, and security of all records and data provided pursuant to sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 14.

69-2416 Licensed importer, manufacturer, or dealer; compliance not required; when.

A licensed importer, manufacturer, or dealer shall not be required to comply with the provisions of subdivision (2) of section 69-2410 and sections 69-2411 to 69-2423 in the event of:

(1) Unavailability of telephone service at the licensed premises due to (a) the failure of the entity which provides telephone service in the state, region, or other geographical area in which the licensee is located to provide telephone service to the premises due to the location of such premises or (b) the interruption of telephone service by reason of hurricane, flood, natural disaster, other act of God, war, riot, or other bona fide emergency or reason beyond the control of the licensee; or

(2) Failure of the Nebraska State Patrol to comply reasonably with the requirements of sections 69-2410 to 69-2423.

Source: Laws 1991, LB 355, § 15.

69-2417 Nebraska State Patrol; licensee; liability defense; when.

Compliance with sections 69-2410 to 69-2423 shall be a defense by the Nebraska State Patrol and the licensee transferring a handgun in any cause of action under the laws of this state for liability for damages arising from the importation or manufacture, or the subsequent sale or transfer, of any handgun which has been shipped or transported in interstate or foreign commerce to

any person who has been convicted in any court of any crime punishable by a term of more than one year.

Source: Laws 1991, LB 355, § 16.

69-2418 Instant criminal history record check; requirements; exemptions.

Sections 69-2410 to 69-2423 shall not apply to:

(1) Any antique handgun or pistol; or

(2) Any firearm which is a curio or relic as defined in 27 C.F.R. 478.11.

Source: Laws 1991, LB 355, § 17; Laws 2006, LB 1227, § 7.

69-2419 Criminal history records; prohibited acts; violation; penalty.

Any licensed importer, manufacturer, or dealer who knowingly and intentionally requests a criminal history record check from the Nebraska State Patrol for any purpose other than compliance with sections 69-2410 to 69-2423 or knowingly and intentionally disseminates any criminal history record check information to any person other than the subject of such information shall be guilty of a Class I misdemeanor.

Source: Laws 1991, LB 355, § 18; Laws 2006, LB 1227, § 8.

69-2420 False statement; false identification; prohibited acts; violation; penalty.

Any person who, in connection with the purchase, transfer, or attempted purchase of a handgun pursuant to sections 69-2410 to 69-2423, knowingly and intentionally makes any materially false oral or written statement or knowingly and intentionally furnishes any false identification intended or likely to deceive the licensee shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 19.

69-2421 Sale or delivery; violation; penalty.

Any licensed importer, manufacturer, or dealer who knowingly and intentionally sells or delivers a handgun in violation of sections 69-2401 to 69-2425 shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 20; Laws 1996, LB 1055, § 7.

69-2422 Obtaining handgun for prohibited transfer; violation; penalty.

For purposes of sections 69-2401 to 69-2425, any person who knowingly and intentionally obtains a handgun for the purposes of transferring it to a person who is prohibited from receipt or possession of a handgun by state or federal law shall be guilty of a Class IV felony.

Source: Laws 1991, LB 355, § 21; Laws 1996, LB 1055, § 8.

69-2423 Nebraska State Patrol; annual report; contents.

The Nebraska State Patrol shall provide an annual report to the Judiciary Committee of the Legislature which includes the number of inquiries made pursuant to sections 69-2410 to 69-2423 for the prior calendar year, the number of such inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a handgun pursuant to state or federal law, the estimated costs of administering such sections, the

number of instances in which a person requested amendment of the record pertaining to such person pursuant to section 69-2414, and the number of instances in which a county court issued an order directing the patrol to amend a record.

Source: Laws 1991, LB 355, § 22.

69-2424 Rules and regulations.

The Nebraska State Patrol shall adopt and promulgate rules and regulations to carry out sections 69-2401 to 69-2425.

Source: Laws 1991, LB 355, § 23; Laws 1996, LB 1055, § 9.

69-2425 City or village ordinance; not preempted.

Any city or village ordinance existing on September 6, 1991, shall not be preempted by sections 69-2401 to 69-2425.

Source: Laws 1991, LB 355, § 24; Laws 1996, LB 1055, § 10.

(b) FIREARM INFORMATION

69-2426 Dealers of firearms; distribution of information; Firearm Information Fund; created.

(1) Dealers of firearms shall distribute to all purchasers information developed by the Department of Health and Human Services regarding the dangers of leaving loaded firearms unattended around children.

(2) There is hereby created the Firearm Information Fund. Private contributions shall be credited by the State Treasurer to such fund for the implementation of the provisions of this section.

Source: Laws 1993, LB 117, § 1; Laws 1996, LB 1044, § 367.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2448 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1; Laws 2009, LB430, § 9.

69-2428 Permit to carry concealed handgun; authorized.

An individual may obtain a permit to carry a concealed handgun in accordance with the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 2.

69-2429 Terms, defined.

For purposes of the Concealed Handgun Permit Act:

(1) Concealed handgun means the handgun is totally hidden from view. If any part of the handgun is capable of being seen, it is not a concealed handgun;

(2) Emergency services personnel means a volunteer or paid firefighter or rescue squad member or a person licensed to provide emergency medical services pursuant to the Emergency Medical Services Practice Act;

(3) Handgun means any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by the use of a single hand;

(4) Peace officer means any town marshal, chief of police or local police officer, sheriff or deputy sheriff, the Superintendent of Law Enforcement and Public Safety, any officer of the Nebraska State Patrol, any member of the National Guard on active service by direction of the Governor during periods of emergency or civil disorder, any Game and Parks Commission conservation officer, and all other persons with similar authority to make arrests;

(5) Permitholder means an individual holding a current and valid permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act; and

(6) Proof of training means an original document or certified copy of a document, supplied by an applicant, that certifies that he or she either:

(a) Within the previous three years, has successfully completed a handgun training and safety course approved by the Nebraska State Patrol pursuant to section 69-2432; or

(b) Is a member of the active or reserve armed forces of the United States or a member of the National Guard and has had handgun training within the previous three years which meets the minimum safety and training requirements of section 69-2432.

Source: Laws 2006, LB 454, § 3; Laws 2007, LB463, § 1177.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

69-2430 Application; form; contents; prohibited acts; penalty; permit issuance; denial; appeal.

(1) Application for a permit to carry a concealed handgun shall be made in person at any Nebraska State Patrol Troop Headquarters or office provided by the patrol for purposes of accepting such an application. The applicant shall present a current Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card and shall submit two legible sets of fingerprints for a criminal history record information check pursuant to section 69-2431. The application shall be made on a form prescribed by the Superintendent of Law Enforcement and Public Safety. The application shall state the applicant's full name, motor vehicle operator's license number or state identification card number, address, and date of birth and contain the applicant's signature and shall include space for the applicant to affirm that he or she meets each and every one of the requirements set forth in section 69-2433. The applicant shall attach to the application proof of training and proof of vision as required in subdivision (3) of section 69-2433.

(2) A person applying for a permit to carry a concealed handgun who gives false information or offers false evidence of his or her identity is guilty of a Class IV felony.

(3)(a) Until January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within five business days after completion of the applicant's criminal history record information check, if the applicant has complied with this section and has met all the requirements of section 69-2433.

(b) Beginning January 1, 2010, the permit to carry a concealed handgun shall be issued by the Nebraska State Patrol within forty-five days after the date an application for the permit has been made by the applicant if the applicant has complied with this section and has met all the requirements of section 69-2433.

(4) An applicant denied a permit to carry a concealed handgun may appeal to the district court of the judicial district of the county in which he or she resides or the county in which he or she applied for the permit pursuant to the Administrative Procedure Act.

Source: Laws 2006, LB 454, § 4; Laws 2009, LB63, § 36; Laws 2009, LB430, § 10.

Cross References

Administrative Procedure Act, see section 84-920.

69-2431 Fingerprinting; criminal history record information check.

In order to insure an applicant's initial compliance with sections 69-2430 and 69-2433, the applicant for a permit to carry a concealed handgun shall be fingerprinted by the Nebraska State Patrol and a check made of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol. The criminal history record information check under the Concealed Handgun Permit Act is for initial compliance only.

Source: Laws 2006, LB 454, § 5.

69-2432 Nebraska State Patrol; handgun training and safety courses and instructors; duties; certificate of completion of course; fee.

(1) The Nebraska State Patrol shall prepare and publish minimum training and safety requirements for and adopt and promulgate rules and regulations governing handgun training and safety courses and handgun training and safety course instructors. Minimum safety and training requirements for a handgun training and safety course shall include, but not be limited to:

(a) Knowledge and safe handling of a handgun;

(b) Knowledge and safe handling of handgun ammunition;

(c) Safe handgun shooting fundamentals;

(d) A demonstration of competency with a handgun with respect to the minimum safety and training requirements;

(e) Knowledge of federal, state, and local laws pertaining to the purchase, ownership, transportation, and possession of handguns;

(f) Knowledge of federal, state, and local laws pertaining to the use of a handgun, including, but not limited to, use of a handgun for self-defense and laws relating to justifiable homicide and the various degrees of assault;

(g) Knowledge of ways to avoid a criminal attack and to defuse or control a violent confrontation; and

(h) Knowledge of proper storage practices for handguns and ammunition, including storage practices which would reduce the possibility of accidental injury to a child.

(2) A person or entity conducting a handgun training and safety course and the course instructors shall be approved by the patrol before operation. The patrol shall issue a certificate evidencing its approval.

(3) A certificate of completion of a handgun training and safety course shall be issued by the person or entity conducting a handgun training and safety course to persons successfully completing the course. The certificate of completion shall also include certification from the instructor that the person completing the course does not suffer from a readily discernible physical infirmity that prevents the person from safely handling a handgun.

(4) Any fee for participation in a handgun training and safety course is the responsibility of the applicant.

Source: Laws 2006, LB 454, § 6.

69-2433 Applicant; requirements.

An applicant shall:

(1) Be at least twenty-one years of age;

(2) Not be prohibited from purchasing or possessing a handgun by 18 U.S.C. 922, as such section existed on January 1, 2005;

(3) Possess the same powers of eyesight as required under section 60-4,118 for a Class O operator's license. If an applicant does not possess a current Nebraska motor vehicle operator's license, the applicant may present a current optometrist's or ophthalmologist's statement certifying the vision reading obtained when testing the applicant. If such certified vision reading meets the vision requirements prescribed by section 60-4,118 for a Class O operator's license, the vision requirements of this subdivision shall have been met;

(4) Not have pled guilty to, not have pled nolo contendere to, or not have been convicted of a felony or a crime of violence under the laws of this state or under the laws of any other jurisdiction;

(5) Not have been found in the previous ten years to be a mentally ill and dangerous person under the Nebraska Mental Health Commitment Act or a similar law of another jurisdiction or not be currently adjudged mentally incompetent;

(6)(a) Have been a resident of this state for at least one hundred eighty days. For purposes of this section, resident does not include an applicant who maintains a residence in another state and claims that residence for voting or tax purposes except as provided in subdivision (b) of this subdivision; or

(b) If an applicant is a member of the United States Armed Forces, such applicant shall be considered a resident of this state for purposes of this section after he or she has been stationed at a military installation in this state pursuant to permanent duty station orders even though he or she maintains a residence in another state and claims that residence for voting or tax purposes;

(7) Have had no violations of any law of this state relating to firearms, unlawful use of a weapon, or controlled substances or of any similar laws of another jurisdiction in the ten years preceding the date of application;

(8) Not be on parole, probation, house arrest, or work release;

(9) Be a citizen of the United States; and

(10) Provide proof of training.

Source: Laws 2006, LB 454, § 7; Laws 2009, LB430, § 11.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

69-2434 Permit; design and form.

The design and form of the permit to carry a concealed handgun shall be prescribed by the Nebraska State Patrol. The permit shall list the permitholder's name, the permitholder's address, and the expiration date of the permit and contain a photograph of the permitholder.

Source: Laws 2006, LB 454, § 8.

69-2435 Permitholder; continuing requirements; return of permit; when.

A permitholder shall continue to meet the requirements of section 69-2433 during the time he or she holds the permit. If, during such time, a permitholder does not continue to meet one or more of the requirements, the permitholder shall return his or her permit to the Nebraska State Patrol for revocation. If a permitholder does not return his or her permit, the permitholder is subject to having his or her permit revoked under section 69-2439.

Source: Laws 2006, LB 454, § 9.

69-2436 Permit; period valid; fee; renewal; fee.

(1) A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance. The fee for issuing a permit is one hundred dollars.

(2) The Nebraska State Patrol shall renew a person's permit to carry a concealed handgun for a renewal period of five years, subject to continuing compliance with the requirements of section 69-2433. The renewal fee is fifty dollars, and renewal may be applied for up to four months before expiration of a permit to carry a concealed handgun.

(3) The applicant shall submit the fee with the application to the Nebraska State Patrol. The fee shall be remitted to the State Treasurer for credit to the Nebraska State Patrol Cash Fund.

(4) On or before June 30, 2007, the Nebraska State Patrol shall journal entry, as necessary, all current fiscal year expenses and revenue, including investment income, from the Public Safety Cash Fund under the Concealed Handgun Permit Act and recode them against the Nebraska State Patrol Cash Fund and its program appropriation.

Source: Laws 2006, LB 454, § 10; Laws 2007, LB322, § 17.

69-2437 Permit; nontransferable.

A permit to carry a concealed handgun shall be issued to a specific individual only and shall not be transferred from one person to another.

Source: Laws 2006, LB 454, § 11.

69-2438 Limitation on liability.

The Nebraska State Patrol or any agent, employee, or member thereof is not civilly liable to any injured person or his or her estate for any injury suffered, including any action for wrongful death or property damage suffered, relating to the issuance or revocation of a permit to carry a concealed handgun issued pursuant to the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 12.

69-2439 Permit; application for revocation; prosecution; fine; costs.

(1) Any peace officer having probable cause to believe that a permitholder is no longer in compliance with one or more requirements of section 69-2433 shall bring an application for revocation of the permit to be prosecuted as provided in subsection (2) of this section.

(2) It is the duty of the county attorney or his or her deputy of the county in which such permitholder resides to prosecute a case for the revocation of a permit to carry a concealed handgun brought pursuant to subsection (1) of this section. In case the county attorney refuses or is unable to prosecute the case, the duty to prosecute shall be upon the Attorney General or his or her assistant.

(3) The case shall be prosecuted as a civil case, and the permit shall be revoked upon a showing by a preponderance of the evidence that the permitholder does not meet one or more of the requirements of section 69-2433.

(4) A person who has his or her permit revoked under this section may be fined up to one thousand dollars and shall be charged with the costs of the prosecution. The money collected under this subsection as an administrative fine shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2006, LB 454, § 13.

69-2440 Permitholder; duties; contact with peace officer or emergency services personnel; procedures for securing handgun.

(1) A permitholder shall carry his or her permit to carry a concealed handgun and his or her Nebraska driver's license, Nebraska-issued state identification card, or military identification card any time he or she carries a concealed handgun. The permitholder shall display both the permit to carry a concealed handgun and his or her Nebraska motor vehicle operator's license, Nebraska-issued state identification card, or military identification card when asked to do so by a peace officer or by emergency services personnel.

(2) Whenever a permitholder who is carrying a concealed handgun is contacted by a peace officer or by emergency services personnel, the permitholder shall immediately inform the peace officer or emergency services personnel that the permitholder is carrying a concealed handgun.

(3)(a) During contact with a permitholder, a peace officer or emergency services personnel may secure the handgun or direct that it be secured during the duration of the contact if the peace officer or emergency services personnel determines that it is necessary for the safety of any person present, including the peace officer or emergency services personnel. The permitholder shall submit to the order to secure the handgun.

(b)(i) When the peace officer has determined that the permitholder is not a threat to the safety of any person present, including the peace officer, and the permitholder has not committed any other violation that would result in his or

her arrest or the suspension or revocation of his or her permit, the peace officer shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact.

(ii) When emergency services personnel have determined that the permitholder is not a threat to the safety of any person present, including emergency services personnel, and if the permitholder is physically and mentally capable of possessing the handgun, the emergency services personnel shall return the handgun to the permitholder before releasing the permitholder from the scene and breaking contact. If the permitholder is transported for treatment to another location, the handgun shall be turned over to any peace officer. The peace officer shall provide a receipt which includes the make, model, caliber, and serial number of the handgun.

(4) For purposes of this section, contact with a peace officer means any time a peace officer personally stops, detains, questions, or addresses a permitholder for an official purpose or in the course of his or her official duties, and contact with emergency services personnel means any time emergency services personnel provide treatment to a permitholder in the course of their official duties.

Source: Laws 2006, LB 454, § 14.

69-2441 Permitholder; locations; restrictions; posting of prohibition; consumption of alcohol; prohibited.

(1)(a) A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school as defined in section 85-1603, a community college, or a public or private college, junior college, or university; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by state law.

(b) A financial institution may authorize its security personnel to carry concealed handguns in the financial institution while on duty so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act.

(c) A place of worship may authorize its security personnel to carry concealed handguns on its property so long as each member of the security personnel, as authorized, is in compliance with the Concealed Handgun Permit Act and possesses a permit to carry a concealed handgun issued pursuant to the act and

written notice is given to the congregation and, if the property is leased, the carrying of concealed handguns on the property does not violate the terms of any real property lease agreement between the place of worship and the lessor.

(2) If a person, persons, entity, or entities in control of the property or an employer in control of the property prohibits a permitholder from carrying a concealed handgun into or onto the place or premises and such place or premises are open to the public, a permitholder does not violate this section unless the person, persons, entity, or entities in control of the property or employer in control of the property has posted conspicuous notice that carrying a concealed handgun is prohibited in or on the place or premises or has made a request, directly or through an authorized representative or management personnel, that the permitholder remove the concealed handgun from the place or premises.

(3) A permitholder carrying a concealed handgun in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public, used by any location listed in subdivision (1)(a) of this section, does not violate this section if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, a hardened compartment securely attached to the motorcycle. This subsection does not apply to any parking area used by such location when the carrying of a concealed handgun into or onto such parking area is prohibited by federal law.

(4) An employer may prohibit employees or other persons who are permitholders from carrying concealed handguns in vehicles owned by the employer.

(5) A permitholder shall not carry a concealed handgun while he or she is consuming alcohol or while the permitholder has remaining in his or her blood, urine, or breath any previously consumed alcohol or any controlled substance as defined in section 28-401. A permitholder does not violate this subsection if the controlled substance in his or her blood, urine, or breath was lawfully obtained and was taken in therapeutically prescribed amounts.

Source: Laws 2006, LB 454, § 15; Laws 2007, LB97, § 1; Laws 2009, LB430, § 12.

Cross References

Nebraska Liquor Control Act, see section 53-101.

69-2442 Injury to person or damage to property; permitholder; report required.

Any time the discharge of a handgun carried by a permitholder pursuant to the Concealed Handgun Permit Act results in injury to a person or damage to property, the permitholder shall make a report of such incident to the Nebraska State Patrol on a form designed and distributed by the Nebraska State Patrol. The information from the report shall be maintained as provided in section 69-2444.

Source: Laws 2006, LB 454, § 16.

69-2443 Violations; penalties; revocation of permit.

(1) A permitholder who violates subsection (1) or (2) of section 69-2440 or section 69-2441 or 69-2442 is guilty of a Class III misdemeanor for the first violation and a Class I misdemeanor for any second or subsequent violation.

(2) A permitholder who violates subsection (3) of section 69-2440 is guilty of a Class I misdemeanor.

(3) A permitholder convicted of a violation described in subsection (1) or (2) of this section may also have his or her permit revoked.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2.

69-2444 Listing of applicants and permitholders; availability; confidential information.

The Nebraska State Patrol shall maintain a listing of all applicants and permitholders and any pertinent information regarding such applicants and permitholders. The information shall be available upon request to all federal, state, and local law enforcement agencies. Information relating to an applicant or to a permitholder received or maintained pursuant to the Concealed Handgun Permit Act by the Nebraska State Patrol or any other law enforcement agency is confidential and shall not be considered a public record within the meaning of sections 84-712 to 84-712.09.

Source: Laws 2006, LB 454, § 18.

69-2445 Carrying concealed weapon under other law; act; how construed.

Nothing in the Concealed Handgun Permit Act prevents a person from carrying a concealed weapon as permitted under section 28-1202.

Source: Laws 2006, LB 454, § 19.

69-2446 Rules and regulations.

The Nebraska State Patrol may adopt and promulgate rules and regulations to carry out the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 20.

69-2447 Department of Motor Vehicles records; use and update of information.

(1) The Department of Motor Vehicles shall modify the existing system of the department to allow the status of a permit to carry a concealed handgun and the dates of issuance and expiration of such permit to be recorded on the permitholder's record provided for in section 60-483. The Nebraska State Patrol shall use the system to record the issuance or renewal of a permit to carry a concealed handgun. The transmission of notice of the issuance or renewal of such permit shall include the applicant's name, the applicant's motor vehicle operator's license number or state identification card number, and the dates of issuance and expiration of the permit to carry a concealed handgun.

(2) An abstract of a court record of every case in which a person's permit to carry a concealed handgun is revoked shall be transmitted to the Department of Motor Vehicles using the abstracting system provided for in section 60-497.01. Such abstract shall contain the name of the revoked permitholder, his or her motor vehicle operator's license number or state identification card number, and the date of revocation of the permit to carry a concealed handgun.

Source: Laws 2006, LB 454, § 21.

69-2448 License or permit issued by other state or District of Columbia; how treated.

A valid license or permit to carry a concealed handgun issued by any other state or the District of Columbia shall be recognized as valid in this state under the Concealed Handgun Permit Act if (1) the holder of the license or permit is not a resident of Nebraska and (2) the Attorney General has determined that the standards for issuance of such license or permit by such state or the District of Columbia are equal to or greater than the standards imposed by the act. The Attorney General shall maintain and publish a list of such states and the District of Columbia which he or she has determined have standards equal to or greater than the standards imposed by the act.

Source: Laws 2009, LB430, § 13.

ARTICLE 25

PLASTIC CONTAINER CODING

Section
69-2501. Act, how cited.
69-2502. Terms, defined.
69-2503. Conformity with industry standards; codes required; department; duties.
69-2504. Violations; penalty; enforcement duties.
69-2505. Environmental Quality Council; adopt rules and regulations.
69-2506. Administrative costs; limitation; payment.
69-2507. Act; applicability.

69-2501 Act, how cited.

Sections 69-2501 to 69-2507 shall be known and may be cited as the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 1.

69-2502 Terms, defined.

For purposes of the Plastic Container Coding Act:

(1) Code shall mean a molded, imprinted, or raised symbol on or near the bottom of a plastic bottle or rigid plastic container;

(2) Department shall mean the Department of Environmental Quality;

(3) Plastic shall mean any material made of polymeric organic compounds and additives that can be shaped by flow;

(4) Plastic bottle shall mean a plastic container intended for a single use that:

(a) Has a neck smaller than the body of the container;

(b) Is designed for a screw-top, snap cap, or other closure; and

(c) Has a capacity of not less than sixteen fluid ounces or more than five gallons; and

(5) Rigid plastic container shall mean any formed or molded container intended for a single use, composed predominately of plastic resin, that has a relatively inflexible finite shape or form with a capacity of not less than eight ounces or more than five gallons. Rigid plastic container shall not include a plastic bottle.

Source: Laws 1993, LB 63, § 2.

69-2503 Conformity with industry standards; codes required; department; duties.

(1) This section and any rules or regulations adopted and promulgated under the Plastic Container Coding Act shall be interpreted to conform with nationwide plastics industry standards.

(2) No person shall manufacture or distribute a plastic bottle or rigid plastic container unless such bottle or container is imprinted with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the arrowhead from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number.

(3) The codes shall be:

(a) 1 and PETE, representing polyethylene terephthalate;

(b) 2 and HDPE, representing high density polyethylene;

(c) 3 and V, representing vinyl;

(d) 4 and LDPE, representing low density polyethylene;

(e) 5 and PP, representing polypropylene;

(f) 6 and PS, representing polystyrene; and

(g) 7 and OTHER.

(4) The department shall maintain a list of the symbols and provide a copy of the list to any person on request.

Source: Laws 1993, LB 63, § 3.

69-2504 Violations; penalty; enforcement duties.

(1) After being notified by the department that a plastic bottle or rigid plastic container does not comply with section 69-2503 or the rules and regulations promulgated under such section, a person violating such section shall be subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from further violations.

(2) For any violation of section 69-2503 or the rules and regulations promulgated under the Plastic Container Coding Act, the Attorney General or county attorney shall institute proceedings to recover the civil penalty imposed under this section.

Source: Laws 1993, LB 63, § 4.

69-2505 Environmental Quality Council; adopt rules and regulations.

The Environmental Quality Council shall adopt and promulgate rules and regulations to carry out the Plastic Container Coding Act.

Source: Laws 1993, LB 63, § 5.

69-2506 Administrative costs; limitation; payment.

Administrative costs incurred in implementing the Plastic Container Coding Act shall not exceed five thousand dollars and shall be paid solely from the Integrated Solid Waste Management Cash Fund.

Source: Laws 1993, LB 63, § 6.

69-2507 Act; applicability.

The Plastic Container Coding Act shall apply to plastic bottles and rigid plastic containers manufactured or distributed on or after January 1, 1994.

Source: Laws 1993, LB 63, § 7; Laws 2000, LB 819, § 83.

ARTICLE 26

ASSISTIVE TECHNOLOGY REGULATION ACT

Section
69-2601. Act, how cited.
69-2602. Definitions, where found.
69-2603. Assistive device, defined.
69-2604. Assistive device dealer, defined.
69-2605. Assistive device lessor, defined.
69-2606. Collateral costs, defined.
69-2607. Consumer, defined.
69-2608. Demonstrator, defined.
69-2609. Major life activity, defined.
69-2610. Manufacturer, defined.
69-2611. Nonconformity, defined.
69-2612. Reasonable allowance for use, defined.
69-2613. Reasonable attempt to repair, defined.
69-2614. Manufacturer; express warranty; requirements.
69-2615. Manufacturer; consumer; assistive device lessor; duties.
69-2616. Returned assistive device; resale or subsequent lease; lease; enforcement.
69-2617. Rights and remedies.
69-2618. Rental assistive device reimbursement; when.
69-2619. Act; applicability.

69-2601 Act, how cited.

Sections 69-2601 to 69-2619 shall be known and may be cited as the Assistive Technology Regulation Act.

Source: Laws 1997, LB 802, § 1.

69-2602 Definitions, where found.

For purposes of the Assistive Technology Regulation Act, the definitions found in sections 69-2603 to 69-2613 apply.

Source: Laws 1997, LB 802, § 2.

69-2603 Assistive device, defined.

Assistive device means any device, including a demonstrator, that a consumer purchases or accepts transfer of in this state which is used for a major life activity, including, but not limited to, manual wheelchairs, motorized wheelchairs, motorized scooters, and other aides that enhance the mobility of an individual; hearing instruments, telephone communication devices for the deaf (TTY), assistive listening devices, and other aides that enhance an individual's ability to hear; voice synthesized computer modules, optical scanners, talking software, braille printers, and other devices that enhance a sight-impaired

individual's ability to communicate; environmental control units; and any other assistive device that enables a person with a disability to communicate, see, hear, or maneuver.

Source: Laws 1997, LB 802, § 3; Laws 2009, LB195, § 52.

69-2604 Assistive device dealer, defined.

Assistive device dealer means a person who is in the business of selling assistive devices.

Source: Laws 1997, LB 802, § 4.

69-2605 Assistive device lessor, defined.

Assistive device lessor means a person who leases an assistive device to a consumer under a written lease or who holds the lessor's rights under a written lease.

Source: Laws 1997, LB 802, § 5.

69-2606 Collateral costs, defined.

Collateral costs means expenses incurred by an assistive device lessor or a consumer in connection with the repair of a nonconformity, including the costs of sales tax and of obtaining an alternative assistive device.

Source: Laws 1997, LB 802, § 6.

69-2607 Consumer, defined.

Consumer means any of the following:

(1) An individual or entity purchasing an assistive device if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(2) An individual or entity to whom the assistive device is transferred for purposes other than resale if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(3) An individual or entity who may enforce the warranty; or

(4) An individual or entity who leases an assistive device from an assistive device lessor under a written lease.

Source: Laws 1997, LB 802, § 7.

69-2608 Demonstrator, defined.

Demonstrator means an assistive device used primarily for the purpose of demonstration to the public.

Source: Laws 1997, LB 802, § 8.

69-2609 Major life activity, defined.

Major life activity means a function such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Source: Laws 1997, LB 802, § 9.

69-2610 Manufacturer, defined.

Manufacturer means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, a factory branch, a distributor branch, and any warrantors of the manufacturer's assistive device, but not including an assistive device dealer.

Source: Laws 1997, LB 802, § 10.

69-2611 Nonconformity, defined.

Nonconformity means a condition or defect that substantially impairs the use, value, or safety of an assistive device and that is covered by an express warranty applicable to the assistive device or to a component of the assistive device but does not include (1) a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the assistive device by a consumer or (2) a condition that is the result of normal use which could be resolved through fitting adjustments, cleaning, or proper care.

Source: Laws 1997, LB 802, § 11.

69-2612 Reasonable allowance for use, defined.

Reasonable allowance for use means an amount up to a maximum of the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor, or assistive device dealer.

Source: Laws 1997, LB 802, § 12.

69-2613 Reasonable attempt to repair, defined.

Reasonable attempt to repair means within the terms of an express warranty applicable to a new assistive device:

(1) Any nonconformity within the warranty that has been repaired by the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers on at least two previous occasions and a nonconformity continues; or

(2) The assistive device is out of service for repair for an aggregate of at least thirty cumulative days because of warranty nonconformity.

Source: Laws 1997, LB 802, § 13.

69-2614 Manufacturer; express warranty; requirements.

(1) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. If a manufacturer fails to furnish an express warranty as required by this section, the assistive device shall be covered by an express warranty for a period of one year as if the manufacturer had furnished an express warranty to the consumer as required by this section.

(2) An express warranty does not take effect until the consumer takes possession of the new assistive device.

(3) If a new assistive device does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or any of the manufacturer's authorized assistive device dealers and makes the assistive device available for repair before one year after first delivery of the device to a consumer, the nonconformity shall be repaired or a refund or replacement shall be made pursuant to section 69-2615.

Source: Laws 1997, LB 802, § 14.

69-2615 Manufacturer; consumer; assistive device lessor; duties.

(1) The manufacturer shall:

(a) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by a consumer. Within thirty days after such offer, the manufacturer shall provide the consumer with a comparable new assistive device or refund to the consumer and to any holder of a perfected security interest in the consumer's assistive device, as the interest may appear, the amount paid by the consumer at the point of sale, plus any finance charge and collateral costs, less a reasonable allowance for use; or

(b) Accept an offer to return or an offer to transfer possession of any nonconforming assistive device by an assistive device lessor. Within thirty days after such offer, the manufacturer shall provide the assistive device lessor with a comparable new assistive device or refund to the assistive device lessor and to any holder of a perfected security interest in the assistive device, as the interest may appear, the amount paid by the assistive device lessor at the time of purchase, plus any finance charge and collateral costs incurred by both the assistive device lessor and the consumer, and the amount paid by the consumer to date under the written lease, less a reasonable allowance for use.

(2)(a) To receive a comparable new assistive device or a refund, a consumer shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, the consumer shall return to the manufacturer the assistive device having the nonconformity; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to the manufacturer of the assistive device. When the manufacturer provides the comparable new assistive device or a refund pursuant to subdivision (1)(a) of this section, the consumer shall return the assistive device having the nonconformity to the manufacturer along with any endorsements necessary to transfer real possession to the manufacturer.

(b) If the consumer has leased the assistive device from an assistive device lessor, the consumer shall return the assistive device having a nonconformity to the assistive device lessor. The assistive device lessor shall provide to the consumer from the manufacturer a comparable new assistive device or a refund pursuant to subdivision (3)(b) of this section.

(3)(a) To receive a comparable new assistive device or a refund, an assistive device lessor shall:

(i) Offer to return the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive

device lessor shall return the nonconforming assistive device to the manufacturer; or

(ii) Offer to transfer possession of the assistive device having the nonconformity to its manufacturer. When the manufacturer provides a comparable new assistive device or a refund pursuant to subdivision (1)(b) of this section, the assistive device lessor shall return the nonconforming assistive device to the manufacturer along with any endorsements necessary to transfer real possession to the manufacturer.

(b) The assistive device lessor shall refund to the consumer the amount that the consumer paid under the written lease and collateral costs paid by the consumer, less a reasonable allowance for use.

Source: Laws 1997, LB 802, § 15.

69-2616 Returned assistive device; resale or subsequent lease; lease; enforcement.

(1) No assistive device returned by a consumer or assistive device lessor in this state or in any other state may be sold or leased again in this state unless full written disclosure of the reasons for return is made to any prospective buyer or lessee.

(2) No person may enforce the lease against the consumer after the consumer receives a refund.

Source: Laws 1997, LB 802, § 16.

69-2617 Rights and remedies.

(1) The Assistive Technology Regulation Act shall not limit rights or remedies available to a consumer under any other law.

(2) Any waiver of rights by a consumer under the act shall be void.

(3) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of the act. The court shall award a consumer who prevails in such an action the amount of any pecuniary loss, together with costs, disbursements, reasonable attorney's fees, and any equitable relief that the court determines is appropriate.

Source: Laws 1997, LB 802, § 17.

69-2618 Rental assistive device reimbursement; when.

(1) If an assistive device covered by a manufacturer's express warranty is tendered by a consumer to the dealer from whom it was purchased or exchanged for the repair of any nonconformity to which the warranty is applicable and at least one of the conditions described in subdivision (a) or (b) of this subsection exists, the manufacturer shall provide directly to the consumer for the duration of the repair period a rental assistive device reimbursement of up to twenty dollars per day. The applicable conditions are:

(a) The repair period exceeds ten working days, including the day on which the device is tendered to the dealer for repair; or

(b) The nonconformity is the same for which the assistive device has been tendered to the dealer for repair on at least two previous occasions.

(2) The provisions of this section regarding a manufacturer's duty shall apply for the period of the manufacturer's express warranty or for one year from

delivery of the assistive device to the consumer, whichever period of time is longer.

Source: Laws 1997, LB 802, § 18.

69-2619 Act; applicability.

The Assistive Technology Regulation Act shall apply to assistive devices delivered after September 13, 1997, and shall in no way be applied retroactively.

Source: Laws 1997, LB 802, § 19.

ARTICLE 27
TOBACCO

Section

69-2701 Tobacco Enforcement Fund; created; use; investment.

(1) For purposes of this section, Master Settlement Agreement means the settlement agreement (and related documents) entered into on November 23, 1998, by the state and leading United States tobacco manufacturers.

(2) The Tobacco Enforcement Fund is created. Any money received by the state from the State Enforcement Fund established as part of the Master Settlement Agreement shall be deposited into the Tobacco Enforcement Fund. The fund shall be used by the Attorney General to enforce the Master Settlement Agreement and to investigate and litigate potential violations of state tobacco laws. The Attorney General may contract with the Nebraska State Patrol and local law enforcement agencies to assist with the investigation. The contractual costs may be paid from the fund. 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.

Source: Laws 1999, LB 324, § 6.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

69-2702 Tobacco product manufacturer; terms, defined.

For purposes of this section and section 69-2703:

(1) Adjusted for inflation means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement;

(2) Affiliate means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this subdivision, the terms owns, is owned, and ownership means ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term person means an individual, partnership, committee, association, corporation, or any other organization or group of persons;

(3) Allocable share means allocable share as that term is defined in the Master Settlement Agreement;

(4) Cigarette means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subdivision (a) of this subdivision. The term cigarette includes roll-your-own tobacco (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition, nine-hundredths of an ounce of roll-your-own tobacco shall constitute one individual cigarette;

(5) Master Settlement Agreement means the settlement agreement entered into on November 23, 1998, between the state and specific United States tobacco product manufacturers and related documents to such agreement;

(6) Qualified escrow fund means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer that places such funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with subdivision (2)(b) of section 69-2703;

(7) Released claims means released claims as that term is defined in the Master Settlement Agreement;

(8) Releasing parties means releasing parties as that term is defined in the Master Settlement Agreement;

(9) Tobacco product manufacturer means an entity that after April 29, 1999, directly and not exclusively through any affiliate:

(a) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except when such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of

subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) Becomes a successor of an entity described in subdivision (9)(a) or (9)(b) of this section.

The term tobacco product manufacturer does not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of subdivisions (9)(a) through (9)(c) of this section; and

(10) Units sold means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs or roll-your-own tobacco containers. The Tax Commissioner shall adopt and promulgate such rules and regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Source: Laws 1999, LB 574, § 1; Laws 2003, LB 572, § 8.

69-2703 Tobacco product manufacturer; requirements to sell within the state.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, after April 29, 1999, shall do one of the following:

(1) Become a participating manufacturer, as that term is defined in section II(jj) of the Master Settlement Agreement, and generally perform its financial obligations under the Master Settlement Agreement; or

(2)(a) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(i) 1999: $.0094241 per unit sold after April 29, 1999;

(ii) 2000: $.0104712 per unit sold;

(iii) For each of the years 2001 and 2002: $.0136125 per unit sold;

(iv) For each of the years 2003, 2004, 2005, and 2006: $.0167539 per unit sold; and

(v) For the year 2007 and each year thereafter: $.0188482 per unit sold.

(b) A tobacco product manufacturer that places funds into escrow pursuant to subdivision (2)(a) of this section shall receive the interest or other appreciation on such funds as earned. Such funds shall be released from escrow only under the following circumstances:

(i) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (2)(b)(i) in the order in which they were placed into escrow and

only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) To the extent not released from escrow under subdivision (2)(b)(i) or (2)(b)(ii) of this section, funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to subdivision (2) of this section shall annually certify to the Attorney General that it is in compliance with subdivision (2) of this section. The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(i) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow;

(ii) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this section. The court, upon a finding of a knowing violation of subdivision (2) of this section, may impose a civil penalty in an amount not to exceed fifteen percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow. Such civil penalty shall be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska; and

(iii) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

Each failure to make an annual deposit required under this section constitutes a separate violation.

Source: Laws 1999, LB 574, § 2; Laws 2004, LB 944, § 1.

69-2703.01 Unconstitutionality of amendatory provision; effect.

If the amendments to subdivision (2)(b)(ii) of section 69-2703 made by Laws 2004, LB 944, are held by a court of competent jurisdiction to be unconstitutional, then the changes made by Laws 2004, LB 944, shall be deemed repealed and subdivision (2)(b)(ii) of section 69-2703 shall be deemed to be in the form

as it existed prior to such amendments. Neither a holding of unconstitutionality nor an implied repeal of the amendment shall affect, impair, or invalidate any other portion of section 69-2703 or the application of such section to any other person or circumstance and those remaining portions of section 69-2703 shall at all times continue in full force and effect.

Source: Laws 2004, LB 944, § 2.

69-2704 Legislative findings.

The Legislature finds that violations of sections 69-2702 and 69-2703 threaten the integrity of the tobacco Master Settlement Agreement, the fiscal soundness of the state, and the public health. The Legislature finds that enacting procedural enhancements will aid the enforcement of sections 69-2702 and 69-2703 and thereby safeguard the Master Settlement Agreement, the fiscal soundness of the state, and the public health.

Source: Laws 2003, LB 572, § 1.

69-2705 Terms, defined.

For purposes of sections 69-2704 to 69-2710:

(1) Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, menthol, lights, kings, and 100s, and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, or recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes;

(2) Cigarette has the same meaning as in section 69-2702;

(3) Master Settlement Agreement has the same meaning as in section 69-2702;

(4) Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer;

(5) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement defined in section 69-2702 as such agreement existed on May 30, 2003;

(6) Qualified escrow fund has the same meaning as in section 69-2702;

(7) Stamping agent means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under section 77-2603 or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

(8) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(9) Tobacco product manufacturer has the same meaning as in section 69-2702; and

(10) Units sold has the same meaning as in section 69-2702.

Source: Laws 2003, LB 572, § 2.

69-2706 Tobacco product manufacturer; certification; contents; Tax Commissioner; powers and duties; directory; prohibited acts.

(1)(a) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the Tax Commissioner a certification to the Tax Commissioner and the Attorney General no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, such tobacco product manufacturer either is a participating manufacturer or is in full compliance with subdivision (2) of section 69-2703, including all quarterly installment payments required by subsection (4) of section 69-2708.

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(c) A nonparticipating manufacturer shall include in its certification (i) a list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year and (ii) a list of all of its brand families that have been sold in the state at any time during the current calendar year (A) indicating by an asterisk any brand family sold in the state during the preceding or current calendar year that is no longer being sold in the state as of the date of such certification and (B) identifying by name and address any other manufacturer of such brand families in the preceding calendar year. The nonparticipating manufacturer shall update such list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Tax Commissioner and the Attorney General.

(d) In the case of a nonparticipating manufacturer, such certification shall further certify:

(i) That such nonparticipating manufacturer is registered to do business in the state or has appointed an agent for service of process and provided notice thereof as required by section 69-2707;

(ii) That such nonparticipating manufacturer has established and continues to maintain a qualified escrow fund pursuant to a qualified escrow agreement that has been reviewed and approved by the Attorney General or has been submitted for review by the Attorney General;

(iii) That such nonparticipating manufacturer is in full compliance with subdivision (2) of section 69-2703 and this section and any rules and regulations adopted and promulgated pursuant thereto;

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund required pursuant to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; (B) the account number of such qualified escrow fund and any subaccount number for the State of Nebraska; (C) the amount such nonparticipating manufacturer placed in such fund for cigarettes sold in the state during the preceding calendar year, the dates and amount of each such deposit, and such evidence or verification as may be deemed necessary by the Attorney General to confirm the foregoing; and (D) the amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from such fund or from any other qualified escrow fund into which it ever made escrow payments pursuant

to subdivision (2) of section 69-2703 and all rules and regulations adopted and promulgated pursuant thereto; and

(v) That such nonparticipating manufacturer consents to be sued in the district courts of the State of Nebraska for purposes of the state (A) enforcing any provision of sections 69-2703 to 69-2710 and any rules and regulations adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702.

(e) A tobacco product manufacturer shall not include a brand family in its certification unless (i) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year in the volume and shares determined pursuant to the Master Settlement Agreement and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of subdivision (2) of section 69-2703. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of section 69-2703.

(f) Tobacco product manufacturers shall maintain all invoices and documentation of sales and other such information relied upon for such certification for a period of five years unless otherwise required by law to maintain them for a greater period of time.

(2) The Tax Commissioner shall develop, maintain, and make available for public inspection or publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (1) of this section and all brand families that are listed in such certifications except:

(a) The Tax Commissioner shall not include or retain in such directory the name or brand families of any tobacco product manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subdivisions (1)(c) and (d) of this section unless the Tax Commissioner has determined that such violation has been cured to his or her satisfaction;

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General recommends and notifies the Tax Commissioner who concludes, in the case of a nonparticipating manufacturer, that (i) any escrow payment required pursuant to subdivision (2) of section 69-2703 or subsection (4) of section 69-2708 for any period for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General or (ii) any outstanding final judgment, including interest thereon, for violations of section 69-2703 has not been fully satisfied for such brand family and such manufacturer;

(c) The Tax Commissioner shall update the directory no later than May 15 of each year to reflect certifications made on or before April 30 as required in subsection (1) of this section. The Tax Commissioner shall continuously update the directory as necessary in order to correct mistakes and to add or remove a

tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of sections 69-2704 to 69-2710;

(d) The Tax Commissioner shall transmit by email or other practicable means to each stamping agent notice of any removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the stamping agent and a tobacco product manufacturer, the stamping agent shall be entitled to a refund from a tobacco product manufacturer for any money paid by the stamping agent to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the stamping agent on the date of notice by the Tax Commissioner of the removal from the directory of that tobacco product manufacturer or the brand family or for any cigarettes returned to the stamping agent by its customers under subsection (2) of section 69-2709. The Tax Commissioner shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the stamping agent any refund due; and

(e) Every stamping agent shall provide and update as necessary an electronic mail address to the Tax Commissioner for the purpose of receiving any notifications as may be required by sections 69-2704 to 69-2710.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(d) of this section or the failure of a stamping agent to receive such notice shall not relieve the stamping agent of its obligations under sections 69-2704 to 69-2710.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or (b) to sell, offer, or possess for sale in this state cigarettes of a tobacco product manufacturer or brand family in this state not included in the directory.

Source: Laws 2003, LB 572, § 3; Laws 2007, LB580, § 1.

69-2707 Nonresident or foreign nonparticipating manufacturer; agent for service of process.

(1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory created in subsection (2) of section 69-2706, appoint and continually engage without interruption the services of an agent in the United States to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of sections 69-2703 to 69-2710, may be served in any manner authorized by law. Such service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of such agent to the Tax Commissioner and Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Tax Commissioner and Attorney General thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer

shall notify the Tax Commissioner and Attorney General of the termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state who has not appointed and engaged the services of an agent as required by this section shall be deemed to have appointed the Secretary of State as its agent for service of process. The appointment of the Secretary of State as agent shall not satisfy the condition precedent required in subsection (1) of this section to have the nonparticipating manufacturer's brand families included or retained in the directory.

Source: Laws 2003, LB 572, § 4; Laws 2007, LB580, § 2.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers; escrow deposits.

(1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the Tax Commissioner, each stamping agent shall submit such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2710, including, but not limited to, a list by brand family of the total number of cigarettes or, in the case of roll-your-own, the equivalent stick count for which the stamping agent affixed stamps during the previous calendar quarter or otherwise paid the tax due for such cigarettes. The stamping agent shall maintain, and make available to the Tax Commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Tax Commissioner for a period of five years.

(2) The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which such manufacturer has established a qualified escrow fund for the purpose of compliance with section 69-2703, of the amount of money in such fund, exclusive of interest, the amounts and dates of each deposit to such fund, and the amounts and dates of each withdrawal from such fund.

(3) In addition to the information required to be submitted pursuant to subsection (1) of this section, the Tax Commissioner or Attorney General may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Tax Commissioner or Attorney General to determine whether a tobacco product manufacturer is in compliance with sections 69-2704 to 69-2710.

(4) To promote compliance with sections 69-2704 to 69-2707, a tobacco product manufacturer subject to the requirements of subdivision (1)(c) of section 69-2706 shall make the escrow deposits required by section 69-2703 in quarterly installments during the year in which the sales covered by such deposits are made: (a) Through the end of the calendar year following the year the tobacco product manufacturer is listed in the directory established pursuant to section 69-2706; (b) if the tobacco product manufacturer is removed from, then subsequently relisted in, the directory, then for all periods following the relisting through the end of the calendar year following the year the tobacco product manufacturer is relisted in the directory; (c) if the tobacco product manufacturer has failed to make a complete and timely escrow deposit for any calendar year as required by section 69-2703 or for any quarter as required in

this section; or (d) if the tobacco product manufacturer has failed to pay any judgment, including any civil penalty ordered under section 69-2703 or 69-2709. The Tax Commissioner may require production of information sufficient to enable the Tax Commissioner to determine the adequacy of the amount of the installment deposit. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to the requirements of subdivision (1)(c) of section 69-2706 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3.

69-2709 Revocation or suspension of stamping agent license; civil penalty; contraband; actions to enjoin; criminal penalty; remedies cumulative.

(1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a stamping agent has violated subsection (4) of section 69-2706 or any rule or regulation adopted and promulgated pursuant thereto, the Tax Commissioner may revoke or suspend the license of any stamping agent in the manner provided by section 77-2615.01. For each violation hereof, the Tax Commissioner may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of subsection (4) of section 69-2706 or any rules or regulations adopted and promulgated pursuant thereto. Such penalty shall be imposed in the manner provided by section 77-2615.01.

(2) Any cigarettes that have been sold, offered for sale, or possessed for sale in this state in violation of subsection (4) of section 69-2706 shall be deemed contraband under section 77-2620 and such cigarettes shall be subject to seizure and forfeiture as provided in section 77-2620, except that all such cigarettes so seized and forfeited shall be destroyed and not resold. The stamping agent shall notify its customers for a brand family with regard to any notice of removal of a tobacco product manufacturer or a brand family from the directory and give its customers a seven-day period for the return of cigarettes that become contraband.

(3) The Attorney General, on behalf of the Tax Commissioner, may seek an injunction to restrain a threatened or actual violation of subsection (4) of section 69-2706 or subsection (1) or (4) of section 69-2708 by a stamping agent and to compel the stamping agent to comply with any of such subsections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney's fees.

(4) It is unlawful for a person to (a) sell or distribute cigarettes for sale in this state or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of subsection (4) of section 69-2706. A violation of this section is a Class III misdemeanor.

(5) If a court determines that a person has violated any portion of sections 69-2704 to 69-2710, the court shall order the payment of any profits, gains, gross receipts, or other benefits from the violation to be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. Unless otherwise expressly provided, the remedies or penalties provided by sections 69-2704 to 69-2710 are cumulative to each other

and to the remedies or penalties available under all applicable laws of this state.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4.

69-2710 Removal from directory; procedure; rules and regulations.

(1) Before any tobacco product manufacturer may be removed from the directory, the Tax Commissioner shall provide the tobacco product manufacturer thirty days' notice of the intended action and shall post the notice in the directory. The tobacco product manufacturer shall have thirty days to come into compliance with sections 69-2703 to 69-2710 or, in the alternative, secure a temporary injunction against removal in the district court of Lancaster County. For purposes of the temporary injunction sought pursuant to this subsection, loss of the ability to sell tobacco products as a result of removal from the directory shall constitute irreparable harm. If after thirty days the tobacco product manufacturer remains in noncompliance and has not obtained a temporary injunction pursuant to this subsection, the tobacco product manufacturer shall be removed from the directory.

(2) If the Tax Commissioner determines that a tobacco product manufacturer shall not be included in the directory, such manufacturer may request a contested case before the Tax Commissioner under the Administrative Procedure Act. The Tax Commissioner shall notify the tobacco product manufacturer in writing of the determination not to include it in the directory. A request for hearing shall be made within thirty calendar days after the date of the determination that the manufacturer shall not be included in the directory and shall contain the evidence supporting the manufacturer's compliance with sections 69-2703 to 69-2710. The hearing shall be held within sixty days after the request. At the hearing, the Tax Commissioner shall determine whether the tobacco product manufacturer is in compliance with sections 69-2703 to 69-2710 and whether the manufacturer should be listed in the directory. A final decision shall be rendered within thirty days after the hearing. Any decision of the Tax Commissioner may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(3) The first report of stamping agents required by subsection (1) of section 69-2708 shall be due thirty calendar days after May 30, 2003, the certifications by a tobacco product manufacturer described in subsection (1) of section 69-2706 shall be due forty-five calendar days after May 30, 2003, and the directory described in subsection (2) of section 69-2706 shall be published or made available within ninety calendar days after May 30, 2003.

(4) The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 69-2704 to 69-2710.

Source: Laws 2003, LB 572, § 7.

Cross References

Administrative Procedure Act, see section 84-920.

69-2711 Conflict of laws; how treated.

If a court of competent jurisdiction finds that the provisions of sections 69-2704 to 69-2710 and of sections 69-2702 and 69-2703 conflict and cannot be harmonized, then the provisions of sections 69-2702 and 69-2703 shall control. If sections 69-2704 to 69-2710 or any part of any such sections causes sections

69-2702 and 69-2703 to no longer constitute a Qualifying or Model Statute, as those terms are defined in the Master Settlement Agreement, then that portion of sections 69-2704 to 69-2710 shall not be valid.

Source: Laws 2003, LB 572, § 13.

CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.

Cross References

Constitutional provisions:
- Capital stock, increase only upon notice and as provided by law, see Article X, section 5, Constitution of Nebraska.
- Consolidation, Public Service Commission permission required, see Article X, section 3, Constitution of Nebraska.
- Dividends only out of earnings, see Article X, section 5, Constitution of Nebraska.
- Legislature may not grant special privileges or franchises, see Article I, section 16, and Article III, section 18, Constitution of Nebraska.
- Payment in lieu of taxes, see Article VIII, section 11, Constitution of Nebraska.
- Physical connection, exchange of service, may be required, see Article X, section 3, Constitution of Nebraska.
- Property and franchises, may be taken for public necessity, see Article X, section 6, Constitution of Nebraska.
- Public Service Commission, powers over common carriers, see Article IV, section 20, Constitution of Nebraska.
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Cities of the primary class, see sections 15-222 and 15-266.
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Political Subdivisions Self-Funding Benefits Act, see section 13-1601.
Political Subdivisions Tort Claims Act, see section 13-901.
Public Funds Deposit Security Act, see section 77-2386.
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School districts, payments authorized, see sections 79-1066 to 79-1069.
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ARTICLE 1
GENERAL PROVISIONS

Section

Section
70-136. Repealed. Laws 1945, c. 154, § 1.
70-137. Repealed. Laws 1945, c. 154, § 1.
70-138. Repealed. Laws 1945, c. 154, § 1.
70-139. Repealed. Laws 1945, c. 154, § 1.
70-140. Repealed. Laws 1945, c. 154, § 1.
70-141. Repealed. Laws 1945, c. 154, § 1.
70-142. Repealed. Laws 1945, c. 154, § 1.
70-143. Repealed. Laws 1945, c. 154, § 1.
70-144. Repealed. Laws 1945, c. 154, § 1.
70-145. Repealed. Laws 1945, c. 154, § 1.
70-146. Repealed. Laws 1945, c. 154, § 1.
70-147. Repealed. Laws 1945, c. 154, § 1.
70-148. Repealed. Laws 1945, c. 154, § 1.
70-149. Repealed. Laws 1945, c. 154, § 1.
70-150. Repealed. Laws 1945, c. 154, § 1.
70-151. Repealed. Laws 1945, c. 154, § 1.
70-152. Repealed. Laws 1945, c. 154, § 1.
70-153. Repealed. Laws 1945, c. 154, § 1.
70-154. Repealed. Laws 1945, c. 154, § 1.
70-155. Repealed. Laws 1945, c. 154, § 1.
70-156. Repealed. Laws 1945, c. 154, § 1.
70-157. Repealed. Laws 1945, c. 154, § 1.

70-101 Districts and corporations; furnish information; enforcement.

Notwithstanding any other provision of law regarding confidentiality of records, every district or corporation organized under Chapter 70 shall, upon request, furnish to any county attorney, any authorized attorney as defined in section 42-347, or the Department of Health and Human Services a utility service subscriber's name, social security number, and mailing and residence addresses only for the purposes of establishing and collecting child, spousal, and medical support and of conducting reviews under sections 43-512.12 to 43-512.18. Such information shall be used for no other purpose. An action may be filed in district court to enforce this section. For purposes of this section, utility service shall mean electrical, gas, water, telephone, garbage disposal, or waste disposal service.

Source: Laws 1994, LB 1224, § 82; Laws 1996, LB 1044, § 368; Laws 1997, LB 307, § 113.

Cross References

Records, withheld from public, see section 84-712.05.

70-102 Repealed. Laws 1945, c. 154, § 1.

70-103 Repealed. Laws 1945, c. 154, § 1.

70-104 Repealed. Laws 1945, c. 154, § 1.

70-105 Repealed. Laws 1945, c. 154, § 1.

70-106 Repealed. Laws 1945, c. 154, § 1.

70-107 Repealed. Laws 1945, c. 154, § 1.

70-108 Repealed. Laws 1945, c. 154, § 1.

70-109 Repealed. Laws 1945, c. 154, § 1.

70-110 Repealed. Laws 1945, c. 154, § 1.

70-111 Repealed. Laws 1945, c. 154, § 1.

70-112 Repealed. Laws 1945, c. 154, § 1.

70-113 Repealed. Laws 1945, c. 154, § 1.

70-114 Repealed. Laws 1945, c. 154, § 1.

70-115 Repealed. Laws 1945, c. 154, § 1.

70-116 Repealed. Laws 1945, c. 154, § 1.

70-117 Repealed. Laws 1945, c. 154, § 1.

70-118 Repealed. Laws 1945, c. 154, § 1.

70-119 Repealed. Laws 1945, c. 154, § 1.

70-120 Repealed. Laws 1945, c. 154, § 1.

70-121 Repealed. Laws 1945, c. 154, § 1.

70-122 Repealed. Laws 1945, c. 154, § 1.

70-123 Repealed. Laws 1945, c. 154, § 1.

70-124 Repealed. Laws 1945, c. 154, § 1.

70-125 Repealed. Laws 1945, c. 154, § 1.

70-126 Repealed. Laws 1945, c. 154, § 1.

70-127 Repealed. Laws 1945, c. 154, § 1.

70-128 Repealed. Laws 1945, c. 154, § 1.

70-129 Repealed. Laws 1945, c. 154, § 1.

70-130 Repealed. Laws 1945, c. 154, § 1.

70-131 Repealed. Laws 1945, c. 154, § 1.

70-132 Repealed. Laws 1945, c. 154, § 1.

70-133 Repealed. Laws 1945, c. 154, § 1.

70-134 Repealed. Laws 1945, c. 154, § 1.

70-135 Repealed. Laws 1945, c. 154, § 1.

70-136 Repealed. Laws 1945, c. 154, § 1.

70-137 Repealed. Laws 1945, c. 154, § 1.

70-138 Repealed. Laws 1945, c. 154, § 1.

70-139 Repealed. Laws 1945, c. 154, § 1.

70-140 Repealed. Laws 1945, c. 154, § 1.

70-141 Repealed. Laws 1945, c. 154, § 1.

70-142 Repealed. Laws 1945, c. 154, § 1.

70-143 Repealed. Laws 1945, c. 154, § 1.

70-144 Repealed. Laws 1945, c. 154, § 1.

70-145 Repealed. Laws 1945, c. 154, § 1.

70-146 Repealed. Laws 1945, c. 154, § 1.

70-147 Repealed. Laws 1945, c. 154, § 1.

70-148 Repealed. Laws 1945, c. 154, § 1.

70-149 Repealed. Laws 1945, c. 154, § 1.

70-150 Repealed. Laws 1945, c. 154, § 1.

70-151 Repealed. Laws 1945, c. 154, § 1.

70-152 Repealed. Laws 1945, c. 154, § 1.

70-153 Repealed. Laws 1945, c. 154, § 1.

70-154 Repealed. Laws 1945, c. 154, § 1.

70-155 Repealed. Laws 1945, c. 154, § 1.

70-156 Repealed. Laws 1945, c. 154, § 1.

70-157 Repealed. Laws 1945, c. 154, § 1.

ARTICLE 2

HYDROELECTRIC AND OTHER POWER DISTRICTS

Section
70-201. Repealed. Laws 1945, c. 155, § 1.
70-202. Repealed. Laws 1945, c. 155, § 1.
70-203. Repealed. Laws 1945, c. 155, § 1.
70-204. Repealed. Laws 1945, c. 155, § 1.
70-205. Repealed. Laws 1945, c. 155, § 1.
70-206. Repealed. Laws 1945, c. 155, § 1.
70-207. Repealed. Laws 1945, c. 155, § 1.
70-208. Repealed. Laws 1945, c. 155, § 1.
70-209. Repealed. Laws 1945, c. 155, § 1.
70-210. Repealed. Laws 1945, c. 155, § 1.
70-211. Repealed. Laws 1945, c. 155, § 1.
70-212. Repealed. Laws 1945, c. 155, § 1.
70-213. Repealed. Laws 1945, c. 155, § 1.
70-214. Repealed. Laws 1945, c. 155, § 1.
70-215. Repealed. Laws 1945, c. 155, § 1.
70-216. Repealed. Laws 1945, c. 155, § 1.
70-217. Repealed. Laws 1945, c. 155, § 1.
70-218. Repealed. Laws 1945, c. 155, § 1.
70-219. Repealed. Laws 1945, c. 155, § 1.
70-220. Repealed. Laws 1945, c. 155, § 1.
70-221. Repealed. Laws 1945, c. 155, § 1.
70-222. Repealed. Laws 1945, c. 155, § 1.
70-223. Repealed. Laws 1945, c. 155, § 1.
70-224. Repealed. Laws 1945, c. 155, § 1.
70-225. Repealed. Laws 1945, c. 155, § 1.

Section

70-201 Repealed. Laws 1945, c. 155, § 1.

70-202 Repealed. Laws 1945, c. 155, § 1.

70-203 Repealed. Laws 1945, c. 155, § 1.

70-204 Repealed. Laws 1945, c. 155, § 1.

70-205 Repealed. Laws 1945, c. 155, § 1.

70-206 Repealed. Laws 1945, c. 155, § 1.

70-207 Repealed. Laws 1945, c. 155, § 1.

70-208 Repealed. Laws 1945, c. 155, § 1.

70-209 Repealed. Laws 1945, c. 155, § 1.

70-210 Repealed. Laws 1945, c. 155, § 1.

70-211 Repealed. Laws 1945, c. 155, § 1.

70-212 Repealed. Laws 1945, c. 155, § 1.

70-213 Repealed. Laws 1945, c. 155, § 1.

70-214 Repealed. Laws 1945, c. 155, § 1.

70-215 Repealed. Laws 1945, c. 155, § 1.

70-216 Repealed. Laws 1945, c. 155, § 1.

70-217 Repealed. Laws 1945, c. 155, § 1.

70-218 Repealed. Laws 1945, c. 155, § 1.

70-219 Repealed. Laws 1945, c. 155, § 1.

70-220 Repealed. Laws 1945, c. 155, § 1.

70-221 Repealed. Laws 1945, c. 155, § 1.

70-222 Repealed. Laws 1945, c. 155, § 1.

70-223 Repealed. Laws 1945, c. 155, § 1.

70-224 Repealed. Laws 1945, c. 155, § 1.

70-225 Repealed. Laws 1945, c. 155, § 1.

70-226 Repealed. Laws 1945, c. 155, § 1.

70-227 Repealed. Laws 1945, c. 155, § 1.

70-228 Repealed. Laws 1945, c. 155, § 1.

70-229 Repealed. Laws 1945, c. 155, § 1.

70-230 Repealed. Laws 1945, c. 155, § 1.

70-231 Repealed. Laws 1945, c. 155, § 1.

70-232 Repealed. Laws 1945, c. 155, § 1.

70-233 Repealed. Laws 1945, c. 155, § 1.

70-234 Repealed. Laws 1945, c. 155, § 1.

70-235 Repealed. Laws 1945, c. 155, § 1.

70-236 Repealed. Laws 1945, c. 155, § 1.

70-237 Repealed. Laws 1945, c. 155, § 1.

70-238 Repealed. Laws 1945, c. 155, § 1.

70-239 Repealed. Laws 1945, c. 155, § 1.

70-240 Repealed. Laws 1945, c. 155, § 1.

70-241 Repealed. Laws 1945, c. 155, § 1.

70-242 Repealed. Laws 1945, c. 155, § 1.

70-243 Repealed. Laws 1945, c. 155, § 1.

70-244 Repealed. Laws 1945, c. 155, § 1.

70-245 Repealed. Laws 1945, c. 155, § 1.

70-246 Repealed. Laws 1945, c. 155, § 1.

70-247 Repealed. Laws 1945, c. 155, § 1.

70-248 Repealed. Laws 1945, c. 155, § 1.

70-249 Repealed. Laws 1945, c. 155, § 1.

ARTICLE 3
RIGHT-OF-WAY FOR POLE LINES

Cross References

Eminent domain, power of public power districts, see section 70-670.
Municipalities, right-of-way along public roads outside corporate limits to waterworks, see section 18-413.
Railroads, power of eminent domain, see section 74-308.
Relocation of facilities, state or federal highway construction, see section 39-1304.02.

Section

70-301 Right-of-way; acquisition; procedure; approval.

Any public power district, corporation, or municipality that engages in the generation or transmission, or both, of electric energy for sale to the public for light and power purposes, the production, storage, or distribution of hydrogen for use in fuel processes, or the production or distribution, or both, of ethanol for use as fuel may acquire right-of-way over and upon lands, except railroad right-of-way and depot grounds, for the construction of pole lines or underground lines necessary for the conduct of such business and for the placing of all poles and constructions for the necessary adjuncts thereto, in the same manner as railroad corporations may acquire right-of-way for the construction of railroads. Such district, corporation, or municipality shall give public notice of the proposed location of such pole lines or underground lines with a voltage capacity of thirty-four thousand five hundred volts or more which involves the acquisition of rights or interests in more than ten separately owned tracts by causing to be published a map showing the proposed line route in a legal newspaper of general circulation within the county where such line is to be constructed at least thirty days before negotiating with any person, firm, or corporation to acquire easements or property for such purposes and shall consider all objections which may be filed to such location. After securing approval from the Public Service Commission and having complied with sections 70-305 to 70-309 and 86-701 to 86-707, such public power districts, corporations, and municipalities shall have the right to condemn a right-of-way over and across railroad right-of-way and depot grounds for the purpose of crossing the same. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-301; Laws 1951, c. 101, § 104, p. 495; Laws 1969, c. 545,

§ 1, p. 2199; Laws 1973, LB 187, § 7; Laws 1986, LB 1230, § 33; Laws 2002, LB 1105, § 467; Laws 2005, LB 139, § 1; Laws 2009, LB238, § 8.

The authority of a public power district to acquire right-of-way for transmission lines by eminent domain is conferred by this section. This section refers specifically and exclusively to the acquisition of ''right-of-way over and upon lands'' for the purpose of constructing overhead or underground transmission lines. It does not permit the acquisition of any other interest in land for any other purpose. The power of eminent domain conferred by this section reflects legislative intent that a public power district may exercise the power of eminent domain to acquire right-of-way over public lands. SID No. 1 of Fillmore County v. Nebraska Pub. Power Dist., 253 Neb. 917, 573 N.W.2d 460 (1998).

70-302 Repealed. Laws 1963, c. 394, § 2.

70-303 Right-of-way; abandonment, effect of.

If any pole line or underground line constructed under section 70-301 be abandoned for a period of five years, the right-of-way or easement acquired for its construction shall revert to the owner of the property affected.

Source: Laws 1927, c. 107, § 1, p. 295; C.S.1929, § 70-401; R.S.1943, § 70-303; Laws 1963, c. 394, § 1, p. 1252; Laws 1969, c. 545, § 2, p. 2200.

70-304 Right-of-way; acquisition; crop damage.

Any such public power district, corporation or municipality acquiring any easement or right-of-way hereunder shall be liable to the owner of the land affected for any damage to growing crops not included in the original settlement or award.

Source: Laws 1927, c. 107, § 2, p. 296; C.S.1929, § 70-402; R.S.1943, § 70-304; Laws 1969, c. 545, § 3, p. 2200.

70-305 Right-of-way; damage to private property; procedure.

Any person engaged in the generating or transmitting of electric current for sale, use, or purchase in the state for power or other purposes is granted the right-of-way for all necessary poles and wires along, within, and across any of the public highways of this state. Such person is liable for all damages to private property by reason of the use of the public highways for such purpose. Such damages shall be ascertained and determined in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-305; Laws 1951, c. 101, § 124, p. 504; Laws 1967, c. 626, § 1, p. 2090; R.S.1943, (1999), § 86-305; Laws 2002, LB 1105, § 468.

Right given to utility companies to erect poles and wires along highways is valuable franchise right subject to taxation. Northern Nebraska Power Co. v. Holt County, 120 Neb. 724, 235 N.W. 92 (1931).

Under former section, company erecting transmission line may assume that line of highway is where trees and fences are found, until line is otherwise fixed. Saline County v. Blue River Power Co., 102 Neb. 758, 169 N.W. 785 (1918).

Former section did not apply to telephone companies which furnish telephone service exclusively. Alt v. State, 88 Neb. 259, 129 N.W. 432 (1911).

70-306 Placement of lines; procedure.

(1) Any electric wire shall be placed at least eighteen feet above all road crossings. Any electric poles and wires shall be so placed as not to interfere with the public use of such highways, and if practicable, the poles shall be set upon the line of such highways.

(2) If any person engaged in distributing, generating, or transmitting electric current for power or other purposes by means of wires seeks to construct an electric wire over and across any railroad tracks, telegraph wires, or rights-of-way of any railroad company in this state and the electric wire intersects and crosses streets, highways, alleys, and other public thoroughfares, or elsewhere, such person and railroad company shall first endeavor to agree by a contract as to the manner and kind of crossing to be constructed. The contract shall at a minimum meet the requirements of sections 75-706 and 75-707 as to terms and conditions of such construction or placement and shall include the compensation, if any, to be awarded as damages. If no contract is reached, the person may proceed to have the same ascertained and determined in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-306; Laws 1951, c. 101, § 125, p. 505; R.S.1943, (1999), § 86-306; Laws 2002, LB 1105, § 469.

Wires at railroad crossing must be kept so they do not interfere with work of trainmen. Scherzer v. Lincoln Traction Co., 91 Neb. 407, 136 N.W. 62 (1912).

70-307 Placement of lines; violation; penalty.

If any person engaged in distributing, generating, or transmitting electric current for power or other purposes by means of wires constructs or places electric wires over the railroad tracks, telegraph wires, or rights-of-way of any railroad company in violation of section 70-305, section 75-708 shall apply.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-307; R.S.1943, (1999), § 86-307; Laws 2002, LB 1105, § 470.

70-308 Property within village or city; how treated.

Section 70-305 shall not be construed to grant any rights within the corporate limits of any village or city in this state.

Source: Laws 1903, c. 117, § 1, p. 608; R.S.1913, § 7420; Laws 1917, c. 135, § 1, p. 320; Laws 1921, c. 259, § 1, p. 874; C.S.1922, § 7099; C.S.1929, § 86-303; Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-308; R.S.1943, (1999), § 86-308; Laws 2002, LB 1105, § 471.

70-309 Electrical transmission lines; state or federal highways; regulation by Department of Roads.

If the public road, along, upon, across, or under which the right to construct, operate, and maintain the electrical transmission line is granted, is a state or federal highway, then the location and installation of the electrical transmission facilities, insofar as they pertain to the present and future use of the rights-of-way for highway purposes, shall be subject to reasonable regulations and restrictions prescribed by the Department of Roads. If the future use of the state or federal highway requires the moving or relocating of the facilities, then such

facilities shall be removed or relocated by the owner, at the owner's cost and expense, and as directed by the Department of Roads except as provided by section 39-1304.02.

Source: Laws 1943, c. 231, § 2, p. 780; R.S.1943, § 86-308.01; Laws 1957, c. 171, § 4, p. 593; R.S.1943, (1999), § 86-308.01; Laws 2002, LB 1105, § 472.

70-310 Repealed. Laws 2009, LB 238, § 10.

70-311 Electric transmission or electric distribution lines; notice of widening of roads; when given.

Whenever any county or township road construction, widening, repair, or grading project requires, or can reasonably be expected to require, the performance of any work within six feet of any electric transmission or electric distribution line, poles, or anchors, notice to the owner of such line, poles, or anchors shall be given by the respective county or township officers in charge of such projects. Such notice shall be given at least thirty days prior to the start of any work when, because of road construction, widening, repair, or grading, or for any other reason, it is necessary to relocate such line, poles, or anchors.

Source: Laws 2002, LB 1105, § 474.

70-312 Electric transmission or electric distribution lines; notice of widening of roads; contents.

The notice required by section 70-311 shall state the nature and location of the work to be done and the date on which such work is scheduled to commence. In the event of any change in the scheduled time of starting such work, notice of such change shall be given as soon as practicable.

Source: Laws 2002, LB 1105, § 475.

70-313 Electric transmission or electric distribution lines; liability; cost of removal.

Any owner of any electric transmission or electric distribution line failing to move its lines, poles, or anchors located near a public highway in accordance with the notice provided by section 70-311 shall be liable to the county or township for the cost of relocating such lines, poles, and anchors. When an owner of such facilities located on private right-of-way is required to move such lines, poles, or anchors, it shall be at the expense of the county or township. The county or township shall be liable to the owner of any electric transmission or electric distribution line for loss of use of such line for failure to give the notice required by sections 70-311 and 70-312.

Source: Laws 2002, LB 1105, § 476.

ARTICLE 4

ELECTRIC COMPANIES; RATES

Section
70-401. Repealed. Laws 1963, c. 397, § 24.
70-402. Repealed. Laws 1963, c. 397, § 24.
70-403. Repealed. Laws 1963, c. 397, § 24.
70-404. Repealed. Laws 1963, c. 397, § 24.
70-405. Repealed. Laws 1963, c. 397, § 24.

Section
70-406. Repealed. Laws 1963, c. 397, § 24.
70-407. Terms, defined.
70-408. Electric companies; rates; kilowatt-hour meter; demand meter; minimum charge authorized.
70-409. Electric companies; rate regulations; violation; penalty.

70-401 Repealed. Laws 1963, c. 397, § 24.

70-402 Repealed. Laws 1963, c. 397, § 24.

70-403 Repealed. Laws 1963, c. 397, § 24.

70-404 Repealed. Laws 1963, c. 397, § 24.

70-405 Repealed. Laws 1963, c. 397, § 24.

70-406 Repealed. Laws 1963, c. 397, § 24.

70-407 Terms, defined.

For the purpose of Chapter 70 the following words shall be construed to mean as follows:

(1) A kilowatt hour shall be deemed and considered to equal one thousand watts, or the energy resulting from an activity of one kilowatt continued for one hour, which equals about one and one-third horsepower hours;

(2) The word watt shall be construed to mean the practical unit of electric power, activity, or rate of work equivalent to 107 ergs or one joule per second, or approximately one seven-hundred-forty-sixth of a horsepower.

Source: Laws 1933, c. 60, § 1, p. 291; C.S.Supp.,1941, § 70-505; R.S. 1943, § 70-407; Laws 1981, LB 181, § 1.

70-408 Electric companies; rates; kilowatt-hour meter; demand meter; minimum charge authorized.

All charges, made for electrical energy for residential, commercial, and farm purposes by any person, firm, corporation, or municipal corporation engaged in the sale of electrical energy in cities of the first class having a population of more than five thousand and less than twenty-five thousand inhabitants, cities of the second class, villages, and unincorporated areas in Nebraska, shall be based on the amount of such energy actually furnished by the kilowatt-hour meter, together with such demand as may be registered or indicated by a demand meter, or as may be contracted for, to such purchaser. Such person, firm, corporation, or municipal corporation may provide for either a penalty on or a discount from the amount of any bill to promote prompt payment thereof under uniform rules and regulations governing such penalty or discount. A reasonable minimum charge may be collected from purchasers of electrical energy by any such person, firm, corporation, or municipal corporation, even though the charge for the amount of electrical energy actually furnished by the kilowatt-hour to such purchaser or user does not equal such minimum charge for the designated period of service; *Provided,* the provisions of sections 70-407 to 70-409 shall not be construed to affect any contract or franchise in existence at the time of the passage and approval of this section.

Source: Laws 1933, c. 60, § 2, p. 292; C.S.Supp.,1941, § 70-506; R.S. 1943, § 70-408; Laws 1949, c. 197, § 1, p. 576.

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. Blankenship v. Omaha P. P. Dist., 195 Neb. 170, 237 N.W.2d 86 (1976).

The railway commission, hearing a complaint under stipulation that only the question of jurisdiction be determined, acted prematurely in determining, without a full hearing being given, the question of validity of a minimum charge. Miller v. Iowa-Nebraska Light & Power Co., 129 Neb. 757, 262 N.W. 855 (1935).

70-409 Electric companies; rate regulations; violation; penalty.

Any person, firm or corporation, their employees, agents or servants, who shall violate any of the provisions of sections 70-407 and 70-408 shall be guilty of a Class V misdemeanor.

Source: Laws 1933, c. 60, § 4, p. 292; C.S.Supp.,1941, § 70-508; R.S. 1943, § 70-409; Laws 1977, LB 39, § 136.

The railway commission does not have power to inflict the penalties provided for in this section. Miller v. Iowa-Nebraska Light & Power Co., 129 Neb. 757, 262 N.W. 855 (1935).

ARTICLE 5

PUBLIC ELECTRIC PLANTS AND DISTRIBUTION; EXTENSION; SALE

Cross References

Monopolization in producing, selling, and distributing electricity, prohibited, see section 59-801 et seq.
Nebraska Power Review Board, see sections 70-1001 to 70-1027.

Section

70-501 Extension authorized; electric energy; sale; contracts authorized; payments from net earnings and profits.

Any city, village, or public electric light and power district within the state, which may own or operate, or hereafter acquire or establish, any electric light and power plant, distribution system and transmission lines may, at the time of or at any time after such acquisition or establishment, extend the same beyond its boundaries, and for that purpose is hereby authorized and empowered to construct, purchase, lease, or otherwise acquire, and to maintain, improve, extend and operate electric light and power plants, distribution systems and transmission lines, outside of the boundaries of such city, village, or public electric light and power district, for such distance and over such territory

within this state as may be deemed expedient. In the exercise of the powers granted by this section any such city, village, or public electric light and power district may enter into contracts to furnish and sell electrical energy to any person, firm, association, corporation, municipality, or public electric light and power district. However, no such construction, purchase, lease, acquisition, improvement or extension of any such additional plant, distribution system or transmission lines shall be paid for except out of the net earnings and profits of one or more or all of the electric light and power plants, distribution systems and transmission lines of such city, village, or public electric light and power district. The provisions of sections 70-501 to 70-515 shall be deemed cumulative, and the authority herein granted to cities, villages, and public electric light and power districts shall not be limited or made inoperative by any existing statute.

Source: Initiative Law 1930, No. 324, § 1; Laws 1931, c. 116, § 1, p. 336; C.S.Supp.,1941, § 70-601; R.S.1943, § 70-501.

Provisions of this section did not operate to prevent a public power district from contracting with second-class city to furnish electric power at wholesale for period of twenty-five years. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

Scope of this section was limited by title to original act. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

City cannot issue revenue bonds without an authorizing election for purchase of completely new electric power plant. Nacke v. City of Hebron, 155 Neb. 739, 53 N.W.2d 564 (1952).

Where a municipality is given power to furnish public utility service beyond its corporate limits, it has the right to provide service within the corporate boundaries of another municipal corporation. City of Curtis v. Maywood Light Co., 137 Neb. 119, 288 N.W. 503 (1939).

Constitutionality of this and succeeding sections in this article was raised but not decided since defendants were estopped to assail statute. State ex rel. Sorensen v. Southern Nebraska Power Co., 131 Neb. 472, 268 N.W. 284 (1936).

Neither express nor implied power is conferred upon municipal corporations not already engaged in generation or distribution of electrical energy to acquire an electric light and power plant and to pay for it by pledge of future earnings therefrom. Interstate Power Co. v. City of Ainsworth, 125 Neb. 419, 250 N.W. 649 (1933).

This section empowers a city to acquire by condemnation power plant properties and distribution systems located outside its territorial limits but it cannot be compelled to extend its facilities inside the corporate boundaries of another municipality. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

70-502 Electric energy; sale or purchase; interconnections; contracts authorized.

For the purpose of selling or purchasing electrical energy for lighting, heating or power purposes, any city, village, or public electric light and power district in this state is hereby authorized to enter into agreements to connect and interconnect its electric light and power plants, distribution system and transmission lines with the electric light and power plant, distribution system or transmission lines of any one or more other cities, villages, or public electric light and power districts in this state, upon such terms and conditions as may be agreed upon between the contracting cities, villages, and public power districts.

Source: Initiative Law 1930, No. 324, § 2; Laws 1931, c. 116, § 2, p. 337; C.S.Supp.,1941, § 70-602; R.S.1943, § 70-502.

This section does not prevent a second-class city from contracting for wholesale power requirement if and when city acquired distribution system. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

The provisions of this section were modified by legislative act creating the Nebraska Power Review Board. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

This section did not operate to confer power and authority contrary to petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

A municipality owning and operating a public power plant may extend its lines into another municipal corporation's boundaries only upon contract, agreement, or franchise. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

70-503 Acquisition, extension, and improvements; pledge of earnings or profits authorized.

In lieu of the issuance of bonds or the levy of taxes as otherwise by law provided, and in lieu of any other lawful methods or means of providing for the

payment of indebtedness, any city, village, or public electric light and power district within this state shall have the power and authority by and through its governing body or board of directors, to provide for or to secure the payment of the cost or expenses of purchasing, constructing, or otherwise acquiring, extending and improving any real or personal property necessary or useful in its operation of any electric light and power plant, distribution system or transmission lines, by pledging, assigning, or otherwise hypothecating, the net earnings or profits of such electric light and power district, city or village, derived, or to be derived, from the operation of such electric light and power plant, distribution system or transmission lines, and to that end, to enter into such contracts and to issue such warrants or debentures as may be proper to carry out the provisions of this section.

Source: Initiative Law 1930, No. 324, § 3; Laws 1931, c. 116, § 3, p. 337; C.S.Supp.,1941, § 70-603; R.S.1943, § 70-503.

Where city does not own light plant, revenue bonds for construction of same cannot be issued without an authorizing election. Nacke v. City of Hebron, 155 Neb. 739, 53 N.W.2d 564 (1952).

Revenue bonds for extension or enlargement of existing electric distribution system can be issued without vote of electors. Slepicka v. City of Wilber, 150 Neb. 376, 34 N.W.2d 646 (1948).

A village may extend or enlarge its existing electric light plant and issue warrants pledging the future earnings of the plant in consideration therefor without obligating the municipality for their payment. Southern Nebraska Power Co. v. Village of Deshler, 130 Neb. 598, 265 N.W. 880 (1936).

In a condemnation proceeding by a city against the property of a power company, the company cannot raise the question of how the city will obtain funds to pay for the property taken. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

70-504 Sale, lease, or transfer; election and voter approval required; exceptions; procedure.

In the following cases, a sale, lease, or transfer of any electric light or power plant, distribution system, or transmission line shall not be valid unless the sale, lease, or transfer is authorized at any state or municipal election, including a primary or special election, except as otherwise provided in this section, and approved by sixty percent of the electors voting on the proposed matter, except that an election and such approval shall not be required when the sale, lease, or transfer is part of a merger or consolidation of a public power district:

(1) By any city or village to any private person, firm, association, corporation, or public power district, except that any city or village may by resolution of the city council or board of trustees sell, lease, or transfer all or part of its electric light or power plant, distribution system, or transmission lines to any public power district or an electric cooperative, which cooperative has an approved retail service area adjoining such city or village, but such transaction shall not be consummated nor become effective until thirty days' notice of the transaction has been given by the governing body by publication once each week for three successive weeks in such city or village or, if no newspaper is published therein, then by posting in five or more public places therein. If within thirty days after the last publication of such notice or posting thereof a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein is filed with the municipal clerk, such transaction shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such transaction, the transaction shall not become effective. If no such petitions are filed, the transaction shall become effective at the expiration of such thirty-day period. The power district shall charge fair, reasonable, and nondiscriminatory rates so adjusted as, in a fair and equitable

manner, to confer upon and distribute among its customers the benefits of a successful and efficient operation and conduct of the business of the district; or

(2) By any public power district operating lines, owning lines, or operating and owning lines in less than thirteen counties in this state to any other public power district, except (a) where transmission or distribution lines extend into another power district and the board of directors of the selling power district, by resolution entered on its records, determines that such transmission or distribution lines would serve customers more advantageously in the purchasing power district and that the sale thereof should be made or (b) sales of any surplus equipment which the selling district, by resolution adopted by its board of directors and entered on its records, determines that it does not then need and is needed by the purchasing district, which sales are hereby expressly authorized to be made. Except for the referendum election provided for in subdivision (1) of this section, notice of the submission of the proposition shall be given by publication thereof three consecutive weeks in a legal newspaper published and of general circulation in such city, village, or public power district or, if no newspaper is published therein, by posting in five or more public places therein. Any elections herein required in public power districts or public power and irrigation districts shall be held at the same time and in connection with the next regular primary or general election in the state thereafter at which directors of the public power district are to be nominated or elected. Any proposals for the sale of lines or other property required to be submitted to an election under the provisions of this section shall be certified by the board of directors of the district selling or disposing of the property to the county clerk of the respective county or counties wherein such election of directors is to be held in the form of a question to be submitted upon the ballot not less than thirty days before the election. The county clerks to whom such certificates are submitted shall cause the same question submitted by the board of directors to be placed upon the same ballot and in proximity to the names of the directors to be nominated or elected in the same district at the next primary or general election. The results of the election with relation to the proposal shall be counted, canvassed, and certified in the same manner as the other results of the election.

Source: Initiative Law 1930, No. 324, § 4; Laws 1931, c. 116, § 4, p. 338; C.S.Supp.,1941, § 70-604; Laws 1943, c. 144, § 1, p. 505; R.S. 1943, § 70-504; Laws 1945, c. 156, § 1, p. 513; Laws 1947, c. 225, § 1, p. 718; Laws 1965, c. 58, § 5, p. 269; Laws 1969, c. 83, § 5, p. 421; Laws 1990, LB 907, § 1.

Cross References

For provisions relating to public power districts, see sections 70-601 to 70-681.

This statute, which authorizes sale or lease of electrical stations, does not require sale proceeds to benefit electrical utility customers within the municipality. Nebraska P. P. Dist. v. City of York, 212 Neb. 747, 326 N.W.2d 22 (1982).

Section was not applicable to transaction fully carried out before act became effective. Babson v. Village of Ulysses, 155 Neb. 492, 52 N.W.2d 320 (1952).

Where election was called under this section, incurring of expense in excess of amount allowed per voter was violation of act. State ex rel. Sorensen v. Southern Nebraska Power Co., 131 Neb. 472, 268 N.W. 284 (1936).

70-505 Sale, lease, or transfer; documents; filing.

In order to consummate and complete the sale, lease, or transfer of any electric light and power plant, distribution system, or transmission lines by any city, village, or public electric light and power district of this state, to any

private person, firm, association, or corporation, there shall be filed in the office of the Nebraska Power Review Board of this state, prior to any delivery or change of possession, control, or management under such sale, lease, or transfer, true and exact duplicate signed copies of all agreements, conveyances, contracts, franchises, deeds, leases, bills of sale, and other instruments, under which such sale, lease, or transfer is to be made. Said instruments shall be certified to under the oath of the executive or presiding officers of the seller and purchaser, respectively, as such true and exact duplicates.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-505; Laws 1981, LB 181, § 2.

70-506 Sale, lease, or transfer; statement and report; contents; filing.

At the same time, and accompanying said documents and instruments of sale and transfer, there shall be filed with the Nebraska Power Review Board a statement and report, in form and detail to be approved by the Nebraska Power Review Board and the Attorney General, clearly setting forth the following facts and data: (1) The location and detailed description, including source and methods of generation, of all the property involved in the sale, lease, or transfer; (2) the dates of the construction, purchase, or other acquisition, by such municipality, or public electric light and power district, of such power plant, distribution system, or transmission lines, including all replacements, extensions, repairs, and betterments, together with a detailed statement of the actual cost; (3) a detailed description of such parts of the utility to be sold as, between the time of acquisition thereof and the time of the sale under consideration, shall have become obsolete, or shall have been sold, transferred, lost, destroyed, abandoned, or otherwise disposed of by such municipality or public electric light and power district, and the cost of such part of the utility, including extensions or additions thereto; and (4) a complete schedule of the rates and charges made or levied by such municipality or public electric light and power district for electric current, and a full and complete statement showing the financial condition and the receipts and disbursements of such municipality or public power district in the operation of the utility during the preceding three-year period, and a statement of the bonded indebtedness, if any, of such municipality or public power district in connection with its ownership or operation of the utility, including the amount of all bonds issued and paid.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-506; Laws 1981, LB 181, § 3.

70-507 Sale, lease, or transfer; statement and report; certification; filing.

Such statement and report shall be certified and sworn to as correct by the presiding officer of the governing body of such municipality or public electric light and power district, as the case may be, and shall also have thereto attached the certificate and oath of the presiding officer, or other duly authorized executive officer of the purchaser, under the seal of the purchaser, if a corporation, that the purchaser of the utility has examined the statement and report, has investigated the facts therein set forth, believes the statement and report to be true and correct, and that the proposed purchase of the utility has

been made with reference to and in reliance upon the facts, situation and circumstances set forth in the statement and report. The filing of the instruments, the statement and report, certified as herein required, is hereby made a condition precedent to the validity of any such sale, lease or transfer.

Source: Initiative Law 1930, No. 324, § 5; Laws 1931, c. 116, § 5, p. 338; C.S.Supp.,1941, § 70-605; R.S.1943, § 70-507.

70-508 Sale, lease, or transfer; false statement, report, or certificate; penalty.

Whoever shall make, utter or subscribe to any statement and report, or certificate, required under the provisions of sections 70-506 and 70-507, knowing or having reason to believe that any such statement and report, or certificate, is false, shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 6; Laws 1931, c. 116, § 6, p. 340; C.S.Supp.,1941, § 70-606; R.S.1943, § 70-508; Laws 1977, LB 39, § 137.

70-509 Sale, lease, or transfer; evidence of valuation.

Any instrument, statement and report, or certificate filed with the Nebraska Power Review Board, as provided for in Chapter 70, article 5, or certified copies thereof, shall be competent evidence in any hearing or proceeding involving the valuation of the electric light and power plant, distribution system, or transmission lines covered by the statement and report and certificate, for ratemaking purposes, taxation, or in any other matter in which the facts and statements in such instrument, statement and report, or certificate, may be involved or drawn in question, and the purchaser thereof and his, her, or its successor or assigns, shall be forever estopped to deny the facts set forth in such instrument, statement and report, or certificate.

Source: Initiative Law 1930, No. 324, § 6; Laws 1931, c. 116, § 6, p. 340; C.S.Supp.,1941, § 70-606; R.S.1943, § 70-509; Laws 1981, LB 181, § 4.

70-510 Sale, lease, or transfer; promotion expenditures; limitation.

No private person, firm, association or corporation proposing to purchase, lease, or otherwise acquire any electric light and power plants, distribution system or transmission lines, from any city, village, or public electric light and power district of this state, nor any one on behalf or for the benefit of such proposed purchaser, may, in order to promote or bring about such sale, lease or transfer, pay out, contribute or expend, directly or indirectly, money or other valuable thing in excess of three thousand dollars nor, in any event, in excess of a sum in number of dollars greater than the number of the qualified voters in such municipality or public electric light and power district, based on the total vote cast for Governor at the last general election.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-510.

Where amount was paid for promotion of sale in excess of statutory amount, it was within prohibition of this section. State ex rel. Sorensen v. Southern Nebraska Power Co., 131 Neb. 472, 268 N.W. 284 (1936).

70-511 Sale, lease, or transfer; excessive promotion expenditures; violation; penalty.

Any person, firm or corporation, violating any provision of section 70-510 shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-511; Laws 1977, LB 39, § 138.

70-512 Sale, lease, or transfer; excessive promotion expenditures; action to invalidate; procedure.

Any violation of section 70-510 shall nullify and render wholly void any such proposed purchase, lease or acquisition; *Provided, however,* any action to set aside and render invalid any such sale, lease, transfer or acquisition, under the provisions of said section, shall be brought, in the district court of the county in which such municipality or public electric light and power district, or a portion thereof, is located, by one or more electors of such municipality or public electric light and power district, or by such municipality or district itself, or by the State of Nebraska, within ninety days after the holding of the election at which the question voted on shall have been submitted.

Source: Initiative Law 1930, No. 324, § 7; Laws 1931, c. 116, § 7, p. 340; C.S.Supp.,1941, § 70-607; R.S.1943, § 70-512.

70-513 Sale, lease, or transfer; promotion expenditures; statement.

Within ten days after any election upon the proposition of the sale, lease or transfer of any electric light or power plant, distribution system or transmission lines, as provided by section 70-504, the person, firm, association or corporation proposing to make or secure such purchase, lease or transfer, shall file with the Secretary of State a sworn statement, in form and detail to be approved by the Attorney General, showing all expenditures made and all obligations incurred by such proposed purchaser, directly or indirectly, in connection with or pertaining to such proposed sale, lease or transfer, and in connection with or pertaining to such election.

Source: Initiative Law 1930, No. 324, § 8; Laws 1931, c. 116, § 8, p. 341; C.S.Supp.,1941, § 70-608; R.S.1943, § 70-513.

70-514 Sale, lease, or transfer; promotion expenditures; failure to file statement; penalty.

Any person, firm, association or corporation who shall fail or refuse to file such statement, or who shall subscribe to such statement, knowing the same to be false, shall be guilty of a Class IV felony.

Source: Initiative Law 1930, No. 324, § 8; Laws 1931, c. 116, § 8, p. 341; C.S.Supp.,1941, § 70-608; R.S.1943, § 70-514; Laws 1977, LB 39, § 139.

70-515 Applicability of laws.

All provisions of law, now applicable to electric light and power corporations as regards the use and occupation of the public highways, and the manner or method of construction and physical operation of plants, systems, and transmission lines, shall be applicable, as nearly as may be, to municipalities and public electric light and power districts in their exercise of the powers and functions,

and in their performance of the duties, conferred or imposed upon them under the provisions of sections 70-501 to 70-515.

Source: Initiative Law 1930, No. 324, § 9; Laws 1931, c. 116, § 9, p. 342; C.S.Supp.,1941, § 70-609; R.S.1943, § 70-515; Laws 1951, c. 101, § 105, p. 496.

Public power and irrigation district has the right to exercise the power of eminent domain in the acquisition of property. Snyder v. Platte Valley Public Power & Irr. Dist., 144 Neb. 308, 13 N.W.2d 160 (1944).

ARTICLE 6

PUBLIC POWER AND IRRIGATION DISTRICTS

Section

Section

Section

70-601 Terms, defined.

For purposes of Chapter 70, article 6, unless the context otherwise requires:

(1) District means a public power district, public irrigation district, or public power and irrigation district, organized under Chapter 70, article 6, either as originally organized or as the same may from time to time be altered or extended, and includes, when applicable, rural public power districts organized under Chapter 70, article 8, and subject to Chapter 70, article 6;

(2) Municipality, when used in relation to the organization or charter of a public power district or to the election of successors to the board of directors of a public power district, means any county, city, incorporated village, or voting precinct in this state;

(3) Governing body, whenever used in relation to any municipality, means the duly constituted legislative body or authority within and for such municipality as a public corporation and governmental subdivision. When used with reference to a voting precinct, governing body means the county board of the county in which the precinct is located;

(4) Irrigation works means any and all sites, dams, dikes, abutments, reservoirs, canals, flumes, ditches, head gates, machinery, equipment, materials, apparatus, and all other property used or useful for the storage, diversion, damming, distribution, sale, or furnishing of water supply or storage of water for irrigation purposes or for flood control, or used or useful for flood control, whether such works be operated in conjunction with or separately from electric light and power plants or systems;

(5) Power includes any and all electrical energy and capacity generated, produced, transmitted, distributed, bought, or sold, hydrogen produced, stored, or distributed, and ethanol produced for purposes of lighting, heating, power, and any and every other useful purpose whatsoever;

(6) Plant or system includes any and all property owned, used, operated, or useful for operation in the district's business, including the generation by means of water power, steam, or other means or in the transmission, distribution, sale, or purchase of electrical energy, hydrogen, or ethanol for any and every useful purpose, including any and all irrigation works which may be owned, used, or operated in conjunction with such power plant or system;

(7) Energy equipment includes, but is not limited to, equipment or facilities used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam for use by the district or the district's commercial and industrial customers; and

(8) Public power industry means public power districts, public power and irrigation districts, municipalities, registered groups of municipalities, electric cooperatives, electric membership associations, joint entities formed under the Interlocal Cooperation Act, joint public agencies formed under the Joint Public Agency Act, agencies formed under the Municipal Cooperative Financing Act, and any other governmental entities providing electric service.

Source: Laws 1933, c. 86, § 1, p. 338; Laws 1937, c. 152, § 1, p. 577; Laws 1939, c. 88, § 2, p. 386; C.S.Supp.,1941, § 70-701; R.S. 1943, § 70-601; Laws 1965, c. 403, § 1, p. 1290; Laws 1981, LB 181, § 5; Laws 1985, LB 2, § 4; Laws 1986, LB 1230, § 34; Laws 1986, LB 949, § 2; Laws 1997, LB 658, § 5; Laws 2004, LB 969, § 12; Laws 2005, LB 139, § 2.

Cross References

Interlocal Cooperation Act, see section 13-801.

Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

1. Constitutionality
2. Liability
3. Powers
4. Miscellaneous

1. Constitutionality

Public power and irrigation act, sustained against contention of unconstitutionality on grounds that the act was never properly passed, that the title contains more than one subject in violation of section 14, article 3 of the Constitution of Nebraska, and that the act authorizes the taking of private property without payment of just compensation therefor. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

2. Liability

District was not liable for maintenance of bridge which was not constructed under its supervision. Platte Valley P. P. & I. Dist. v. County of Lincoln, 163 Neb. 196, 79 N.W.2d 61 (1956).

In action for damages resulting from flooding of plaintiff's premises by floodwaters from canal of irrigation district, negligence of irrigation district was for jury. Webb v. Platte Valley Public Power & Irrigation District, 146 Neb. 61, 18 N.W.2d 563 (1945).

Right of landowners to recover consequential damages was governed in federal court by state law. Feltz v. Central Nebraska P. P. & I. Dist., 124 F.2d 578 (8th Cir. 1942).

3. Powers

Powers of grid system were those provided by this article. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966).

Public power district and city were each authorized to furnish electric current in area adjacent to city. State ex rel. Dawson County Feed Products v. Omaha P. P. Dist., 174 Neb. 350, 118 N.W.2d 7 (1962).

Purchase of land for a right-of-way carries with it all the incidents of the power of eminent domain. Clary v. State, 171 Neb. 691, 107 N.W.2d 429 (1961).

4. Miscellaneous

A public power district which does not provide at least 50 percent of the retail or wholesale power requirements of a municipality cannot include that municipality within its charter area. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 554 (1984).

Members of public power system were corporations. State ex rel. League of Municipalities v. Loup River Public Power Dist., 158 Neb. 160, 62 N.W.2d 682 (1954).

It is the duty of district organized under this section that builds structures across natural drainways to provide for the natural passage of all waters which may be reasonably anticipated to drain there. Halligan v. Elander, 147 Neb. 156, 22 N.W.2d 647 (1946).

Public corporation organized to use waters of natural stream for irrigation and for development of electric power is a governmental subdivision, and all its property is exempt from taxation. Platte Valley Public Power and Irrigation District v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944).

70-601.01 Ethanol production and distribution; hydrogen production and distribution; legislative findings.

(1) The Legislature finds and declares that:

(a) Nebraska has been and will continue to be a state which is dependent on a stable, income-producing farm sector;

(b) When agriculture fails to produce adequate income for farmers, ranchers, and agricultural business interests within this state, the economic well-being of the state and its citizens will be threatened;

(c) There currently exists a chronic grain surplus within the state because of underutilization of grain products, and prices for grain remain unreasonably low because of such surplus and underutilization;

(d) Enlargement of the ethanol industry within the state would result in additional utilization of surplus grain;

(e) Ethanol will be increasingly in demand in the marketplace because of its efficacy as an octane enhancer and fuel extender;

(f) The public power industry within the state is experienced in the production and transmission of electrical power; and

(g) The experience of the public power industry could be used in the development of the production and distribution of ethanol and in the enhancement of the economic well-being of this state.

(2) The Legislature further finds:

(a) Hydrogen production and distribution may serve as a viable alternative in the marketplace for use in fuel processes;

(b) The public power industry within the state is experienced in the production and transmission of electrical power; and

(c) The experience of the public power industry could be used in the development of the production, storage, and distribution of hydrogen for use in fuel processes and in the enhancement of the economic well-being of this state.

Source: Laws 1986, LB 1230, § 32; Laws 2005, LB 139, § 3.

70-602 District; creation; general powers.

A district may be created as hereinafter provided and, when so created, shall be a public corporation and political subdivision of this state and may sue or be sued in its corporate name. A district may be composed of the territory of one or more municipalities as defined in subsection (2) of section 70-601, whether contiguous or otherwise. Nothing in Chapter 70, article 6, shall be construed to prevent the organization of a district within or partly within the territorial boundaries of another district organized hereunder, so long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of one district, do not nullify, conflict with, or materially affect those of, or on the part of, another district.

Source: Laws 1933, c. 86, § 2, p. 339; Laws 1937, c. 152, § 2, p. 578; C.S.Supp.,1941, § 70-702; R.S.1943, § 70-602; Laws 1981, LB 181, § 6; Laws 1986, LB 949, § 3.

Rural public power district is a public corporation and political subdivision of the state. York County Rural P. P. Dist. v. O'Connor, 172 Neb. 602, 111 N.W.2d 376 (1961).

A power district is a political subdivision of the state. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Conflict between powers of two districts is to be determined at date of organization of later district. Custer Public Power Dist. v. Loup River Public Power Dist., 162 Neb. 300, 75 N.W.2d 619 (1956).

A public power district is a public corporation and a political subdivision of the state. Consumers Public Power Dist. v. Eldred, 146 Neb. 926, 22 N.W.2d 188 (1946).

Service in the same territory by two public power districts is not forbidden where there is no conflict in the exercise of powers and assumption of duties by each, and, in issuing a certificate of approval to a proposed district, the Department of Water Resources is not required to include a finding that no conflict exists. State ex rel. Wright v. Eastern Nebraska Public Power District, 130 Neb. 683, 266 N.W. 594 (1936); State ex rel. Wright v. Lancaster County Rural Public Power District, 130 Neb. 677, 266 N.W. 591 (1936).

70-603 District; organization; amendment of charter; petition.

A district may be organized and may amend its charter under Chapter 70, article 6, by filing in the office of the Nebraska Power Review Board a petition in compliance with requirements set forth in Chapter 70, article 6, and receiving the approval of the petition by the Nebraska Power Review Board.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(1), p. 507; R.S.1943, § 70-603; Laws 1981, LB 181, § 7; Laws 1986, LB 949, § 4; Laws 2009, LB53, § 1.

Initial step toward the organization of a district is the filing of a petition. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-604 District; petition; contents.

The petition shall be addressed to the Nebraska Power Review Board and state in substance that it is the intent and purpose of the petitioners by such petition to create or amend the charter of a district subject to approval by the Nebraska Power Review Board. The petition shall state and contain:

(1) The name of the district, which name shall contain, if the district is to engage or is engaged in the electric light and power business, hydrogen production, storage, or distribution, or ethanol production and distribution, the words public power district. If the district is to engage or is engaged in the business of owning and operating irrigation works, the name shall include the words public irrigation district, except that if electric light and power are the major business of such district, it need not include these words in its name. A district may be organized to engage only in the electric light and power business, the production, storage, or distribution of hydrogen, and the production and distribution of ethanol, only in the business of owning and operating irrigation works, in any business identified in section 70-625, or in all of such businesses;

(2) The names of the municipalities constituting the district and the boundaries of such district;

(3) A general description of the nature of the business which the district intends to engage in and, for the original creation of a district, the location and method of operation of the proposed power plants and systems or irrigation works of the district;

(4) The location of the principal place of business of the district;

(5) A statement that the district shall not have the power to levy taxes nor to issue general obligation bonds;

(6) When the Nebraska Power Review Board finds from the evidence that subdivisions, from which directors are to be elected or appointed, are necessary or desirable, such subdivisions shall be of substantially equal population, except that no district shall be required to redistrict its subdivisions for purposes of equalizing population more frequently than every ten years following publication of the most recent federal decennial census; and

(7) Except in a district having within its boundaries twenty-five or more cities or villages, the names and addresses of the members of the board of directors of the district, not less than five nor more than twenty-one, who shall serve or continue to serve until their successors are elected and qualified. In any district having within its boundaries twenty-five or more cities and villages, (a) the original petition for creation shall set forth the number of directors of the district and shall provide that the board of directors, to serve until their successors are elected and qualified, shall be appointed by the Governor within thirty days after the approval of the formation of the district and (b) a petition to amend a charter shall set forth the names and addresses of the members of the board of directors of the district. In the petition the directors named or to be appointed by the Governor shall be divided as nearly as possible into three equal groups, the members of the first group to hold office until their successors, elected at the first statewide general election thereafter, shall have qualified, the members of the second group to hold office until their successors, elected at the second statewide general election thereafter, shall have qualified, and the members of the third group to hold office until their successors, elected at the third statewide general election thereafter, shall have qualified. The group to which each proposed director belongs shall be designated in the petition or, for an original petition in case the district has within its proposed

boundaries twenty-five or more cities and villages, shall be set forth in the order of appointment by the Governor.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; R.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(2), p. 507; R.S.1943, § 70-604; Laws 1945, c. 157, § 1, p. 516; Laws 1955, c. 267, § 1, p. 839; Laws 1967, c. 418, § 1, p. 1284; Laws 1981, LB 181, § 8; Laws 1986, LB 1230, § 35; Laws 1986, LB 949, § 5; Laws 1997, LB 658, § 6; Laws 2005, LB 139, § 4.

General description of the nature of business is required to be set forth in the petition. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Petition for organization, when approved, becomes charter of district. Custer Public Power Dist. v. Loup River Public Power Dist., 162 Neb. 300, 75 N.W.2d 619 (1956).

70-604.01 Chartered territory; boundaries.

(1) Except as the same may be further limited or expanded by requirements in Chapter 70, article 6, the chartered territory of any district organized pursuant to and existing by virtue of or subject to the provisions of Chapter 70, article 6, shall include the area in this state within which such district renders electric service of the nature defined in section 70-604.02 and termed its operating area. There may be included, within the chartered area of such district, areas which are outside the operating area as defined in section 70-604.02, but as to which inclusion is nevertheless authorized by other sections of Chapter 70, article 6.

(2) Subject to the requirements of section 70-662 and the approval of the Nebraska Power Review Board in accordance with sections 70-663 and 70-664, any district organized pursuant to Chapter 70, article 6, and engaged in the operation of electric generation, transmission, or distribution facilities or any combination thereof may, in the discretion of the board of directors of such district and upon a finding by the board of directors of such district that the inclusion or exclusion thereof would be consistent with the best interests of the district and its customers, either include within or exclude from the chartered area all municipalities which have a population of fewer than one thousand five hundred inhabitants and which are within a county where such district provides electric service but are not otherwise in such district's operating area.

Source: Laws 1967, c. 418, § 7, p. 1289; Laws 1986, LB 949, § 6; Laws 2009, LB53, § 2.

A public power district which does not provide at least 50 percent of the retail or wholesale power requirements of a municipality cannot include that municipality within its charter area. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 544 (1984).

70-604.02 Operating area, defined.

The operating area of a district, for purposes of establishing its chartered territory, is the geographical area in this state comprising:

(1) The district's retail distribution area, which is that area within which the district delivers electricity by distribution lines directly to those of its customers who consume the electricity; and

(2) The district's wholesale distribution area, which is the aggregate of those retail distribution areas of the public electric utilities which purchase electricity either directly or indirectly from the district for resale to their retail customers if the selling district has the responsibility, in whole or in part, of charging for and delivery of the electricity by transmission lines to the retail public electric

utility distribution lines at one or more points of delivery pursuant to a power contract, having an original term of five years or more, to deliver firm power and energy that constitutes fifty percent or more of the purchasing public electric utility's annual energy requirements. To the extent that a selling district leases its plant or systems to another district to be operated by such other district, or produces electricity, hydrogen, or ethanol which other districts may purchase, and such other districts provide or operate the transmission lines to carry such electricity from the producer to such other districts, the retail and wholesale distribution areas of such other districts are not a part of the operating area of the selling district by reason alone of such leasing or production.

Source: Laws 1967, c. 418, § 8, p. 1289; Laws 1986, LB 949, § 7; Laws 1986, LB 1230, § 36; Laws 2005, LB 139, § 5; Laws 2009, LB53, § 3.

70-604.03 Operating area; boundary lines; establish; precinct division; request by retail customer to vote or hold office; certification procedure.

(1) To establish boundary lines of an operating area coincident with voting precinct or county boundary lines, it shall be permissible to eliminate area from or add area to the operating area so that retail distribution areas are identified by reference to whole voting precincts and wholesale distribution areas are identified by reference to whole counties.

(2) Voting or election precincts may be divided for the purposes of establishing chartered territory and district elections. The description of such divided precincts may be given by section, township, and range and shall be subject to the approval of the Secretary of State.

(3) Any retail customer whose principal residence is being served by a public power district and whose principal residence is not in the chartered territory of such district may request the district in writing at least fifteen days prior to the certification date for such district, as such date is provided in section 70-611, for the right for each registered voter residing at such residence to vote for, and be eligible to hold office as a member of, the board of directors of such district. The secretary of the district shall cause notice to be given to each such retail customer which reasonably prescribes the manner in which the retail customer may request such right to vote. The notice shall be given by first-class mail and may be included as part of the regular billing statement mailed to a customer if such billing statement is sent by first-class mail to such retail customer and the mail is conspicuously marked as to its importance. Such notice shall be given at least sixty days prior to the time the election certification and publication information is transmitted to the Secretary of State pursuant to section 70-611. The district shall certify to the Secretary of State the names of all such retail customers for whom such request to vote has been made along with identification of the voting or election precincts in which such retail customers reside, and each such retail customer shall be a registered voter and qualified to hold office as a member of the board of directors, if otherwise qualified to vote.

(4) Any district dividing a precinct pursuant to subsection (2) of this section or certifying retail customers pursuant to subsection (3) of this section shall transmit all necessary information relevant to such division or certification along with the election certification and publication provided for in section 70-611. All additional election costs caused by such division or certification

shall be due and payable by the district within thirty days after the receipt of a statement from the county.

Source: Laws 1967, c. 418, § 9, p. 1290; Laws 1982, LB 198, § 1; Laws 1985, LB 96, § 1; Laws 1986, LB 949, § 8; Laws 1994, LB 76, § 577.

The right to vote in an election of successors to the board of directors of a public power district is purely statutory. In re Boundaries of McCook P. P. Dist., 217 Neb. 11, 347 N.W.2d 554 (1984).

70-604.04 Operating area; electric utility not included, when; wholesale supplier; duties.

Interconnections of plant or system primarily for the purpose of rendering emergency or temporary electric service to another electric utility, in order to maintain adequate reserve capacity for all the electric utilities involved or to pool spare plant or system capacity, shall not in itself establish an electric utility as part of the operating area of another for purposes of sections 70-604 to 70-619. When a district which purchases electricity for resale actually segregates its distribution system to its customers such that only a portion of its total customers normally receive the electricity transmitted by a given wholesale supplier district, that wholesale supplier district may be required to include in its operating area only that portion of the customers of the supplied district who are so indirectly supplied by electricity from that wholesale supplier district.

Source: Laws 1967, c. 418, § 10, p. 1290; Laws 1994, LB 76, § 578.

70-604.05 District; noncompliance; complaint; hearing; notice; order; failure to comply; penalty.

When it appears that one or more districts are in noncompliance with the provisions of Chapter 70, article 6, the corporate amendments required to comply shall be made generally in accordance with the procedures and requirements contained in Chapter 70, article 6. In the absence of voluntary amendment any time subsequent to six months after the publication of the first federal decennial census published after August 30, 2009, any person residing in the geographical area of alleged noncompliance, or any district or any two or more districts, may file a complaint with the Nebraska Power Review Board against one or more other districts alleging the area of noncompliance of such other districts. Upon receipt of such complaint, the Nebraska Power Review Board shall issue an order directed to the alleged noncomplying district, granting a hearing and requiring it to show cause why an amended petition for creation eliminating such noncompliance should not be filed for approval. Thirty-three days' notice of hearing, which includes mailing time, shall be given to such alleged noncomplying district by either registered or certified mail. The alleged noncomplying district may appear by answer or by petition for amended petition for creation of the district. The burden of proof of noncompliance shall be upon the complainant and of proposed amendments upon the petitioner. If the Nebraska Power Review Board finds that an amended petition for creation should be made and the alleged noncomplying district has not proposed an acceptable one, the Nebraska Power Review Board shall frame the amendment to be approved after continuing the hearing to receive such evidence as may be offered by the parties having appeared before the Nebraska Power Review Board regarding the contents of the amendment to be framed by the Nebraska Power Review Board.

The members of the board of directors of any noncomplying district, including any district failing to comply with an amended petition as framed by the Nebraska Power Review Board, shall each be liable for a civil penalty of fifty dollars for each day of noncompliance which continues after thirty days following final adjudication of noncompliance. Such penalty shall be recovered in an action brought by the Attorney General in the district court for Lancaster County. Service of summons in such action may be had anywhere in the state. Any penalty collected pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. No member of any such board shall receive any compensation or reimbursement of expenses during the period for which he or she is liable for such penalty, nor shall he or she be eligible as a candidate for reelection.

Source: Laws 1967, c. 418, § 11, p. 1291; Laws 1969, c. 546, § 1, p. 2200; Laws 1981, LB 181, § 9; Laws 1986, LB 949, § 9; Laws 2009, LB53, § 4.

70-604.06 Nebraska Power Review Board; final action; appeal; manner.

An appeal of any final action of the Nebraska Power Review Board may be taken to the Court of Appeals. Such appeal shall be in accordance with the rules provided by law for appeals in civil cases.

Source: Laws 1967, c. 418, § 12, p. 1291; Laws 1981, LB 181, § 10; Laws 1991, LB 732, § 122; Laws 2003, LB 187, § 12.

70-604.07 Repealed. Laws 1986, LB 949, § 17.

70-604.08 District; reorganization, consolidation, or merger; directors; continue to serve term.

In the event of a reorganization, consolidation, or merger of any district or districts, directors of the districts involved and who are in office at the time of such reorganization, consolidation, or merger may continue to serve as directors of the resulting reorganized, consolidated, or merged district until the expiration of the term of office for which such person or persons have been elected and until his or their successors are elected and qualified.

Source: Laws 1967, c. 418, § 14, p. 1292; Laws 1994, LB 76, § 579.

70-604.09 District; conduct business in other states; limitations.

A public power district may exercise its powers and engage in business either in the State of Nebraska or in any other state subject to any limitations in the petition for its creation and to the laws of such other state. In order to exercise its powers or engage in business in another state, a public power district shall have power and be authorized to comply with the laws of that state.

Source: Laws 1971, LB 276, § 1.

70-605 District; original creation; petition; signatures; number required.

The petition for the original creation of a district shall be signed by fifteen percent of the registered voters of the municipality or municipalities as defined in subsection (2) of section 70-601 the combined territory of which composes the territory of the proposed district. If the municipality is a county or voting precinct, the whole number of votes cast for Governor at the statewide general

election next preceding the filing of the petition shall be the basis on which the required number of signatures on the petition shall be determined. If the municipality is a city or incorporated village, the number of signatures required on the petition shall be based on the total number of votes cast at its general municipal election next preceding the filing of the petition. Signers and circulators of a petition under this section shall comply with sections 32-629 and 32-630.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(3), p. 508; R.S.1943, § 70-605; Laws 1986, LB 949, § 10; Laws 1994, LB 76, § 580.

70-606 District; petition requirements.

The petition for the original creation of a district shall conform to the requirements of section 32-628.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(4), p. 508; R.S.1943, § 70-606; Laws 1994, LB 76, § 581.

70-607 District; petition; investigation; approval.

Upon receipt of such petition it shall be the duty of the Nebraska Power Review Board at once to make an investigation of the proposed district and of its proposed plants, systems, or irrigation works, and, if deemed by the Nebraska Power Review Board feasible and conforming to public convenience and welfare, the Nebraska Power Review Board, or its successor, by its executive head, shall thereupon and within thirty days from the receipt of such petition, execute a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(5), p. 509; R.S.1943, § 70-607; Laws 1967, c. 419, § 1, p. 1293; Laws 1981, LB 181, § 11.

Petition, when approved, becomes the charter of the district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Provision in this section that a certificate of approval of petition for incorporation shall be issued within thirty days from filing of the petition is directory as distinguished from mandatory where the statute itself imposes duties of a judicial nature requiring a longer time. State ex rel. Wright v. Eastern Nebraska Public Power District, 130 Neb. 683, 266 N.W. 594 (1936); State ex rel. Wright v. Lancaster County Rural Public Power District, 130 Neb. 677, 266 N.W. 591 (1936).

70-608 District; certificate of approval; filing.

The Nebraska Power Review Board shall immediately cause one of the certificates to be forwarded to and filed in the office of the Secretary of State and the other one in the office of the county clerk of the county in which the principal place of business of the district is located. Thereupon such district under its designated name shall be and constitute a body politic and corporate.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(6), p. 509; R.S.1943, § 70-608; Laws 1981, LB 181, § 12.

70-609 District; board of directors; assumption of duties.

Immediately upon the filing of the certificate in the office of the Secretary of State and in the office of the county clerk, the members of the board of

directors named in the petition, or appointed by the Governor in case the district has within its boundaries twenty-five or more cities and villages, shall qualify as provided for in section 70-616 and immediately assume the duties of their office. Failure or refusal to qualify shall be deemed to create a vacancy, which shall be filled as provided in section 70-615. The first meeting of the board of directors shall be called by the director first named in the petition who qualifies.

Source: Laws 1933, c. 86, § 3, p. 339; Laws 1937, c. 152, § 3, p. 579; C.S.Supp.,1941, § 70-703; Laws 1943, c. 145, § 1(7), p. 510; R.S.1943, § 70-609; Laws 1945, c. 157, § 2, p. 517; Laws 2000, LB 901, § 3.

70-609.01 Board of directors; statement of public policy.

Because of the importance of electrical energy to the present and future development of the state, the effect of the operations of public power districts on both its citizens and economy, and the significant impact of the action or inaction of a public power district not only on its direct and indirect residential ratepayers but also on the population and economy of areas in proximity to the immediate area served, it is hereby declared to be the public policy of this state to provide for and encourage a broad base representation of the citizens of this state on the boards of directors of public power districts.

Source: Laws 1986, LB 949, § 1.

70-610 Board of directors; candidate qualifications; election; expenses.

(1) After the selection of the original board of directors of a district as provided for in sections 70-604 and 70-609, successors shall be nominated and elected as provided in section 32-512. Elections shall be conducted as provided in the Election Act.

(2) A candidate for director shall be a registered voter residing within the chartered territory or subdivision as defined in the charter of the district or a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

(3) Each public power district shall pay for the election expenses of nominating and electing its directors as provided in this section. Except as otherwise provided in this section, the district shall pay to each county in which the name of one or more candidates appears upon the ballot as follows: Counties having a population of less than three thousand inhabitants, one hundred dollars; counties having a population of at least three thousand but less than nine thousand inhabitants, one hundred fifty dollars; counties having a population of at least nine thousand but less than fourteen thousand inhabitants, two hundred dollars; counties having a population of at least fourteen thousand but less than twenty thousand inhabitants, two hundred fifty dollars; counties having a population of at least twenty thousand but less than sixty thousand inhabitants, three hundred dollars; counties having a population of at least sixty thousand but less than one hundred thousand inhabitants, fifteen hundred dollars; counties having a population of at least one hundred thousand but less than two hundred thousand inhabitants, three thousand dollars; and counties having a population of two hundred thousand inhabitants or more, fifty-five hundred dollars. The population of a county for purposes of this section shall be the population as determined by the most recent federal decennial census.

When the name of one or more candidates of a district appears on ballots in less than one-half of the precincts in a county, the cost to the district shall be reduced fifty percent. Election expenses shall be due and payable by each public power district within thirty days after receipt of a statement from the county.

(4) In lieu of the payment of election expenses pursuant to subsection (3) of this section, a district shall pay for the election expenses of nominating and electing its board of directors pursuant to subsection (2) of section 32-1203 upon request of a county. The election expenses shall be due and payable by the district within thirty days after receipt from the county of an itemized statement of election expenses owed by the district. This subsection shall not be construed to authorize reimbursement for expenses not directly attributable to nominating and electing members of the board of directors.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 2(1), (11), pp. 510, 515; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-610; Laws 1949, c. 198, § 1, p. 587; Laws 1957, c. 124, § 21, p. 431; Laws 1959, c. 135, § 29, p. 525; Laws 1963, c. 395, § 1, p. 1253; Laws 1967, c. 418, § 2, p. 1286; Laws 1969, c. 547, § 1, p. 2202; Laws 1972, LB 661, § 79; Laws 1972, LB 1401, § 1; Laws 1973, LB 364, § 1; Laws 1975, LB 453, § 57; Laws 1981, LB 181, § 13; Laws 1982, LB 198, § 2; Laws 1986, LB 949, § 11; Laws 1993, LB 90, § 1; Laws 1994, LB 76, § 582; Laws 2008, LB1067, § 2.

Cross References

Election Act, see section 32-101.
Eligibility, additional requirements, see section 70-619.

70-611 Board of directors; election; certified notice; publication.

(1) Not later than January 5 in each even-numbered year, the secretary of the district in districts grossing forty million dollars or more annually shall certify to the Secretary of State on forms prescribed by the Secretary of State the names of the counties in which all registered voters are eligible to vote for public power district candidates and for other counties the names of the election precincts within each county excluding the municipalities in which voters are not eligible to vote on public power district candidates. The secretary shall also certify the number of directors to be elected and the length of terms for which each is to be elected.

(2) Districts grossing less than forty million dollars annually shall prepare the same type of certification as districts grossing over forty million dollars annually and file such certification with the Secretary of State not later than July 1 of each even-numbered year.

(3) The secretary of each district shall, at the time of filing the certification, cause to be published once in a newspaper or newspapers of general circulation within the district a list of the incumbent directors and naming the counties or election precincts excluding those municipalities in which voters are not eligible to vote for public power district candidates in the same general form as the certification filed with the Secretary of State. A certified copy of the

published notice shall be filed with the Secretary of State within ten days after such publication.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(2), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-611; Laws 1959, c. 135, § 30, p. 526; Laws 1972, LB 1401, § 2; Laws 1973, LB 364, § 2; Laws 1975, LB 453, § 58; Laws 1994, LB 76, § 583; Laws 1997, LB 764, § 110.

70-612 Board of directors; election; subdivisions; procedure.

(1) Subject to the provisions of Chapter 70, article 6, and subject to the approval of the Nebraska Power Review Board, the board of directors of a district may amend the petition for its creation to provide for the division of the territory of such district into two or more subdivisions for the nomination and election of some or all of the directors. Each subdivision shall be composed of one or more voting precincts, or divided voting precincts, and the total population of each such subdivision shall be approximately the same. Two or more subdivisions may be combined for election purposes, and members of the board of directors to be elected from such combined subdivisions may be nominated and elected at large when not less than seventy-five percent of the population of the combined subdivisions is within the corporate limits of any city. In the event a district formed includes all or part of two or more counties and is (a) engaged in furnishing electric light and power and more than fifty percent of its customers are rural customers or (b) engaged in furnishing electric light and power and in the business of owning and operating irrigation works, then and in that event such subdivisions may be formed by following precinct or county boundary lines without regard to population if in the judgment of the Nebraska Power Review Board the interests of the rural users of electricity or of users of irrigation water service in such district will not be prejudiced thereby.

(2) Any public power district or public power and irrigation district owning and operating irrigation works may, with approval of the Nebraska Power Review Board, add representation on its board of directors from any county which is outside its chartered territory but in which is located some or all of such irrigation works.

Source: Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(3), p. 511; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-612; Laws 1967, c. 418, § 3, p. 1287; Laws 1981, LB 181, § 14; Laws 1982, LB 198, § 3; Laws 1986, LB 949, § 12; Laws 1992, LB 424, § 18; Laws 1992, LB 573, § 9.

Amendments to the petition for creation of the district are authorized. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-613 Repealed. Laws 1975, LB 453, § 61.

70-614 Repealed. Laws 1994, LB 76, § 615.

70-614.01 Repealed. Laws 1967, c. 418, § 16.

70-614.02 Repealed. Laws 1967, c. 418, § 16.

70-615 Board of directors; vacancy; how filled.

(1) In addition to the events listed in section 32-560, a vacancy on the board of directors shall exist in the event of the (a) removal from the chartered area of any director, (b) removal from the subdivision from which such director was elected, (c) elimination or detachment from the chartered area of the territory in which a director or directors reside, or (d) expiration of the term of office of a director and failure to elect a director to fill such office at the preceding general election. After notice and hearing, a vacancy shall also exist in the event of the absence of any director from more than two consecutive regular meetings of the board, unless such absences are excused by a majority of the remaining board members.

(2) In the event of a vacancy from any of such causes, or otherwise, such vacancy or vacancies shall, except in districts having within their chartered area twenty-five or more cities and villages, be filled by the board of directors. In districts having within their chartered area twenty-five or more cities and villages, vacancies shall be filled by the Governor.

(3) If a vacancy occurs during the term of any director prior to the deadline for filing and the unexpired term extends beyond the first Thursday after the first Tuesday in January following the next general election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election, and candidates may file nomination papers as provided by law for the placing of their names upon the ballot for election to the unexpired term. If a vacancy occurs during the term of any director after the deadline for filing for election, an appointment shall be until the first Thursday after the first Tuesday in January following the next general election for which candidates may file nomination papers as provided by law.

(4) At any time a vacancy is to be filled by election, the secretary of the district shall give notice to the public by publishing the notice of vacancy, length of term, and the deadline for filing, once in a newspaper or newspapers of general circulation within the district.

Any appointment shall be filed with the Secretary of State by certified mail.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(7), p. 514; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-615; Laws 1945, c. 157, § 3, p. 518; Laws 1953, c. 106, § 31, p. 338; Laws 1957, c. 124, § 23, p. 436; Laws 1967, c. 418, § 5, p. 1268; Laws 1973, LB 364, § 3; Laws 1975, LB 453, § 59; Laws 1985, LB 569, § 2; Laws 1994, LB 76, § 584.

70-616 Board of directors; oath.

Before entering upon the duties of his office, every member elected to membership on the board of directors shall take and subscribe to an oath to support the Constitution of the United States and the Constitution of the State of Nebraska, and faithfully and impartially to perform the duties of his office, which oath shall be filed in the office of the Secretary of State.

Source: Laws 1933, c. 86, § 4, p. 344; Laws 1937, c. 152, § 4, p. 581; Laws 1941, c. 137, § 1, p. 542; C.S.Supp.,1941, § 70-704; Laws 1943, c. 145, § 1(8), p. 515; Laws 1943, c. 146, § 1, p. 516; R.S.1943, § 70-616.

70-617 Repealed. Laws 2000, LB 901, § 10.

70-618 Repealed. Laws 1984, LB 975, § 14.

70-619 Board of directors; qualifications.

The corporate powers of the district shall be vested in and exercised by the board of directors of the district. No person shall be qualified to hold office as a member of the board of directors unless (1) he or she is a registered voter (a) of such chartered territory, (b) of the subdivision from which a director is to be elected if such chartered territory is subdivided for election purposes as provided in section 70-612, or (c) of one of the combined subdivisions from which directors are to be elected at large as provided in section 70-612 or (2) he or she is a retail customer duly certified in accordance with subsection (3) of section 70-604.03.

No person who is a full-time or part-time employee of the district shall be eligible to serve as a member of the board of directors unless such person resigns or assumes an unpaid leave of absence for the term as a member. The district shall grant such leave of absence when requested by any employee for the purpose of the employee serving as a member of the board of directors. No person shall be qualified to be a member of more than one such district board, except that a director of a rural public power district may serve as a director of another public power district formed or organized for the purpose of generating electric energy or transmitting electric energy exclusively for resale to some other public power districts, rural electric cooperatives, and membership associations or municipalities. No member of a governing body of any one of the municipalities within the areas of the district shall be qualified to serve on the original board of directors under sections 70-603 to 70-609.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 518; R.S.1943, § 70-619; Laws 1944, Spec. Sess., c. 5, § 1(1), p. 106; Laws 1957, c. 127, § 2, p. 440; Laws 1963, c. 396, § 1, p. 1258; Laws 1967, c. 418, § 6, p. 1288; Laws 1973, LB 364, § 4; Laws 1982, LB 198, § 4; Laws 1983, LB 15, § 1; Laws 1985, LB 2, § 5; Laws 1986, LB 949, § 13; Laws 1991, LB 3, § 1; Laws 1994, LB 76, § 585.

Cross References

Eligibility, additional requirements, see section 70-610.

District was not estopped to attack constitutionality of a distinct, separate legislative act. May v. City of Kearney, 145 Neb. 475, 17 N.W.2d 448 (1945).

70-620 Officers; appointment; treasurer's bond.

(1) In districts receiving annual gross revenue of less than forty million dollars, the board of directors shall appoint the officers of the district, who shall be a president, a vice president, a secretary, and a treasurer, and the board shall appoint such executive committee and other officers, including a general manager, agents, servants, and employees, as deemed necessary in handling the affairs and transacting the business of the district. The president and vice president shall be appointed from the membership of the board of directors. The treasurer may be appointed from the membership of the board of directors and shall furnish and maintain a corporate surety bond in an amount sufficient to cover all money coming into his or her possession or control. The bond shall be satisfactory in form and with sureties approved by the board. The bond

required under this subsection shall in no event exceed one hundred thousand dollars. The bond as thus approved shall be filed with the Secretary of State.

(2) In those districts receiving annual gross revenue of forty million dollars or more, the board of directors shall appoint the officers of the district, who shall be a president or chairperson of the board, a vice president or vice-chairperson of the board, a secretary, and a treasurer, and the board shall appoint such executive committee and other officers, including a president or general manager, agents, servants, and employees, as deemed necessary in handling the affairs and transacting the business of the district. The president or chairperson of the board and vice president or vice-chairperson of the board shall be appointed from the membership of the board of directors. The treasurer may be appointed from the membership of the board of directors and shall furnish and maintain a corporate surety bond in an amount sufficient to cover all money coming into his or her possession or control. The bond shall be satisfactory in form and with sureties approved by the board. The bond required under this subsection shall in no event exceed one hundred thousand dollars. The bond as thus approved shall be filed with the Secretary of State.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-620; Laws 1944, Spec. Sess., c. 5, § 1(2), p. 106; Laws 1951, c. 222, § 1, p. 793; Laws 1981, LB 34, § 1; Laws 1984, LB 49, § 1; Laws 1990, LB 1013, § 1.

70-620.01 Chief executive officer; terms of employment; powers; duties.

In districts receiving annual gross revenue of less than forty million dollars, a general manager may be employed on such terms as the board deems advisable. He or she shall be chief executive officer of the district and, subject to the control of the board of directors, shall manage, conduct, and administer the affairs of the district in an efficient and economical manner.

In those districts receiving annual gross revenue of forty million dollars or more, a chief executive officer, who shall be designated as general manager if the board appoints a president of the board or as president if the board appoints a chairperson of the board, may be employed on such terms as the board deems advisable and, subject to the control of the board of directors, shall manage, conduct, and administer the affairs of the district in an efficient and economical manner.

Source: Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-620.01; Laws 1944, Spec. Sess., c. 5, § 1(3), p. 106; Laws 1984, LB 49, § 2.

70-621 Board of directors; rules and regulations.

The board of directors may adopt rules and regulations, or bylaws not inconsistent with the provisions of Chapter 70, article 6, for the conduct of the business and affairs of the district.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-621; Laws 1944, Spec. Sess., c. 5, § 1(4), p. 106; Laws 1981, LB 181, § 15.

70-622 Books and records; where kept; open to inspection.

The board of directors shall cause to be kept accurate minutes of their meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management and business of the district. Said books and records shall be kept at the principal place of business of the district or at such other regularly maintained place or places of business of the district as shall be designated by the board of directors, with due regard to the convenience of the district and its customers in the several localities or divisions served or from which the information is thus gathered or obtained. Said books and records shall at reasonable business hours be open to public inspection.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-622; Laws 1944, Spec. Sess., c. 5, § 1(5), p. 106.

Books of power district were open to public inspection. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

70-623 Fiscal year; annual audit; filing.

The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and shall be filed with the Auditor of Public Accounts and the Nebraska Power Review Board within one hundred eighty days after December 31 of each year.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 519; R.S.1943, § 70-623; Laws 1944, Spec. Sess., c. 5, § 1(6), p. 107; Laws 1967, c. 420, § 1, p. 1294; Laws 1981, LB 302, § 6; Laws 1993, LB 310, § 8; Laws 2004, LB 969, § 13.

70-623.01 Repealed. Laws 1981, LB 181, § 66.

70-623.02 Audit; records accessible to auditor.

The audit required by section 70-623 shall be made at the close of the fiscal year. The person making the audit shall have access to all books, records, vouchers, papers, contracts, or other data containing information on the subject (1) in the office of the public power or public power and irrigation district, (2) in the office of the chief executive officer of the district provided for in section 70-620.01, or (3) in the possession or under the control of any of the officers, agents, or servants of the district. All officers, agents, and servants of the public power or public power and irrigation district shall furnish to the person making the audit and his or her agents, servants, and employees such information regarding the auditing of the public power or public power and irrigation districts as may be demanded.

Source: Laws 1943, c. 146, § 2(3), p. 521; R.S.1943, § 70-623.02; Laws 1944, Spec. Sess., c. 5, § 1(11), p. 109; Laws 1991, LB 3, § 2; Laws 1993, LB 310, § 9.

70-623.03 Failure to file audit; effect.

If any public power district fails to file a copy of an audit within the time prescribed in section 70-623, then its books, records, and financial affairs shall, within one hundred eighty days after the close of the fiscal year of the district, be audited by a certified public accountant or firm of accountants selected by the Auditor of Public Accounts. The cost of the audit shall be paid by the district. A copy of such audit shall be placed and kept on file at the principal place of business of the district.

Source: Laws 1945, c. 160, § 1, p. 523; Laws 1993, LB 310, § 10.

70-624 Officers; compensation; approval; publication; violation; penalty.

(1) In no event shall the compensation, as a salary or otherwise, of any general manager or president, assistant general manager or vice president, or other officer be approved except by the vote of approval of two-thirds or more of the members of the board of directors. The record of such vote of approval, together with the names of the directors so voting, shall be made a part of the permanent records of the board.

(2) The current salaries of any general manager or president or assistant general manager or vice president and all officers of the district shall be published once each year in three legal newspapers of general circulation in the district in which such general manager or president, assistant general manager or vice president, or officers are employed. The chief executive officer as described in section 70-620.01 shall be responsible for publishing the current salaries as required by this subsection. Any chief executive officer who violates this subsection shall be guilty of a Class V misdemeanor.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(1), p. 579; Laws 1971, LB 243, § 1; Laws 1982, LB 739, § 1; Laws 1984, LB 49, § 3; Laws 1994, LB 915, § 1.

70-624.01 District; agent; cost-plus contracts prohibited.

No district shall hereafter pay or agree to pay any agent a fee or other compensation, for services rendered or to be rendered in connection with the acquisition of any property by any such district, which fee or compensation increases with the amount of the purchase price of the property acquired. Every contract in which such district agrees to pay compensation to any agent upon any such basis is hereby declared to be against public policy, illegal, and void; *Provided,* as to any such contract heretofore made that is legally binding upon any such district, sections 70-619 to 70-624.02 shall not prevent payment of fees or compensation according to the terms thereof. Any officer or director of any such district, who shall authorize, approve, or sanction any such payment or agreement, contrary to the provisions of sections 70-619 to 70-624.02, shall be subject to removal from office therefor in the manner provided by law for removal of county officers and shall be personally liable to the district for the amount paid. The term agent, as used in this section, shall be deemed to include any person, firm, or corporation that seeks to receive payment out of the funds of the district or the proceeds of sale of securities

issued by it for acting on its behalf in conducting any transaction relating to the acquisition of property or financing of its indebtedness.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(2), p. 579.

70-624.02 Board of directors; expenses; compensation; prohibitions; exceptions.

The members of the board of directors shall be paid their actual expenses, while engaged in the business of the district under the authority of the board of directors, and, for their services, such compensation as shall be fixed by the board of directors.

The boards of directors of those districts with gross revenue of less than forty million dollars may fix compensation at not to exceed six thousand seven hundred twenty dollars per year as to all members except the president and not exceeding seven thousand five hundred sixty dollars a year as to the president.

The boards of directors of those districts with gross revenue of forty million dollars or more may fix compensation at not to exceed thirteen thousand four hundred forty dollars per year as to all members except the president or chairperson of the board and not exceeding fifteen thousand one hundred twenty dollars per year as to the president or chairperson of the board. All salaries and compensation shall be obligations against and be paid solely from the revenue of the district. No director shall receive any other compensation from the district, except as provided in this section, during the term for which he or she was elected or appointed or in the year following the expiration of his or her term, and resignation from such board of directors shall not be construed as the termination of the term of office for which he or she was elected or appointed. A member of the board of directors of a public power district organized under the laws of this state shall not be limited to service on the board of directors in the district in which he or she has been elected so as to preclude service in similar positions of trust on a state, regional, or national level which are the result of his or her membership as a director on such board. For time expended in his or her duties in such position of trust, the director shall not be limited to any existing provisions of law of this state relating to payment of per diem for services as a member of such board of directors, but shall be entitled to receive such additional compensation as may be provided for such service, regardless of the fact that such compensation may be paid from funds to which his or her district has made contributions in the form of dues or otherwise.

Source: Laws 1933, c. 86, § 5, p. 345; C.S.Supp.,1941, § 70-705; Laws 1943, c. 146, § 2(1), p. 520; R.S.1943, § 70-624; Laws 1944, Spec. Sess., c. 5, § 1(7), (8), (9), pp. 107, 108; Laws 1949, c. 199, § 1(3), p. 580; Laws 1965, c. 405, § 1, p. 1304; Laws 1965, c. 406, § 1, p. 1306; Laws 1969, c. 548, § 1, p. 2204; Laws 1971, LB 308, § 1; Laws 1975, LB 226, § 1; Laws 1978, LB 837, § 1; Laws 1984, LB 49, § 4; Laws 1985, LB 75, § 1; Laws 1990, LB 730, § 2; Laws 1993, LB 6, § 1; Laws 2000, LB 901, § 4.

70-624.03 Board of directors; plan of insurance for benefit of employees and dependents; may establish.

The board of directors may establish a plan of insurance, designed and intended for the benefit of the employees of the district and the dependents of employees of the district, and, in the discretion of the board, expend funds of the district for the payment of premiums for such employees' and dependents' group, franchise, or wholesale insurance policies. Members of the board of directors of the district may be considered employees for purposes of this section. The dollar amount of any health insurance premiums paid from the funds of the district for the benefit of a member of the board of directors may be in addition to the amount of compensation authorized to be paid to such director pursuant to section 70-624.02.

Source: Laws 1949, c. 199, § 1(4), p. 580; Laws 1972, LB 1186, § 1; Laws 1993, LB 182, § 1; Laws 2000, LB 901, § 5.

70-624.04 Directors and employees; hold other elective office; contract not void or voidable; when.

Directors and employees of public power districts, public power and irrigation districts, and public utility companies shall be permitted to hold other elective office as provided in section 32-604. No contracts of any such public power district, public power and irrigation district, or public utility company shall be void or voidable by reason of such service by its directors or employees.

Source: Laws 1971, LB 494, § 1; Laws 1973, LB 559, § 9; Laws 1990, LB 931, § 7; Laws 1991, LB 20, § 3; Laws 1991, LB 12, § 6; Laws 1994, LB 76, § 586.

A company engaged in the transmission and distribution of natural gas to the public on a regular basis is a public utility company within the meaning of this section. Kansas-Nebraska Nat. Gas Co., Inc. v. Wiles, 190 Neb. 795, 212 N.W.2d 633 (1973).

70-625 Public power district; powers; restrictions.

(1) Subject to the limitations of the petition for its creation and all amendments to such petition, a public power district has all the usual powers of a corporation for public purposes and may purchase, hold, sell, and lease personal property and real property reasonably necessary for the conduct of its business. No district may sell household appliances at retail if the retail price of any such appliance exceeds fifty dollars, except that newly developed electrical appliances may be merchandised and sold during the period of time in which any such appliances are being introduced to the public. New models of existing appliances shall not be deemed to be newly developed appliances. An electrical appliance shall be considered to be in such introductory period of time until the particular type of appliance is used by twenty-five percent of all the electrical customers served by such district, but such period shall in no event exceed five years from the date of introduction by the manufacturer of the new appliance to the local market.

(2) In addition to its powers authorized by Chapter 70 and specified in its petition for creation, as amended, a public power district may sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming, except that this section does not authorize public power districts (a) to provide signal descrambling or decoding devices or

satellite programming to any location (i) being furnished such devices or programming on April 24, 1987, or (ii) where community antenna television service is available from any person, firm, or corporation holding a franchise pursuant to sections 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on April 24, 1987, or (b) to sell, service, or lease C-band satellite dish systems or repair parts.

(3) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, the board of directors of a public power district may apply for and use funds available from the United States Department of Agriculture or other federal agencies for grants or loans to promote economic development and job creation projects in rural areas as permitted under the rules and regulations of the federal agency from which the funds are received. Any loan to be made by a district shall only be made in participation with a bank pursuant to a contract. The district and the participating bank shall determine the terms and conditions of the contract. In addition, in rural areas of the district, the board of directors of such district may provide technical or management assistance to prospective, new, or expanding businesses, including home-based businesses, provide assistance to a local or regional industrial or economic development corporation or foundation located within or contiguous to the district's service area, and provide youth and adult community leadership training.

(4) In addition to the powers authorized by Chapter 70 and specified in its petition for creation as amended, a public power district may sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

(5) Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each public power district may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act or pursuant to this section. In addition to the powers authorized by Chapter 70 and specified in its petition for creation, as amended, and without the need for further amendment thereto, a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district's service territory.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(1), p. 521; R.S.1943, § 70-625; Laws 1961, c. 335, § 1, p. 1045; Laws 1980, LB 954, § 62; Laws 1987, LB 23, § 1; Laws 1987, LB 345, § 1; Laws 1994, LB 915, § 2; Laws 1997, LB 658, § 8; Laws 1997, LB 660, § 1; Laws 2001, LB 827, § 15; Laws 2002, LB 1105, § 477.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

It was intended to permit the business of a power district to be operated in a successful and profitable manner. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

The Legislature gave to a public power district all the usual powers of a corporation organized for a public purpose. York County Rural P. P. Dist. v. O'Connor, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers granted by this section are subject to limitations of petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Legislature gave to power districts all the usual powers of a corporation organized for public purposes. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

District can purchase or otherwise acquire, own and sell the full interest in either real or personal property. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

Powers of purchase are conferred, and are not confined to any specific statutory method or manner of their exercise. State

ex rel. Johnson v. Consumers Public Power Dist., 143 Neb. 753, 10 N.W.2d 784 (1943).

A public power district which purchases and retains equipment essential to its operation is liable for the reasonable value of such equipment, if such district was clothed with power to purchase such property, even though the contract is unenforceable because the power was irregularly exercised. Sorensen v. Chimney Rock Public Power Dist., 138 Neb. 350, 293 N.W. 121 (1940).

70-625.01 Rural areas; legislative findings and declarations.

The Legislature finds and declares that:

(1) There are rural areas in the state which are experiencing declines in economic activity and the outmigration of rural residents which is eroding the tax base of those rural areas and undermining the ability of the state and local governments to provide essential public services;

(2) Rural economic development efforts can increase the productivity of economic resources, create and enhance employment opportunities, increase the level of income and quality of life for rural residents, assist in slowing or reversing the outmigration of rural residents, and help maintain essential public services to the advantage not only of those rural areas but also of the state as a whole and the electric utilities serving those rural areas;

(3) Funds may be available from the United States Department of Agriculture or other federal agencies to suppliers of electricity in rural areas to promote economic development and job creation projects;

(4) It is the policy of this state to promote economic development and job creation projects in rural areas through the use of federal funds and other funds which may be available as authorized in subsection (3) of section 70-625;

(5) Public power districts operating in rural areas of this state are uniquely situated through their boards of directors to know and understand the need to promote economic development and job creation projects in their service areas; and

(6) Involvement by publicly owned electric utilities operating in rural areas in such economic development activities serves a public purpose and it is the public policy of this state to allow public power districts to promote economic development and job creation projects in rural areas as provided in subsection (3) of section 70-625.

Source: Laws 1997, LB 658, § 7.

70-625.02 Electric transmission facilities and interconnections, defined; policy of state.

It is declared to be the policy of the State of Nebraska that electric transmission facilities and interconnections which are defined as being electric lines having a rating of thirty-four thousand five hundred volts and higher will be provided and made available to all power agencies so as to result in the lowest possible cost for the transmission and delivery of electric energy over the transmission and interconnected facilities of any public power district, public power and irrigation district, individual municipality, group of municipalities registered with the Nebraska Power Review Board, governmental subdivision, or nonprofit electric cooperative corporation.

Source: Laws 1967, c. 421, § 1, p. 1295; Laws 1969, c. 550, § 1, p. 2206; Laws 1981, LB 181, § 16.

70-626 Electric light and power, hydrogen, and ethanol systems authorized; construction; acquisition; contracts authorized; copy filed with Nebraska Power Review Board.

Subject to the limitations of the petition for its creation and all amendments thereto, a district may own, construct, reconstruct, purchase, lease, or otherwise acquire, improve, extend, manage, use, or operate any electric light and power plants, lines, and systems, any hydrogen production, storage, or distribution systems, or any ethanol production or distribution systems, either within or beyond, or partly within and partly beyond, the boundaries of the district and may engage in or transact business or enter into any kind of contract or arrangement with any person, firm, corporation, state, county, city, village, governmental subdivision, or agency, with the government of the United States, the Rural Electrification Administration or its successor, the Public Works Administration or its successor, or any officer, department, bureau, or agency thereof, with any corporation organized by federal law, including the Reconstruction Finance Corporation or its successor, or with any body politic or corporate for any of the purposes mentioned in this section, for or incident to the exercise of any one or more of the powers described in this section, or for the generation, distribution, transmission, sale, or purchase of electrical energy, hydrogen, or ethanol for lighting, power, heating, and any and every other useful purpose whatsoever, and for any and every service involving, employing, or in any manner pertaining to the use of electrical energy, by whatever means generated or distributed, or for the financing or payment of the cost and expense incident to the acquisition or operation of any such power plant or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system, or incident to any obligation or indebtedness entered into or incurred by the district. In the case of the acquisition by purchase, lease, or any other contractual obligation of an existing electric light and power plant, lines, or system, hydrogen production, storage, or distribution system, or ethanol production or distribution system from any person, firm, association, or private corporation by any such district, a copy of the proposed contract shall be filed with the Nebraska Power Review Board and open to public inspection and examination for a period of thirty days before such proposed contract may be signed, executed, or delivered, and such proposed contract shall not be valid for any purpose and no rights may arise under such contract until after such period of thirty days has expired.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(2), p. 521; R.S.1943, § 70-626; Laws 1945, c. 157, § 4, p. 518; Laws 1981, LB 181, § 17; Laws 1986, LB 1230, § 37; Laws 2005, LB 139, § 6.

Power district has specific power to own or operate electric plants and to enter into contracts or arrangements with any city for sale of electric energy. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

Powers of a public power district are set forth in this section. York County Rural P. P. Dist. v. O'Connor, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers granted by this section are subject to limitations of petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Powers conferred are intended to permit district to be operated in a successful and profitable manner. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Legislature contemplated that districts should purchase, lease or otherwise acquire such real and personal property as is reasonably necessary for the conduct of its business. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

District may engage in sale of wiring supplies and equipment. Sorensen v. Chimney Rock Public Power Dist., 138 Neb. 350, 293 N.W. 121 (1940).

Provision in this section granting authority to a power district to enter into contracts for any purposes incident to the exercise of its powers does not provide an exception to former section

39-102 requiring notice to and consent of a majority of the voters interested before a public road can be vacated. Wright v. Loup River Public Power Dist., 133 Neb. 715, 277 N.W. 53 (1938).

70-626.01 Generating power agency; duty to sell electrical energy; when.

A district, individual municipality, or group of municipalities registered with the Nebraska Power Review Board which is engaged in the generation and transmission of electrical energy, all of which are referred to in Chapter 70, article 6, by the term generating power agency, shall be required to sell electrical energy at wholesale under the terms and conditions of a fair and reasonable contract directly to any municipality, registered group of municipalities, district, political subdivision in the state, or any nonprofit electric cooperative corporation organized under Chapter 70, article 7, all of which are referred to in Chapter 70, article 6, by the term distribution power agency, when such distribution power agency makes application for the purchase of electrical energy, if such sale is not in violation of an agreement of the generating power agency approved by the Nebraska Power Review Board and such generating power agency has the requested amount of electrical energy available for sale, and the distribution power agency agrees to make or pay for the necessary physical connection with the electrical facilities of such generating power agency.

Source: Laws 1943, c. 146, § 3(2), p. 522; R.S.1943, § 70-626.01; Laws 1967, c. 421, § 2, p. 1295; Laws 1971, LB 349, § 3; Laws 1981, LB 181, § 18.

Cross References

Wholesale service to municipalities, when required, see section 19-708.

Formerly this section required public power districts to sell electrical energy at wholesale to municipalities. As amended in 1971, the proviso if such sale is not in violation of an agreement of the generating power agency approved by the Nebraska Power Review Board was added. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

Powers granted by this section are subject to limitations of petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Sale direct to municipalities, and not to association of municipalities, was contemplated. State ex rel. League of Municipalities v. Loup River Public Power Dist., 158 Neb. 160, 62 N.W.2d 682 (1954).

70-626.02 Generating power agency; physical connections; establish; rates.

A generating power agency shall establish a physical connection of its transmission lines and associated facilities with the facilities of a distribution power agency or with the facilities of an intervening power agency when requested by the distribution power agency and shall make available any surplus capacity in its transmission lines and associated facilities and provide for the receipt, transmission, and delivery of power and energy for the account of the distribution power agency upon the payment of rates, tolls, and charges that are reasonable, fair, and nondiscriminatory for the use made of the transmission lines and associated facilities of the generating power agency.

Source: Laws 1967, c. 421, § 3, p. 1296; Laws 1969, c. 550, § 2, p. 2207.

70-626.03 Transmission facilities of other power agency; available for transmission of electric energy; rates.

Surplus capacity in transmission facilities owned by any other power agency shall be made available for transmitting and delivering electric energy to any Nebraska power agency. Electrical energy shall be transmitted and delivered over the transmission facilities by any power agency subject to the terms of

sections 70-625.02 and 70-626.01 to 70-626.04 but only upon payment of rates, tolls, and charges that are reasonable, fair, and nondiscriminatory for the use made of the transmission facilities of the power agency.

Source: Laws 1967, c. 421, § 4, p. 1296; Laws 1969, c. 550, § 3, p. 2207.

70-626.04 Disagreement between power agencies; file complaint with Nebraska Power Review Board; notice; hearing; order advisory provision; effect.

In the event of any disagreement between the generating power agency and a distribution power agency or between any of the power agencies, whether wholesale or retail, regarding the provisions of sections 70-626.01 to 70-626.03 and the use of transmission lines and associated facilities and the establishment of the physical connection therewith, either party to the disagreement may file a written complaint with the Nebraska Power Review Board requesting the board to hear the complaint and issue an order for settlement of the disagreement. Upon the receipt of such a request, the board shall set the matter for hearing within thirty days after the request is made by the complaining party. The board shall provide notice to the other party to the disagreement at least fifteen days prior to the hearing. After the hearing is completed the board shall, within forty-five days, enter an order setting forth its decision on the issues in disagreement and the disposition of the dispute, taking into consideration whether the relief requested by the complaining party is necessary or appropriate in the public interest and will place no undue burden upon the parties affected thereby. Any provision in an order of the board regarding any rate to be charged by a public power district or public power and irrigation district which has agreed with the holders of its outstanding bonds that the district will fix such rates shall be advisory only and shall not be binding on the district.

Source: Laws 1967, c. 421, § 5, p. 1296; Laws 1969, c. 550, § 4, p. 2207.

70-626.05 Wheeling service; contract; dispute; exception; board; settlement.

When a power agency has requested wheeling service under sections 70-626.01 to 70-626.03, the parties shall develop a contract for such wheeling service. Any provisions of the contract which cannot be resolved by the parties shall then be the subject of a dispute filed with the board for settlement. The provisions of this section shall not include the matter of rates to be paid for such wheeling service in the contract.

Source: Laws 1969, c. 550, § 5, p. 2208.

70-627 Irrigation works; construction; acquisition; contracts authorized.

Subject to the limitations of the petition for its creation and all amendments thereto, a public power district may own, construct, reconstruct, improve, purchase, lease, or otherwise acquire, extend, manage, use or operate any irrigation works, as defined in section 70-601, either within or beyond, or partly within and partly beyond, the boundaries of the district, and any and every kind of property, personal or real, necessary, useful or incident to such acquisition, extension, management, use and operation, whether the same be independent of or in connection or conjunction with an electric light and power business, in whole or in part. In connection with the aforesaid powers, such district shall have the right and power to enter into any contract, lease, agreement or arrangement with any state, county, city, village, governmental or public corporation or association, or with any person, firm or corporation, public or

private, or with the government of the United States, the Rural Electrification Administration, the Public Works Administration, or with any officer, department, bureau or agency thereof, or with any corporation organized under federal law, including the Reconstruction Finance Corporation, or any successor thereof, for the purpose of exercising or utilizing any one or more of the above enumerated powers, or for the sale, leasing, or otherwise furnishing or establishing, water rights, water supply, water service or water storage, for irrigation or flood control, or for the financing or payment of the cost and expenses incident to the construction, acquisition or operation of such irrigation works, or incident to any obligation or liability entered into or incurred by such district.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(3), p. 522; R.S.1943, § 70-627.

Powers granted by this section are subject to limitations of petition for creation of district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

District may acquire fee title to reservoir site. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

70-627.01 Repealed. Laws 1995, LB 120, § 3.

70-627.02 District; radioactive material and energy; powers; development; contracts; financing; indemnification; when.

In addition to all other rights and powers which may be possessed by a public power district or public power and irrigation district under the petition for its creation and all amendments thereto and other statutes, any such district which has radioactive material available to it in association with facilities constructed in connection with the production of electrical energy shall have the power to: (1) Use, sell, lease, transport, dispose of, furnish, or make available, under contract or otherwise, to any person, firm, corporation, state, county, city, village, governmental subdivision or agency, the government of the United States or any officer, department, bureau or agency thereof, any corporation organized by federal law, or any body politic or corporate, any such radioactive material or the energy therefrom; (2) own, operate, construct, reconstruct, purchase, remove, lease, or otherwise acquire, improve, extend, manage, use, or operate such facilities or property, real or personal; or (3) engage in or transact business or enter into any kind of contract or arrangement with anyone for or incident to the exercise of any one or more of the powers of the district for any and every service involving, employing, or in any manner pertaining to the use of radioactive material or the energy therefrom or for the financing or payment of the cost and expense incident to the acquisition, construction, reconstruction, improvement, or operation of such facilities or property, real or personal, or incident to any obligation or indebtedness entered or incurred by any such district.

A public power district or public power and irrigation district may indemnify a public or private entity for such entity's own negligence, notwithstanding section 25-21,187, if the district enters into a contract with the public or private entity for the management or operation of a nuclear power plant that provides for compensation on an at-cost basis. This section does not authorize indemnification for any direct damages from the misconduct of such public or private entity engaged in management or operation of a nuclear power plant. The same limitations of liability and other protections available to a public power district or a public power and irrigation district under the Political Subdivisions Tort

Claims Act shall apply to any public or private entity acting as an agent for a public power district or a public power and irrigation district pursuant to a contract for the management or operation of a nuclear power plant.

Source: Laws 1959, c. 316, § 2, p. 1159; Laws 2003, LB 165, § 12.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

70-628 District; additional powers.

In addition to the rights and powers enumerated in Chapter 70, article 6, and in no manner limiting or restricting the same, each district shall be deemed to be and shall have and exercise each and all of the rights and powers of a public electric light and power district or public power district within the meaning of sections 70-501 to 70-503.

Source: Laws 1933, c. 86, § 6, p. 346; Laws 1937, c. 152, § 5, p. 583; C.S.Supp.,1941, § 70-706; Laws 1943, c. 146, § 3(4), p. 523; R.S.1943, § 70-628; Laws 1981, LB 181, § 19.

This section relates to means by which a district may exercise the powers recited in the petition for creation of the district. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

70-628.01 Joint exercise of powers by districts; agreement; terms and conditions; agent; powers and duties; prudent utility practice, defined; liabilities; sale, lease, merger, or consolidation; procedure.

(1) Such district shall have and may exercise any one or more of the powers, rights, privileges, and franchises mentioned in sections 70-625 to 70-628, either alone or jointly with one or more other districts. In any joint exercise of powers, rights, privileges, and franchises with respect to the construction, operation, and maintenance of electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, each district shall own an undivided interest in each such facility and be entitled to the share of the output or capacity therefrom attributable to its undivided interest. Each district may enter into an agreement or agreements with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other district or districts, and such agreement shall contain such terms, conditions, and provisions consistent with this section as the board of directors of the district shall deem to be in the interests of the district.

(2) The agreement may include, but not be limited to, (a) provisions for the construction, operation, and maintenance of an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility by any one of the participating districts, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participating districts or by such other means as may be determined by the participating districts and (b) provisions for a uniform method of determining and allocating among participating districts the costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as the agent with respect to construction, operation, and maintenance of a facility, such agent shall be governed by the laws and regulations applica-

ble to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating districts.

(3) Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of the agreement any participating district or districts may delegate its powers and duties with respect to the construction, operation, and maintenance of a facility to the participating district acting as agent, and all actions taken by such agent in accordance with the provisions of the agreement shall be binding upon each of such participating districts without further action or approval by their respective boards of directors. The district acting as the agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice shall mean any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in this section be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other district participating in such electric generation or transmission facility. Any district that is interested by ownership, lease, or otherwise in the operation of electric power plants, distribution systems, or transmission lines, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities, either alone or in association with another district or districts, may sell, lease, combine, merge, or consolidate all or a part of its property with the property of any other district or districts with the approval of a majority of the board of directors of each district involved in the sale, lease, combination, merger, or consolidation.

Source: Laws 1943, c. 146, § 3(5), p. 523; R.S.1943, § 70-628.01; Laws 1955, c. 267, § 3, p. 844; Laws 1975, LB 62, § 1; Laws 1986, LB 1230, § 38; Laws 1990, LB 907, § 2; Laws 2005, LB 139, § 7.

70-628.02 Joint exercise of powers with municipalities and public agencies; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with municipalities and other public agencies in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such need and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities located within or outside this state, hydrogen production, storage, or distribution facilities located within this state, or ethanol production or distribution facilities within this state jointly and in cooperation with one or more other such districts, cities, or

villages of this state which own or operate electrical facilities or municipal corporations or other governmental entities of other states which own or operate electrical facilities. The powers granted under this section may be exercised with respect to any electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 1; Laws 1986, LB 1230, § 39; Laws 1997, LB 658, § 9; Laws 2005, LB 139, § 8.

70-628.03 Joint exercise of powers with electric cooperatives or corporations; authority.

The Legislature declares that it is in the public interest of the State of Nebraska that public power districts and public power and irrigation districts be empowered to participate jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state in the establishment and operation of facilities for the generation or transmission of electric power and energy located within or outside this state, for the production, storage, and distribution of hydrogen located within this state, or for the production and distribution of ethanol located within this state in order to achieve economies and efficiencies in meeting the future energy needs of the people of the State of Nebraska. In furtherance of such end and in addition to but not in substitution for any other powers granted such districts, each such district shall have and may exercise its power and authority to plan, finance, acquire, construct, own, operate, maintain, and improve electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities located in this state jointly and in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state, and each district shall have and may exercise such power and authority with respect to electric generation or transmission facilities located outside of this state jointly or in cooperation with one or more electric cooperatives or electric membership corporations organized under the laws of this state or any other state. The power granted under this section may be exercised with respect to any electric generation or transmission facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities jointly with the powers granted under any other provision of sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04.

Source: Laws 1975, LB 104, § 2; Laws 1986, LB 1230, § 40; Laws 1997, LB 658, § 10; Laws 2005, LB 139, § 9.

70-628.04 Joint exercise of powers; agreement; terms and conditions; agent; powers and duties; liability of district.

Any public power district or public power and irrigation district participating jointly and in cooperation with others in an electric generation or transmission facility, a hydrogen production, storage, or distribution facility, or an ethanol production or distribution facility shall own an undivided interest in such facility and be entitled to the share of the output or capacity from the facility attributable to such undivided interest. Such district may enter into an agree-

ment or agreements with respect to each such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility with the other participants, and any such agreement shall contain such terms, conditions, and provisions consistent with the provisions of sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 as the board of directors of such district shall deem to be in the interests of such district. The agreement may include, but not be limited to, provision for the construction, operation, and maintenance of such electric generation or transmission facility, hydrogen production, storage, or distribution facility, or ethanol production or distribution facility by any one of the participants, which shall be designated in or pursuant to such agreement as agent, on behalf of itself and the other participants or by such other means as may be determined by the participants and provision for a uniform method of determining and allocating among participants costs of construction, operation, maintenance, renewals, replacements, and improvements with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, including without limitation the letting of contracts therefor, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participants. Notwithstanding the provisions of any other law to the contrary, pursuant to the terms of any such agreement in which or pursuant to which a public power district or a public power and irrigation district or a city or village of this state shall be designated as the agent thereunder for the construction, operation, and maintenance of such a facility, each of the participants may delegate its powers and duties with respect to the construction, operation, and maintenance of such facility to such agent and all actions taken by such agent in accordance with the provisions of such agreement shall be binding upon each of such participants without further action or approval by their respective boards of directors or governing bodies. Such agent shall be required to exercise all such powers and perform its duties and functions under the agreement in a manner consistent with prudent utility practice. For purposes of this section, prudent utility practice means any of the practices, methods, and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts including, but not limited to, the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry, hydrogen production industry, or ethanol production industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. In no event shall anything in sections 13-803, 13-805, 13-2504, 13-2505, 70-628.02 to 70-628.04, and 70-1002.03 be deemed to authorize any district to become liable for and to pay for any costs, expenses, or liabilities attributable to the undivided interest of any other participant in such electric generation or transmission facility, and no funds of such district may be used for any such purpose.

Source: Laws 1975, LB 104, § 3; Laws 1986, LB 1230, § 41; Laws 1997, LB 658, § 11; Laws 1999, LB 87, § 82; Laws 2005, LB 139, § 10.

70-629 Power to tax denied; exception.

Except for the authority to make assessments granted by section 70-667 to districts organized under or subject to Chapter 70, article 6, the district shall

have no power of taxation, and no governmental authority shall have the power to levy or collect taxes for the purpose of paying, in whole or in part, any indebtedness or obligation of or incurred by the district or upon which the district may be or become in any manner liable.

Source: Laws 1933, c. 86, § 8, p. 350; C.S.Supp.,1941, § 70-708; R.S. 1943, § 70-629; Laws 1971, LB 626, § 1; Laws 1981, LB 181, § 20.

Power of taxation is denied to public power districts. Platte Valley P. P. & I. Dist. v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944).

70-630 Water storage or service; contract required; conditions.

No person, irrigation district or irrigation company shall be liable for the payment of any rent or charge for water storage or service unless a contract therefor has been entered into between such person, irrigation district or irrigation company, and the power and irrigation district furnishing such water storage or such water service. No contract for water service shall be made or continued if the rates, tolls, rents, or charges for such service do not provide the person, irrigation district or irrigation company, or the power and irrigation district with the benefits of an overall profitable and successful operation as provided for in section 70-655, and each contract shall contain such a provision; *Provided,* that if such a provision shall be omitted from any contract, the contract shall be subject to the provisions of this section regardless of the price or prices stated in such contract.

Source: Laws 1933, c. 86, § 8, p. 350; C.S.Supp.,1941, § 70-708; R.S. 1943, § 70-630; Laws 1974, LB 822, § 1.

70-631 Power to borrow; repayment of indebtedness; source of funds; security for indebtedness.

Any district organized under or subject to Chapter 70, article 6, shall have the power to borrow money and incur indebtedness for any corporate use or purpose upon such terms and in such manner as such district shall determine. Any and every indebtedness, liability, or obligation of such district for the payment of money, in whatever manner entered into or incurred, and whether arising from contract, implied contract, or otherwise, shall be payable solely (1) from revenue, income, receipts, and profits derived by the district from its operation and management of power plants, systems, irrigation works, hydrogen producing systems, ethanol producing systems, and from the exercise of its rights and powers with respect to utilization of radioactive material or the energy therefrom or (2) from the issuance or sale by the district of its warrants, notes, debentures, bonds, or other evidences of indebtedness, payable solely from such revenue, income, receipts, and profits, or from the proceeds and avails of the sale of property of the district. Any such district may pledge and put up as collateral security for a loan any revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued by it. Any district may arrange for, or put up as security for notes or other evidences of indebtedness of such district, the credit of any bank or other financial institution which has been approved by the directors of such district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-631; Laws 1944, Spec.

Sess., c. 6, § 1(1), p. 110; Laws 1959, c. 316, § 3, p. 1160; Laws 1967, c. 422, § 1, p. 1297; Laws 1981, LB 181, § 21; Laws 1983, LB 11, § 1; Laws 1986, LB 1230, § 42; Laws 2005, LB 139, § 11.

That the statute restricts funds out of which a district may pay its liabilities to revenues derived from operation does not render unconstitutional the grant of power to condemn property prior to commencement of operations. Johnson v. Platte Valley Public Power and Irrigation Dist., 133 Neb. 97, 274 N.W. 386 (1937).

District is not exempt from payment of charges under Federal Power Act. Central Neb. P. P. & I. Dist. v. Federal Power Commission, 160 F.2d 782 (8th Cir. 1947).

70-632 Indebtedness; pledge of revenue, how made.

Any district issuing revenue debentures, notes, warrants, bonds, or other evidences of indebtedness is hereby specifically authorized and empowered to pledge all or any part of the revenue which the district may derive from the sale of electrical energy, hydrogen produced for use in fuel processes, ethanol produced for fuel, storage of water, water for irrigation, radioactive material or the energy therefrom, or other service as security for the payment of the principal and interest thereon. Any such pledge of revenue shall be made by the directors of the district by resolution or by agreement with the purchasers or holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-632; Laws 1944, Spec. Sess., c. 6, § 1(2), p. 110; Laws 1959, c. 316, § 4, p. 1161; Laws 1986, LB 1230, § 43; Laws 2005, LB 139, § 12.

70-633 Pledge of revenue; terms; directors to prescribe; officer of district; powers authorized.

Any such resolution or agreement may specify the particular revenue that is pledged and the terms and conditions to be performed by the district and the rights of the holders of such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, and may provide for priorities of liens in any such revenue as between the holders of revenue debentures, notes, warrants, bonds, or other evidences of indebtedness, issued at different times or under different resolutions or agreements. Any resolution authorizing the issuance of notes may provide for a designated officer or officers of the district to sell the notes from time to time at such price or prices and in such amounts as shall be within the limitations set forth in such resolution. Such resolution may also authorize such officer or officers to determine interest rates, maturity dates, and other terms of such notes subject to any limitations which are necessary and appropriate, as determined by the district's board of directors, to effectuate the issuance and purposes of such notes, as set forth in the resolution.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-633; Laws 1944, Spec. Sess., c. 6, § 1(3), p. 110; Laws 1983, LB 11, § 2.

70-634 Pledge of revenue; provision for refunding indebtedness.

Such resolution or agreement may further provide for the refunding of any such revenue debentures, notes, warrants, bonds or other evidences of indebtedness, through the issuance of other revenue debentures, notes, warrants, bonds or other evidences of indebtedness, entitled to rights and priorities similar in all respects to those held by the revenue debentures, notes, warrants,

bonds or other evidences of indebtedness, that are refunded, and for the issuance of such refunding revenue debentures, notes, warrants, bonds or other evidences of indebtedness, either in exchange for revenue debentures, notes, warrants, bonds or other evidences of indebtedness then outstanding, or the sale thereof and the application of the proceeds of such sale to the retirement of the revenue debentures, notes, warrants, bonds or other evidences of indebtedness, then outstanding.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-634; Laws 1944, Spec. Sess., c. 6, § 1(4), p. 111.

70-635 Pledge of revenue; special fund.

Any such resolution or agreement may provide that all or any part of the revenue of the district shall be paid into a special fund, and may set forth all the terms and conditions on which such special fund is to be collected, held and disposed of, whether partly or wholly for the benefit of the holders of such revenue debentures, notes, warrants, or other evidences of indebtedness. Provision may be made that such special fund shall be held by depositories designated or described in such resolution or agreement.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-635; Laws 1944, Spec. Sess., c. 6, § 1(5), p. 111.

70-635.01 Repealed. Laws 1967, c. 422, § 2.

70-636 District; rates; agreement with security holders.

The directors of any district organized under or subject to Chapter 70, article 6, are authorized to agree with the holders of any such revenue debentures, notes, warrants, bonds, or other evidences of indebtedness as to the maximum or minimum amounts which such district shall charge and collect for water, electric energy, radioactive material or the energy therefrom, hydrogen, ethanol, or other service sold by the district.

Source: Laws 1933, c. 86, § 9, p. 350; Laws 1937, c. 152, § 6, p. 585; C.S.Supp.,1941, § 70-709; R.S.1943, § 70-636; Laws 1944, Spec. Sess., c. 6, § 1(7), p. 113; Laws 1959, c. 316, § 5, p. 1161; Laws 1981, LB 181, § 22; Laws 1986, LB 1230, § 44; Laws 2005, LB 139, § 13.

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. Blankenship v. Omaha P. P. Dist., 195 Neb. 170, 237 N.W.2d 86 (1976).

70-637 Construction, repairs, and improvements; contracts; sealed bids; exceptions; notice; when.

(1) A district shall cause estimates of the costs to be made by some competent engineer or engineers before the district enters into any contract for:

(a) The construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement, for the use of the district, of any:

(i) Power plant or system;

(ii) Hydrogen production, storage, or distribution system;

(iii) Ethanol production or distribution system;

(iv) Irrigation works; or

(v) Part or section of a system or works described in subdivisions (i) through (iv) of this subdivision; or

(b) The purchase of any materials, machinery, or apparatus to be used in the projects described in subdivision (1)(a) of this section.

(2) If the estimated cost exceeds the sum of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, no such contract shall be entered into without advertising for sealed bids.

(3) Notwithstanding the provisions of subsection (2) of this section and sections 70-638 and 70-639, the board of directors of the district may negotiate directly with sheltered workshops pursuant to section 48-1503.

(4)(a) The provisions of subsection (2) of this section and sections 70-638 and 70-639 relating to sealed bids shall not apply to contracts entered into by a district in the exercise of its rights and powers relating to (i) radioactive material or the energy therefrom, (ii) any technologically complex or unique equipment, (iii) equipment or supplemental labor procurement from an electric utility or from or through an electric utility alliance, or (iv) any maintenance or repair, if the requirements of subdivisions (b) and (c) of this subsection are met.

(b) A contract described in subdivision (a) of this subsection need not comply with subsection (2) of this section or section 70-638 or 70-639 if:

(i) The engineer or engineers certify that, by reason of the nature of the subject matter of the contract, compliance with subsection (2) of this section would be impractical or not in the public interest;

(ii) The engineer's certification is approved by a two-thirds vote of the board; and

(iii) The district advertises notice of its intention to enter into such contract, the general nature of the proposed work, and the name of the person to be contacted for additional information by anyone interested in contracting for such work.

(c) Any contract for which the board has approved an engineer's certificate described in subdivision (b) of this subsection shall be advertised in three issues not less than seven days between issues in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of its intention to enter into such contract, and any such contract shall not be entered into prior to twenty days after the last advertisement.

(5) The provisions of subsection (2) of this section and sections 70-638 and 70-639 shall not apply to contracts in excess of two hundred fifty thousand dollars, for those districts with a gross revenue of less than five hundred million dollars, or five hundred thousand dollars, for those districts with a gross revenue of five hundred million dollars or more, entered into for the purchase of any materials, machinery, or apparatus to be used in projects described in subdivision (1)(a) of this section if, after advertising for sealed bids:

(a) No responsive bids are received; or

(b) The board of directors of such district determines that all bids received are in excess of the fair market value of the subject matter of such bids.

(6) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase replacement parts or services relating to such replacement parts for any generating unit, transformer, or other transmission and distribution equipment from the original manufacturer of such equipment upon certification by an engineer or engineers that such manufacturer is the only available source of supply for such replacement parts or services and that such purchase is in compliance with standards established by the board. A written statement containing such certification and a description of the resulting purchase of replacement parts or services from the original manufacturer shall be submitted to the board by the engineer or engineers certifying the purchase for the board's approval. After such certification, but not necessarily before the board review, notice of any such purchase shall be published once a week for at least three consecutive weeks in one or more newspapers of general circulation in the district and published in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of such purchase.

(7) Notwithstanding any other provision of subsection (2) of this section or sections 70-638 and 70-639, a district may, without advertising or sealed bidding, purchase used equipment and materials on a negotiated basis upon certification by an engineer that such equipment is or such materials are in compliance with standards established by the board. A written statement containing such certification shall be submitted to the board by the engineer for the board's approval.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-637; Laws 1955, c. 268, § 1, p. 847; Laws 1959, c. 316, § 6, p. 1161; Laws 1967, c. 423, § 1, p. 1299; Laws 1975, LB 63, § 1; Laws 1981, LB 34, § 2; Laws 1984, LB 152, § 1; Laws 1984, LB 540, § 11; Laws 1986, LB 1230, § 45; Laws 1998, LB 1129, § 2; Laws 1999, LB 566, § 2; Laws 2005, LB 139, § 14; Laws 2007, LB636, § 6; Laws 2008, LB939, § 3; Laws 2009, LB300, § 1.

70-638 Contracts; sealed bids; advertisement.

Prior to advertisement for sealed bids, plans and specifications for the proposed work or materials shall be prepared and filed at the principal office or place of business of the district. Such advertisement shall be made in three issues, not less than seven days between issues, in one or more newspapers of general circulation in the district and in such additional newspapers or trade or technical periodicals as may be selected by the board in order to give proper notice of the receiving of bids. Such advertisement shall designate the nature of the work proposed to be done or materials proposed to be purchased, that the plans and specifications therefor may be inspected at the office of the district, giving the location thereof, and shall designate the time within which bids shall be filed, and the date, hour and place the same shall be opened.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-638; Laws 1981, LB 34, § 3.

70-639 Letting of contracts; considerations.

The board of directors of the district may let the contract for such work or materials to the responsible bidder who submits the lowest and best bid or, in the sole discretion of the board, all bids tendered may be rejected, and readvertisement for bids made, in the manner, form, and time as provided in section 70-638. In determining whether a bidder is responsible, the board may consider the bidder's financial responsibility, skill, experience, record of integrity, ability to furnish repairs and maintenance services, ability to meet delivery or performance deadlines, and whether the bid is in conformance with specifications. Consideration may also be given by the board of directors to the relative quality of supplies and services to be provided, the adaptability of machinery, apparatus, supplies, or services to be purchased to the particular uses required, to the preservation of uniformity, and the coordination of machinery and equipment with other machinery and equipment already installed. No such contract shall be valid nor shall any money of the district be expended thereunder unless advertisement and letting shall have been had as provided in this section and sections 70-637 and 70-638.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-639; Laws 1951, c. 223, § 1, p. 795; Laws 1955, c. 269, § 1, p. 848; Laws 1981, LB 34, § 4.

70-640 Contracts; Nebraska workmen preferred.

Such contract shall provide that, wherever possible, workmen who are citizens of Nebraska shall be employed by the contractor.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S. 1943, § 70-640.

70-641 Contracts; bonds; laws applicable.

All provisions of section 52-118, with reference to contractors' bonds, shall be applicable and effective as to any contract let pursuant to the provisions of sections 70-637 to 70-640, except that with respect to any electric generating facility, the penal sum of any contractor's bond shall be the lesser of the contract amount or two hundred million dollars. The bond required by section 52-118 may be satisfied by a corporate surety or letter of credit, or combination thereof, approved by the district.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 524; R.S.1943, § 70-641; Laws 2003, LB 655, § 9.

70-642 Damage, injury, or impairment to district property; emergencies; procedure.

In the event of sudden or unexpected damage, injury or impairment of such plant, works, system, or other property belonging to the district, or an order of a regulatory body which would prevent compliance with section 70-637, the board of directors may, in its discretion, declare an emergency, and proceed with the necessary construction, reconstruction, remodeling, building, alteration, maintenance, repair, extension, or improvement without first complying with the provisions of sections 70-637 to 70-641.

Source: Laws 1933, c. 86, § 10, p. 351; C.S.Supp.,1941, § 70-710; Laws 1943, c. 146, § 4, p. 523; R.S.1943, § 70-642; Laws 1981, LB 34, § 5.

70-642.01 Conditions created by war or national defense; contracting requirements inapplicable.

When, by reason of disturbed or disrupted economic conditions due to the prosecution of war or due to the operation of laws, rules or regulations of governmental authorities, whether enacted, passed, promulgated or issued under or due to the emergency or necessities of war or national defense, the contracting or purchasing by the district, for any one or more of the purposes mentioned in sections 70-637 to 70-640, is so restricted, prohibited, limited, allocated, regulated, rationed, or otherwise controlled, that the letting of contracts therefor, pursuant to the requirements of said sections, is legally or physically impossible or impractical, the provisions of said sections shall not apply to such contracts or purchases.

Source: Laws 1943, c. 146, § 4, p. 525; R.S.1943, § 70-642.01.

70-642.02 Contracts; interest of board member prohibited, when; effect.

No member of the board of directors shall be interested, directly or indirectly, in any contract to which the district, or any one for its benefit, is a party, and any such director who shall have such an interest shall be subject to removal from office therefor by the remaining members of the board, subject to review of such action by the district court of the county in which the district maintains its principal place of business. Such interest in any contract by a director shall void the obligation thereof on the part of the power district. Ownership of less than one percent of the outstanding stock of any one class of any corporation shall not constitute an interest, direct or indirect, within the meaning of this section. The receiving and holding of deposits, cashing of checks, and buying, selling, or holding bonds of indebtedness of a district by a financial institution, or any one or more of such activities, shall not be considered a contract within the meaning of this section.

Source: Laws 1943, c. 146, § 4, p. 525; R.S.1943, § 70-642.02; Laws 1969, c. 549, § 1, p. 2205; Laws 1971, LB 346, § 1.

70-642.03 Repealed. Laws 1997, LB 764, § 113.

70-642.04 Repealed. Laws 1997, LB 764, § 113.

70-643 District; funds; how expended; bond, when required.

(1) Money of the district shall be paid out or expended only upon the authorization or approval of the board of directors by specific agreement, a written contract, or by a resolution. All money of the district shall be paid out or expended only by check, draft, warrant, or other instrument in writing, signed by the treasurer, assistant treasurer, or such other officer, employee, or agent of the district as shall be authorized by the treasurer to sign in his or her behalf; *Provided,* such authorization shall be in writing and filed with the secretary of the district.

(2) Money of the district paid out or expended shall be examined by the board of directors at a regular meeting within two months following such expenditure.

(3) In the event that the treasurer's bond shall not expressly insure the district against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any and

every person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the district, together with the written authorization filed with the secretary of the board, a surety bond, effective for protection against such loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the district other than the treasurer. The secretary shall report to the board at each meeting any such bonds filed, or any change in the status of any such bonds, since the last previous meeting of the board.

Source: Laws 1933, c. 86, § 11, p. 353; C.S.Supp.,1941, § 70-711; Laws 1943, c. 146, § 5, p. 525; R.S.1943, § 70-643; Laws 1981, LB 34, § 6.

70-644 District facilities and property; mortgage authorized; when.

No power plant, system, or irrigation works owned by a district shall be sold, alienated or mortgaged by such district, except under the circumstances set forth in this section and sections 70-645 to 70-653.02. If, in order to borrow money from the federal government, the Rural Electrification Administration, the Public Works Administration, from any loan or finance corporation or agency established under federal law, including the Reconstruction Finance Corporation, or its successor, or a cooperative nonprofit corporation organized to provide financing, it shall become necessary that a district mortgage, or otherwise hypothecate, any or all of its property or assets to secure the payment of a loan or loans made to it by or from such source or sources, such district is hereby authorized and empowered to do so.

Source: Laws 1933, c. 86, § 12, p. 353; Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S.1943, § 70-644; Laws 1972, LB 1347, § 1.

This section does not conflict with the provisions of former section 70-657 prohibiting lease or alienation by a district of its franchise, plant, or physical equipment. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

70-645 Pledge of revenue; authorized; when.

Nothing in sections 70-644 to 70-653.02 contained shall prevent the district from assigning, pledging, or otherwise hypothecating, its revenue, incomes, receipts, or profits to secure the payment of indebtedness to the federal government; *Provided,* that the State of Nebraska shall never pledge its credit or funds, or any part thereof, for the payment or settlement of any indebtedness or obligation whatsoever of any district created under or subject to the provisions of Chapter 70, article 6.

Source: Laws 1933, c. 86, § 12, p. 353; Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S.1943, § 70-645; Laws 1981, LB 181, § 23.

District does business at profit or loss so as to be subject to payment of charges under Federal Power Act. Central Neb. P. P. & I. Dist. v. Federal Power Commission, 160 F.2d 782 (8th Cir. 1947).

70-646 Repealed. Laws 1997, LB 658, § 16.

70-646.01 District property; alienation to private power producers prohibited; exceptions.

Except as provided in sections 18-412.07 to 18-412.09, 70-628.02 to 70-628.04, or 70-644 to 70-653.02, the plant, property, or equipment of a public power district shall never, by sale under foreclosure, receivership, bankruptcy proceedings, outright sale, or lease, become the property or come under the control of any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This restriction does not apply to: (1) The exercise by a district of its rights and powers with respect to radioactive material or the energy therefrom; (2) the sales of ethanol production or distribution facilities; (3) the sales of hydrogen production, storage, or distribution facilities; (4) joint participation in any electric generation or transmission facility pursuant to sections 18-412.07 to 18-412.09 and 70-628.02 to 70-628.04; or (5) a nonprofit cooperative corporation that has provided financing for property, projects, or undertakings when such property is covered by a mortgage, pledge of revenue, or other hypothecation to secure the payment of a loan or loans made to a district. This restriction does not apply to a sale, transfer, or lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas, which cooperative corporation is organized under the laws of the State of Nebraska or domesticated in the State of Nebraska, except that such property so acquired by a cooperative nonprofit corporation organized to provide financing or by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit. This section shall not be construed as an expansion of the authority of public power districts to engage in telecommunications services as may otherwise be authorized by statute.

Source: Laws 1997, LB 658, § 12; Laws 2005, LB 139, § 15.

70-647 Indebtedness; default; possession by creditors; agreement authorized; terms; property restored to district; when.

In order to protect and safeguard the security and the rights of the purchasers or holders of revenue debentures, notes, warrants, or other evidences of indebtedness, issued by any district organized under or subject to Chapter 70, article 6, each such district may agree with such purchasers or holders that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, or in the event of default in performance of any duty or obligation of such district in connection therewith, such purchasers or holders, or trustee selected by them, may take possession and control of the business and the property of the district, and proceed to operate the same, and to collect and receive the income thereof, and after paying all necessary and proper operating expenses and all other proper disbursements or liabilities made or incurred, use the surplus, if any there be, of the revenue of the district as follows: (1) In the payment of all outstanding past-due interest on each issue of revenue debentures, notes, warrants, or other evidences of indebtedness, so far as such net revenue will go, and paying pro rata the interest due on each issue thereof when there is not enough to pay in full all of the interest; and (2) if any sums shall remain after the payment of interest as aforesaid, then in the payment of the revenue debentures, notes, warrants, or other evidences of indebtedness, which, by the terms thereof, shall be due and payable on each outstanding issue in accordance with the terms thereof, and paying pro rata when the money available is

not sufficient to pay in full. When all legal taxes and charges, and all arrears of interest, and all matured revenue debentures, notes, warrants, or other evidences of indebtedness, have been paid in full, the control of the business and the possession of the property of the district shall then be restored to such district. The privilege herein granted shall be a continuing one as often as the occasion therefor may arise.

Source: Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 526; R.S. 1943, § 70-647; Laws 1981, LB 181, § 24.

70-648 Receivership; when authorized; discharge of receiver; when.

The board of directors of any district organized under or subject to Chapter 70, article 6, issuing revenue debentures, notes, warrants, or other evidences of indebtedness is hereby also authorized and empowered to agree and contract with the purchasers or holders thereof that in the event of default in the payment of interest on, or principal of, any such revenue debentures, notes, warrants, or other evidences of indebtedness, issued, or in the event of default in the performance of any duty or obligation under any agreement by such district, the holder or holders of such revenue debentures, notes, warrants, or other evidences of indebtedness then outstanding shall be entitled as a matter of right, upon application to a court of competent jurisdiction, to have appointed a receiver of the business and property of the district, including all tolls, rents, revenue, issues, income, receipts, profits, benefits, and additions derived, received or had thereof or therefrom, with power to operate and maintain such business and property, collect, receive, and apply all revenue, income, profits, and receipts arising therefrom, and prescribe rates, tolls, and charges, in the same way and manner as the district might do. Whenever all defaults in the payment of principal of, and interest on, such revenue debentures, notes, warrants, or other evidences of indebtedness, and any other defaults under any agreement made by the district, shall have been made good, such receiver shall be discharged by the court and shall therefor surrender control of the business and possession of the property in his or her hands to the district.

Source: Laws 1937, c. 152, § 7, p. 587; Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 527; R.S. 1943, § 70-648; Laws 1981, LB 181, § 25.

70-649 Plant and system; sale to public agency; authorized; transfer of distribution facilities; restrictions; exception.

Any public power district or public power and irrigation district may sell to any public power district, public power and irrigation district, irrigation district, city or village, any power plant, electric generating plant, electric distribution system, or any parts thereof, for such sums and upon such terms as the board of directors of such public power district or public power and irrigation district may deem fair and reasonable. As a part of an agreement establishing retail service areas pursuant to section 70-1002, a district may transfer distribution facilities having a rating of less than fifteen thousand volts to a nonprofit rural electric membership corporation in exchange for similar facilities transferred to the district by the membership corporation with a net cash differential to be paid by either party not to exceed ten thousand dollars in any one transaction, but this restriction shall not apply to a sale, transfer or

lease of property to a nonprofit electric cooperative corporation engaged in the retail distribution of electric energy in established service areas and which cooperative corporations are organized under the laws of the State of Nebraska or domesticated in the State of Nebraska; *Provided,* that such property so acquired by a nonprofit electric cooperative corporation shall never become the property or come under the control of any person, firm, or corporation engaged in the business of generating, transmitting or distributing electricity for profit.

Source: Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 528; R.S.1943, § 70-649; Laws 1963, c. 397, § 21, p. 1267; Laws 1969, c. 551, § 2, p. 2209.

70-650 Plant and system; sale to city or village; when required; valuation and severance damages; procedure.

Whenever any public power district or public power and irrigation district shall, as herein provided, acquire, by purchase, lease, or otherwise, any electric distribution system, or any part or parts thereof, situated within or partly within any city or village, if any part of such system be within such city or village, such acquisition shall be upon the condition that such city or village may purchase, and such district shall be required to sell to such city or village, such electric distribution system, situated within or partly within such city or village, but not within the corporate limits of any other city or village, by paying to such public power district or public power and irrigation district such sum as is fair and reasonable, including reasonable severance damages. If any city or village and such district shall fail to agree upon a price and terms for the sale of such property to such city or village, the procedure for determining such price and terms of sale, and for compelling such sale shall be the same as is provided by sections 19-701 to 19-706. In determining the amount of such severance damages, the court shall take into account, together with other relevant factors, the economic effect, if any, caused by the severance therefrom of the part taken upon the system as a going concern as it will be and remain after the severance. When the sum that is fair and reasonable shall have been determined as above provided, the court shall deduct therefrom and allow as a credit upon such sum an amount that bears the same proportion to such sum as the amount of the bonds that have been paid, redeemed or liquidated, and the reserves established therefor by said district, out of the earnings from the operation of the district while such city or village was within and a part of such district, bears to the total amount of the bonded indebtedness of such district issued to finance the purchase price and the cost of construction of the entire property of such district. In entering its award the court shall show how much of the total thereof was allowed for the physical property taken and how much was allowed for other values and damages, if any.

Source: Laws 1939, c. 88, § 1, p. 382; C.S.Supp.,1941, § 70-712; Laws 1943, c. 146, § 6, p. 528; R.S.1943, § 70-650; Laws 1945, c. 161, § 1, p. 524.

Cross References

Eminent domain powers of municipalities:
Cities of the first class, see section 16-674 and Chapter 19, article 7.
Cities of the metropolitan class, see sections 14-366 and 14-376.
Cities of the primary class, see section 15-229 and Chapter 19, article 7.
Cities of the second class and villages, see Chapter 19, article 7.

Prior case construing this section distinguished. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

The taking under eminent domain by a city from a public power district is limited to the electric distribution system. Consumers Public Power Dist. v. Eldred, 146 Neb. 926, 22 N.W.2d 188 (1946).

Power to purchase other electric plants is conferred. State ex rel. Johnson v. Consumers Public Power Dist., 143 Neb. 753, 10 N.W.2d 784 (1943).

This statute, providing a method of purchase by agreement which may be used by a municipal corporation desiring to buy a public utility system from a public power district, does not conflict with article 7 of Chapter 19 making provision for purchase of public utilities through the exercise of the power of eminent domain. State ex rel. Consumers Public Power District v. Boettcher, 138 Neb. 22, 291 N.W. 709 (1940).

Provision of this section that a city or village acquiring a distribution system from a public power district may not purchase lines within the corporate limits of any other city or village indicates the Legislature had no intention to give to a city or village any coercive power to extend its utility service into the boundaries of another municipality. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

70-650.01 Electric distribution system; city or village; conveyed on request; when; notice required; referendum.

Except as provided in sections 70-1101 to 70-1106, whenever any public power district or public power and irrigation district shall have acquired, by purchase, lease or otherwise, any electric distribution system, or any part or parts thereof, situated within or partly within any city or village, and such district shall have fully paid and redeemed, or have accumulated reserves sufficient for the redemption of, all of the bonds or other obligations of the district evidencing the indebtedness incurred as the cost of construction or the purchase price of its lines, works and system, then and in that event, whenever any such city or village shall so request, the said district shall convey without cost all of its right, title and interest in and to its electric distribution system, as distinguished from its generating plants and transmission lines, to the said city or village within the territorial limits of which such system is located. The request of such city or village shall be exercised by a resolution duly adopted by its governing body. Such resolution shall not become effective until thirty days' notice of the adoption thereof shall have been given by the governing body by publication once each week for three successive weeks in some legal newspaper published and of general circulation in such city or village, or if no such newspaper is published therein, then by posting in five or more public places therein. If, within thirty days after the last publication of such notice or posting thereof, a referendum petition signed by qualified electors of such city or village equal in number to at least twenty percent of the vote cast at the last general municipal election held therein shall be filed with the municipal clerk, such resolution shall not become effective until it has been approved by a vote of the electors of such municipality at any general or special municipal election. If a majority of the voters voting on the issue vote against such resolution, the resolution shall not become effective. If no such petitions are filed, the resolution shall become effective at the expiration of such thirty-day period. In the absence of an agreement between any city or village and the public power district, the city or village may at any time determine what shall be included in the term distribution system by a declaratory judgment in which the public power district or public power and irrigation district owning the distribution system shall be joined. This section shall not: (1) Prevent the refinancing or changing of the form of the outstanding indebtedness of the district existing on May 4, 1945, where the amount of the outstanding bonds or other evidences of indebtedness representing the cost of existing facilities shall not be increased nor the time of payment extended by any obligations for which the revenue received through the said electric distribution systems is pledged, or (2) prevent the issuance of other and different series of bonds of the district representing the cost of acquisition or construction of additional electric facilities, or the pledging of the revenue of such additional facilities for the payment of such

other or further series of bonds, or to prevent the board of directors of the said district, by a duly adopted resolution, from making reasonable determinations of the amount of the revenue of the district attributable to such additional facilities.

Source: Laws 1945, c. 161, § 2, p. 525; Laws 1963, c. 398, § 1, p. 1269; Laws 1963, c. 393, § 1, p. 1247.

Cross References

Retail electric service, city or village, see sections 70-1101 to 70-1106.

By this section the Legislature intended that the courts make a factual determination in each case as to what is included in an electrical transmission system or distribution system. Nebraska P. P. Dist. v. City of York, 212 Neb. 747, 326 N.W.2d 22 (1982).

Municipality is permitted to acquire distribution system from public power district without cost on January 1, 1972. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

Conflicting interpretation of this section by parties noted but not decided. Inslee v. City of Bridgeport, 153 Neb. 559, 45 N.W.2d 590 (1951).

70-650.02 Repealed. Laws 1982, LB 592, § 2.

70-651 Repealed. Laws 1959, c. 317, § 6.

70-651.01 Districts; payments in lieu of taxes.

Every public power district or public power and irrigation district owning property with respect to which it made payments in lieu of taxes in the 1957 calendar year, shall, so long as it continues to own such property, continue to pay annually the same amounts in the same manner. The directors of any such district shall not have any personal liability by reason of such payments made either before or after September 28, 1959.

Source: Laws 1959, c. 317, § 1, p. 1163.

70-651.02 Districts; payments in lieu of taxes; distribution; use.

The officer receiving payment under section 70-651.01 shall distribute to the state and to each governmental subdivision of the state entitled thereto a part of such payment equivalent to that part of the payment which it received in 1957 in lieu of taxes for property located within its boundaries. The payment may be used for such purposes as the governing body of the state or governmental subdivision prescribes.

Source: Laws 1959, c. 317, § 2, p. 1163.

70-651.03 Districts; gross revenue tax; how determined.

Beginning in 1960, every public corporation and political subdivision of the state, which is organized primarily to provide electricity or irrigation and electricity, and which sells electricity at retail within incorporated cities or villages, shall on or before April 1, of each year, pay to the county treasurer of the county in which any such incorporated city or village may be located, a sum equivalent to five percent of the gross revenue derived by it during the preceding calendar year from retail sales of electricity within such incorporated city or village, less an amount equivalent to the amount paid by such public corporation in lieu of taxes in the 1957 calendar year with respect to its properties in such city or village.

Source: Laws 1959, c. 317, § 3, p. 1163.

70-651.04 Districts; gross revenue tax; distribution.

All payments which are based on retail revenue from each incorporated city or village shall be divided and distributed by the county treasurer to that city or village, to the school districts located in that city or village, and to the county in which may be located any such incorporated city or village in the proportion that their respective property tax levies in the preceding year bore to the total of such levies.

Source: Laws 1959, c. 317, § 4, p. 1164; Laws 1979, LB 187, § 183; Laws 1993, LB 346, § 6; Laws 1995, LB 732, § 1.

70-651.05 Public power districts; payment made in lieu of other taxes and fees; exceptions.

All payments made under sections 70-651.01 to 70-651.05 shall be in lieu of all other taxes, payments in lieu of taxes, franchise payments, occupation taxes, and excise taxes but shall not be in lieu of motor vehicle licenses and wheel taxes, permit fees, fuel taxes, and other such excise taxes or general sales taxes levied against the public generally.

Source: Laws 1959, c. 317, § 5, p. 1164; Laws 1997, LB 271, § 37; Laws 1998, LB 306, § 16.

70-652 Repealed. Laws 1959, c. 317, § 6.

70-653 Repealed. Laws 1959, c. 317, § 6.

70-653.01 Electric distribution system; purchase by city or village; payment in lieu of taxes.

Any city or village which has purchased or acquired before June 10, 1947, the plant or property of an existing electric distribution system furnishing electric energy for heat, light, power or other purposes for use within such city or village from any public power district or public power and irrigation district may annually pay out of the revenue of such system to the State of Nebraska, county, city, village or school district in which such public utility is located, in lieu of taxes, a sum equal to the amount which the state, county, city, village or school district received in lieu of taxes from the public power district or public power and irrigation district.

Source: Laws 1947, c. 227, § 1, p. 721.

70-653.02 Cities and villages; payment in lieu of taxes; how paid.

All sums of money to be paid by such cities or villages in lieu of taxes may be paid at the times, places, and to the tax-collecting officers, as now or may hereafter be provided by law for the payment of taxes, as long as such city or village shall continue to be the owner of such property, and such tax-collecting officers are hereby authorized and directed to receive and collect the same and distribute all money so received to the governmental subdivisions entitled thereto.

Source: Laws 1947, c. 227, § 2, p. 722.

70-654 Repealed. Laws 1959, c. 317, § 6.

70-655 Reasonable rates required; negotiated rates authorized; conditions.

(1) Except as otherwise provided in this section, the board of directors of any district organized under or subject to Chapter 70, article 6, shall have the power and be required to fix, establish, and collect adequate rates, tolls, rents, and other charges for electrical energy, water service, water storage, and for any and all other commodities, including ethanol and hydrogen, services, or facilities sold, furnished, or supplied by the district, which rates, tolls, rents, and charges shall be fair, reasonable, nondiscriminatory, and so adjusted as in a fair and equitable manner to confer upon and distribute among the users and consumers of commodities and services furnished or sold by the district the benefits of a successful and profitable operation and conduct of the business of the district.

(2) The board of directors may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for users and consumers of electrical energy and associated services or facilities different from those of other users and consumers. Any negotiated rates, tolls, rents, and other charges for a commercial or industrial customer shall be effective for no more than five years and in no case shall such rates, tolls, rents, and charges be less than the cost of supplying such services if (a) such customer has entered an agreement with the state or any political subdivision to provide an economic development project pursuant to state or local law and (b) such economic development project has projected new or additional electrical load requirements greater than five hundred kilowatts and a minimum annual load demand factor of sixty percent during the applicable billing period. Any negotiated contract or agreement entered into pursuant to this section shall contain a provision stating that any general retail rate increase approved by the board of directors shall include the parties to a contract or agreement for a discounted rate. This subsection shall also apply to any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

(3) In order to facilitate the merger and consolidation of districts, the board of directors of a merged or consolidated district may negotiate, fix, establish, and collect rates, tolls, rents, and other charges for consumers in the service area of one or more of the predecessor districts which are different than rates, tolls, rents, and other charges for consumers in the remaining service area of the merged or consolidated district. Any different rates, tolls, rents, and other charges pursuant to this subsection shall be effective for no more than five years after the date of merger or consolidation and shall be based on cost of service or other rate studies showing that adoption of dissimilar rates for consumers in otherwise similar rate classes is needed to effectuate the merger or consolidation. This subsection shall also apply in the event of a merger or consolidation of any nonprofit corporation organized for the purpose of furnishing electric service pursuant to the Electric Cooperative Corporation Act or the Nebraska Nonprofit Corporation Act.

Source: Laws 1933, c. 86, § 13, p. 353; Laws 1937, c. 152, § 8, p. 589; Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-655; Laws 1981, LB 181, § 26; Laws 1986, LB 1230, § 47; Laws 1995, LB 828, § 2; Laws 2001, LB 243, § 1; Laws 2005, LB 139, § 16.

Cross References

Electric Cooperative Corporation Act, see section 70-701.

Nebraska Nonprofit Corporation Act, see section 21-1901.

Rent collected under this section would not necessarily have to be cash rent, but would only have to be reasonable consideration. Jeffrey Lake Dev. v. Central Neb. Pub. Power and Irr. Dist., 262 Neb. 515, 633 N.W.2d 102 (2001).

A dissimilar rate may not be imposed for similar service solely on the basis that the additional source of the power or energy is more costly than previous sources. All of the sources must properly be blended into a rate which results in all customers obtaining the same service under the same conditions being charged the same rate. McGinley v. Wheat Belt P. P. Dist., 214 Neb. 178, 332 N.W.2d 915 (1983).

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. Blankenship v. Omaha P. P. Dist., 195 Neb. 170, 237 N.W.2d 86 (1976).

It was intended to permit the business of a power district to be operated in a successful and profitable manner. City of O'Neill v. Consumers P. P. Dist., 179 Neb. 773, 140 N.W.2d 644 (1966).

Board of directors is authorized to establish and collect adequate rates for electrical energy. York County Rural P. P. Dist. v. O'Connor, 172 Neb. 602, 111 N.W.2d 376 (1961).

Powers conferred are intended to permit district to be operated in a successful and profitable manner. United Community Services v. Omaha Nat. Bank, 162 Neb. 786, 77 N.W.2d 576 (1956).

Under assumed contract, district could not increase annual maintenance charge. Faught v. Platte Valley P. P. & I. Dist., 155 Neb. 141, 51 N.W.2d 253 (1952).

District is not exempt from payment of charges under Federal Power Act. Central Neb. P. P. & I. Dist. v. Federal Power Commission, 160 F.2d 782 (8th Cir. 1947).

70-656 Repealed. Laws 1963, c. 425, art. 8, § 2.

70-657 Repealed. Laws 1997, LB 658, § 16.

70-658 Existing utility; lease, purchase, or acquisition by district; franchise and contracts; compliance required.

In the event that any such district shall lease, purchase or acquire, in any manner, the generating plant, distribution system or other property of an existing utility then or theretofore furnishing electrical energy for heat, light, power, or other purposes, for the use or benefit of any city, of whatever class, or village in the State of Nebraska, or its inhabitants, and for use within the corporate limits of such city or village, such district shall be bound by, shall carry out, and shall perform the terms and conditions of any franchise or contract assigned to such district, and shall comply with the provisions of any existing applicable laws or ordinances under which such existing utility, such district's predecessor or assignor, operated at the time such lease, purchase or acquisition of the generating plant, distribution system or other property of such existing utility shall have been made.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-658.

70-659 Operation within city or village by district; franchise required.

Any such district shall be required at all times to have a valid and subsisting franchise, either running to it as original grantee from such city or village, or assigned to it by or through a grantee of the city or village, if such district proposes to generate, distribute and sell, or to distribute and sell, electrical energy to such city or village or to its inhabitants, as a condition precedent to the operation of such district's electric utility or utilities within such city or village, in every case and to the same extent as where a private corporation is required to have such valid and subsisting franchise to operate its electric utility or utilities within such city or village.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-659.

A public power project is to extend its lines into another municipal corporation's boundaries only upon contract, agreement, or franchise. Central Power Co. v. Nebraska City, 112 F.2d 471 (8th Cir. 1940).

70-660 Franchise to operate utility; terms and conditions; rates prescribed.

All franchises granted by a city or village to any such district, to operate such district's electric utility or utilities within the corporate limits of such city or village, may provide the maximum rates that may be charged by such district for furnishing electrical energy to such city or village, or to its inhabitants, during the franchise period. Such franchises shall be granted in the same manner and upon the same terms and conditions as may now or hereafter be provided by law for granting franchises to private corporations by such cities or villages.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-660.

70-661 Contracts with city or village; terms and conditions.

Contracts, other than franchises, which such city or village is empowered to make with any such district to furnish such city or village, or its inhabitants, with electrical energy, shall be made in the same manner and upon the same terms and conditions as such city or village is now or hereafter empowered to make with any private corporation to furnish such city or village, or its inhabitants, with electrical energy.

Source: Laws 1939, c. 89, § 1, p. 388; C.S.Supp.,1941, § 70-713; R.S. 1943, § 70-661.

Under former act, concluding proviso of this section was unconstitutional as special legislation. State ex rel. Johnson v. Consumers Public Power Dist., 143 Neb. 753, 10 N.W.2d 784 (1943).

70-662 District; filings; amendments to petition for creation; amendments to charter; authorized; restriction.

(1) A petition for the creation of a district organized under or subject to the provisions of Chapter 70, article 6, may be amended as provided in this section. Any district, now existing or hereafter created under or subject to Chapter 70, article 6, may file with the Nebraska Power Review Board a petition to amend its charter to eliminate, detach, or reduce area from or add to, increase, or enlarge its chartered territory as required or authorized by Chapter 70, article 6, or subdivide area and territory from within the boundaries of such district, or amend its charter to provide for a change in the general description of the nature of the business in which the district is engaged and the location and method of operation of the power plants and systems or irrigation works of the district proposed in its charter, as long as the plants, systems, and works, the operation of the same, the exercise of powers, and the assumption of duties and responsibilities, of or on the part of such district, do not nullify, conflict with, or materially affect those of, or on the part of, any other district.

(2) Any such district may amend its charter to provide for a change in its name or a change in the location of its principal place of business and may reduce or increase the number of members of its board of directors. No such elimination or detachment, increase or enlargement, or subdivision of the territory of a district, change in its principal place of business, its name, or the number of members of its board of directors, or change in the general description of the nature of its business or methods of operation shall occur unless authorized by the affirmative vote of three-fifths of all the directors of the district involved.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-662; Laws 1945, c. 158, § 1, p. 521; Laws 1955, c. 267, § 5, p. 845; Laws 1957, c. 291, § 1, p. 1046; Laws 1981, LB 181, § 27; Laws 1986, LB 949, § 14.

District may amend its charter. Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959).

Approved petition is charter of the district. Custer Public Power Dist. v. Loup River Public Power Dist., 162 Neb. 300, 75 N.W.2d 619 (1956).

70-663 Amendment; approval procedure.

Upon such authorization occurring, the proposed amendment shall thereupon be submitted to the Nebraska Power Review Board, together with a petition setting forth the reasons for the adoption of such amendment, and requesting that the same be approved. The Nebraska Power Review Board shall then cause notice to be given by publication for three consecutive weeks in two legal newspapers of general circulation within such district. Such notice shall set forth in full the proposed amendment and set a date, not sooner than three weeks after the last date of publication of the notice, for protests, complaints, or objections to be filed with the Nebraska Power Review Board in opposition to the adoption of such amendment. The cost of such publication shall be paid by such district. If any person residing in such district, or affected by the proposed amendment, shall, within the time provided, file a protest, complaint, or objection, the Nebraska Power Review Board shall schedule a hearing and give due notice thereof to the district, the district's representative, and the person who filed such protest, complaint, or objection. Any person filing a protest, complaint, or objection may appear at such hearing and contest the approval by the Nebraska Power Review Board of such proposed amendment. After all protests, complaints, or objections have been heard, the Nebraska Power Review Board shall act upon the petition and either approve or disapprove the amendment. If no protests, complaints, or objections are properly filed, the board shall either approve the amendment without a hearing or schedule a hearing to determine whether or not the amendment should be approved. If a hearing is scheduled, due notice shall be provided to the district and the district representative.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-663; Laws 1981, LB 181, § 28; Laws 1983, LB 366, § 1.

70-664 Amendment; board approval; certificate; filing.

Unless it shall appear affirmatively that the adoption of such proposed amendment will be contrary to the best interests of such district, or that it will jeopardize and impair the rights of the creditors of such districts, or of other persons, the Nebraska Power Review Board shall issue in duplicate a certificate of approval of such proposed amendment, and cause one copy to be filed in the office of the Secretary of State of the State of Nebraska and one copy to be filed in the office of the county clerk of the county in which is located the principal place of business of the district.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-664; Laws 1981, LB 181, § 29.

70-665 Amendment; when effective.

Such proposed amendment shall become effective and in full force immediately upon the issuance of such certificate of approval by the Nebraska Power Review Board. Thereupon and thereafter the district shall, as in case of the original district, be a public corporation and political subdivision, and operate and function accordingly in such reduced and subdivided area, or such in-

creased and enlarged area, under or subject to the terms, powers, privileges, and conditions of Chapter 70, article 6.

Source: Laws 1937, c. 152, § 9, p. 589; C.S.Supp.,1941, § 70-717; R.S. 1943, § 70-665; Laws 1981, LB 181, § 30.

70-666 Dissolution; procedure.

Whenever a petition signed by a majority of the members of the board of directors or by twenty-five or more qualified electors of the state residing within the territorial boundaries of any district organized under or subject to Chapter 70, article 6, shall be presented to the Nebraska Power Review Board, praying for the dissolution of such district, and it shall appear from the petition that such district has no property of any kind, owes no debts of any kind, that the district is not functioning, has ceased to function, and probably will not function in the future, the Nebraska Power Review Board shall forthwith publish a notice for three consecutive weeks in the legal newspaper published in the district which has the largest circulation therein, or, if no legal newspaper is published in the district, then in any legal newspaper widely circulated therein, setting forth, in substance and in a clear and concise manner, the nature and prayer of the petition, and setting a time and place for a public hearing by the Nebraska Power Review Board upon the petition. After such hearing and such independent investigation as may be deemed advisable, the Nebraska Power Review Board shall grant or reject the prayer of the petition, and, if the prayer of the petition is granted, the Nebraska Power Review Board shall thereupon issue its certificate declaring the district dissolved and terminated. One duly certified copy of such certificate shall be immediately filed by the Nebraska Power Review Board in its office with the original organization records of the district. The Nebraska Power Review Board shall also immediately file one such certified copy in the office of the Secretary of State, and another such certified copy in the office of the county clerk of the county in which the principal place of business of such district was last located. The district shall thereupon be dissolved and cease to exist. The persons filing such petition for dissolution shall advance and pay the necessary expense incurred by the Nebraska Power Review Board in the investigations made, and the proceedings and hearings held or conducted, pursuant to the provisions of this section.

Source: Laws 1935, c. 146, § 1, p. 541; C.S.Supp.,1941, § 70-716; Laws 1943, c. 146, § 7, p. 530; R.S.1943, § 70-666; Laws 1981, LB 181, § 31.

70-667 Plants, systems, and works; construction or operation; works of internal improvement; laws applicable; eminent domain; procedure; when available.

All power plants and systems, all hydrogen production, storage, or distribution systems, all ethanol production or distribution systems, and all irrigation works constructed, acquired, used, or operated by any district organized under or subject to Chapter 70, article 6, or proposed by such district to be so constructed, acquired, owned, used, or operated are hereby declared to be works of internal improvement. All laws applicable to works of internal improvement and all provisions of law applicable to electric light and power corporations, irrigation districts, or privately owned irrigation corporations, the

use and occupation of state and other public lands and highways, the appropriation, acquisition, or use of water, water power, water rights, or water diversion or storage rights, for any of the purposes contemplated in such statutory provisions, the manner or method of construction and physical operation of power plants, systems, transmission lines, and irrigation works, as herein contemplated, shall be applicable, as nearly as may be, to all districts organized under or subject to Chapter 70, article 6, and in the performance of the duties conferred or imposed upon them under such statutory provisions. Such laws, provisions of law, or statutory provisions are hereby made applicable to all irrigation works and facilities operated by irrigation divisions of public power and irrigation districts organized under Chapter 70, article 6, and shall include, but not be limited to, the right of such district to exercise the powers conferred upon districts by Chapters 31 and 46, relating to operation, maintenance, rehabilitation, construction, reconstruction, repairs, extension, recharge for ground water, and surface and subsurface drainage projects and the assessment of the cost thereof to the lands benefited thereby. The right to exercise the power of eminent domain is conferred, except that this power may not be exercised for the purpose of condemning property for use by a privately operated ethanol production or distribution facility or a privately operated hydrogen production, storage, or distribution facility. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-667; Laws 1951, c. 101, § 106, p. 496; Laws 1971, LB 626, § 2; Laws 1973, LB 189, § 1; Laws 1981, LB 181, § 32; Laws 1986, LB 1230, § 49; Laws 2005, LB 139, § 17.

1. Liability of district
2. Measure of damages
3. Miscellaneous

1. Liability of district

Legislature is without power to make a grant in fee of, or an easement over, public school lands without compensation for the damage for such taking or use. State v. Platte Valley Public Power and Irrigation Dist., 143 Neb. 661, 10 N.W.2d 631 (1943).

District is liable in damages for public school lands taken under condemnation proceedings for irrigation canal. State ex rel. Johnson v. Central Nebraska Public Power & Irrigation Dist., 143 Neb. 153, 8 N.W.2d 841 (1943).

A public power district which, by constructing and maintaining a tailrace, destroys by drainage the subirrigation waters of lands of others, is liable for resulting damages. Luchsinger v. Loup River Public Power Dist., 140 Neb. 179, 299 N.W. 549 (1941).

2. Measure of damages

Where land is taken for temporary use only, measure of compensation is not the market value but what the property is fairly worth during the time which it is held. Pierce v. Platte Valley Public Power & Irr. Dist., 143 Neb. 898, 11 N.W.2d 813 (1943).

The measure of damages recoverable by a landowner, whose land is permanently injured by seepage water, is the difference between the reasonable market value of the property before and after the injury plus the value of the crop injured in the field at the time of seepage, but shall not include compensation for loss of the use of the land for subsequent years caused by the same seepage. Heiden v. Loup River Public Power Dist., 139 Neb. 754, 298 N.W. 736 (1941).

Where, in a condemnation proceeding, both parties adopt an incorrect theory as to the measure of damages and an instruction is given fairly reflecting that theory, it will be adhered to on appeal. Behle v. Loup River Public Power Dist., 138 Neb. 566, 293 N.W. 413 (1940).

Damages recoverable in the condemnation by an irrigation district of land damaged by seepage from the irrigation reservoir are only those arising from the condemnation, and evidence as to the value of the land must be based upon its value in the condition in which it was at the time of the condemnation. In re Platte Valley Public Power & Irrigation Dist., 137 Neb. 313, 289 N.W. 383 (1939).

Damages for injury to land due to seepage from an irrigation reservoir are not continuous in character but original and recoverable in one action; the measure of such damages is the difference in value of the land before and after the dam was erected, taking into consideration the uses to which the land was put and for which it was reasonably suited. Applegate v. Platte Valley Public Power & Irrigation Dist., 136 Neb. 280, 285 N.W. 585 (1939).

3. Miscellaneous

Omaha Public Power District subject to garnishment process to same extent as any electric and power company. Schreiner v. Irby Constr. Co., 184 Neb. 222, 166 N.W.2d 121 (1969).

All the obligations imposed and rights declared under other specified statutes are preserved by this section. State ex rel.

Dawson County Feed Products v. Omaha P. P. Dist., 174 Neb. 350, 118 N.W.2d 7 (1962).

Provisions of general irrigation act are only incorporated so far as they are applicable. Halligan v. Elander, 147 Neb. 709, 25 N.W.2d 13 (1946).

Legislature did not expressly restrict district in nature of title to be taken under eminent domain, but gave it power to take what was necessary for the public use for which the taking was authorized, up to and including the fee. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

In condemning a right-of-way for an irrigation lateral, the benefit accruing to all irrigable land within the irrigation system's area of delivery by reason of the availability of water must be considered as a general benefit, and is not deductible from the consequential damages to land not taken. Prudential Insurance Company v. Central Nebraska Public Power & Irrigation Dist., 139 Neb. 114, 296 N.W. 752 (1941).

Public power districts are governed as to their use and occupation of highways by the statutes relating to irrigation districts so far as they are applicable. Wright v. Loup River Public Power Dist., 133 Neb. 715, 277 N.W. 53 (1938).

In exercising the power of eminent domain to obtain right-of-way over private property, a public power district is not restricted to condemnation along boundary lines. Johnson v. Platte Valley Public Power & Irrigation Dist., 133 Neb. 97, 274 N.W. 386 (1937).

Power of eminent domain is expressly conferred. State ex rel. Loseke v. Fricke, 126 Neb. 736, 254 N.W. 409 (1934).

70-668 Streams; water rights; priority.

In applying the provisions of law relating to the appropriation of water, priority of appropriation shall give the better right as between those using the water for the same purpose, but when the waters of any natural stream are not sufficient for the use of all those desiring to use the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes, and those using the water for agricultural purposes shall have the preference over those using the same for power purposes, where turbine or impulse water wheels are installed.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-668.

A preferential use is given to waters used for irrigation purposes over waters used for power purposes. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

70-669 Streams; inferior rights; acquired by superior right; how compensated.

No inferior right to the use of the waters of this state shall be acquired by a superior right without just compensation therefor to the inferior user. The just compensation paid to those using water for power purposes shall not be greater than the cost of replacing the power which would be generated in the plant or plants of the power user by the water so acquired.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-669.

Right to use of waters for power purposes cannot be acquired by a superior right for irrigation purposes without payment of just compensation. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

70-670 Eminent domain; procedure; duties of Attorney General; costs.

In addition to any other rights and powers hereinabove conferred upon any district organized under or subject to Chapter 70, article 6, each such district shall have and exercise the power of eminent domain to acquire from any person, firm, association, or private corporation any and all property owned, used, or operated, or useful for operation, in the generation, transmission, or distribution of electrical energy, including an existing electric utility system or any part thereof. The procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7. In the case of the acquisition through the exercise of the power of eminent domain of an existing electric utility

system or part thereof, the Attorney General shall, upon request of any district, represent such district in the institution and prosecution of condemnation proceedings. After acquisition of an existing electric utility system through the exercise of the power of eminent domain, the district shall reimburse the state for all costs and expenses incurred in the condemnation proceedings by the Attorney General. A district may agree to limit its exercise of the power of eminent domain to acquire a project which is a renewable energy generation facility producing electricity with wind and any related facilities.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-670; Laws 1945, c. 157, § 5, p. 519; Laws 1951, c. 101, § 107, p. 497; Laws 1981, LB 181, § 33; Laws 2009, LB561, § 1.

The authority of a public power district to acquire land for purposes outside of section 70-301 is governed by this section. This section refers to a power of eminent domain that is broader than section 70-301. This section permits a public power district to acquire ''any and all property'' to be utilized in the ''generation, transmission, or distribution of electrical energy''. SID No. 1 of Fillmore County v. Nebraska Pub. Power Dist., 253 Neb. 917, 573 N.W.2d 460 (1998).

Eminent domain procedure act controls procedure. Jensen v. Omaha Public Power Dist., 159 Neb. 277, 66 N.W.2d 591 (1954).

Public power and irrigation districts have the same powers of eminent domain as irrigation companies. Burnett v. Central Neb. P. P. & I. Dist., 147 Neb. 458, 23 N.W.2d 661 (1946).

Public power and irrigation district has right to exercise power of eminent domain in the acquisition of property. Snyder v. Platte Valley Public Power & Irr. Dist., 144 Neb. 308, 13 N.W.2d 160 (1944).

Districts have power of eminent domain. State ex rel. Johnson v. Central Neb. P. P. & I. Dist., 140 Neb. 471, 300 N.W. 379 (1941).

70-671 District; breaks, overflow, and seepage; liability.

Any such district shall be liable for all breaks, overflow and seepage damage. Damages from seepage shall be recoverable when and if it accrues.

Source: Laws 1933, c. 86, § 7, p. 349; Laws 1941, c. 138, § 1, p. 545; C.S.Supp.,1941, § 70-707; R.S.1943, § 70-671.

1. Damages from seepage
2. Damages from overflow
3. Miscellaneous

1. Damages from seepage

District is liable for seepage escaping from its works when and if it accrues. Scherz v. Platte Valley Public Power & Irrigation Dist., 151 Neb. 415, 37 N.W.2d 721 (1949).

Damages for seepage are recoverable in one action. Smith v. Platte Valley Public Power & Irrigation Dist., 151 Neb. 49, 36 N.W.2d 478 (1949).

This section gives a party damaged by seepage a plain, complete, adequate and speedy remedy at law. Halligan v. Elander, 147 Neb. 709, 25 N.W.2d 13 (1946).

Districts are liable for overflow and seepage damages, but agreement to drain lands will not be enforced by mandatory injunction which would result in irreparable damage to third parties. Halligan v. Elander, 147 Neb. 156, 22 N.W.2d 647 (1946).

District is liable for damages caused by seepage irrespective of negligence. Luchsinger v. Loup River Public Power Dist., 140 Neb. 179, 299 N.W. 549 (1941).

Landowner is entitled to be compensated for loss of crops growing on land at time land is condemned arising from seepage. Heiden v. Loup River Public Power Dist., 139 Neb. 754, 298 N.W. 736 (1941).

This section makes liability for damages from seepage absolute. Asche v. Loup River Public Power District, 138 Neb. 890, 296 N.W. 439 (1941).

2. Damages from overflow

Liability for all overflow is absolute only for such waters as flow over and from or escape out of the reservoirs or canals of a public power district and cause damage. Robinson v. Central Nebraska Public Power & Irrigation Dist., 146 Neb. 534, 20 N.W.2d 509 (1945).

Instruction stating a public power and irrigation district is liable for all overflow damage plaintiff suffered to his crop by such overflow unless such damages were caused by an act of God is not prejudicial error if supported by competent evidence. Webb v. Platte Valley Public Power & Irrigation District, 146 Neb. 61, 18 N.W.2d 563 (1945).

3. Miscellaneous

This section applies only to districts organized under this article. Baum v. County of Scotts Bluff, 172 Neb. 225, 109 N.W.2d 295 (1961).

70-672 Water rights; eminent domain; condemnation; procedure.

Whenever the directors of an irrigation district vote to acquire and appropriate by the exercise of the power of eminent domain any water being used for power purposes, or whenever any person, firm, association, corporation, or

organization seeks to acquire any water being used for power purposes and shall be unable to agree with the user of such water for power purposes upon the compensation to be paid to such power user, the procedure to condemn property shall be exercised in the manner set forth in Chapter 76, article 7.

Source: Laws 1941, c. 138, § 2, p. 546; C.S.Supp.,1941, § 46-515; R.S. 1943, § 70-672; Laws 1951, c. 101, § 108, p. 497; Laws 1981, LB 181, § 34.

Where owner of a superior right seeks to acquire water being used for power purposes, eminent domain proceedings may be utilized. Hickman v. Loup River P. P. Dist., 173 Neb. 428, 113 N.W.2d 617 (1962).

70-673 Repealed. Laws 1951, c. 101, § 127.

70-674 Repealed. Laws 1951, c. 101, § 127.

70-675 Repealed. Laws 1951, c. 101, § 127.

70-676 Repealed. Laws 1951, c. 101, § 127.

70-677 Repealed. Laws 1951, c. 101, § 127.

70-678 Repealed. Laws 1951, c. 101, § 127.

70-679 Repealed. Laws 1951, c. 101, § 127.

70-680 Judicial proceedings; bond not required, when.

No bond for costs, appeal, supersedeas, injunction, or attachment shall be required of any district organized under or subject to Chapter 70, article 6, or of any officer, board, head of any department, agent, or employee of such district in any proceeding or court action in which the district or any officer, board, head of department, agent, or employee is a party litigant in its, his, or her official capacity.

Source: Laws 1971, LB 310, § 1; Laws 1981, LB 181, § 35.

This section does not violate Neb. Const., Art. III, section 14, because the law, as passed, was an act complete and independent in itself and its title called attention to the subject matter of the bill. Aschenbrenner v. Nebraska P. P. Dist., 206 Neb. 157, 291 N.W.2d 720 (1980).

70-681 Districts existing on August 30, 2009; director holding office when charter amended; how treated.

In order to provide for orderly compliance with Chapter 70, article 6, districts existing on August 30, 2009, are hereby deemed to be properly constituted and incorporated and their directors duly elected and, notwithstanding any other provision of law, a district shall not be required to amend its charter in order to be in such compliance until six months after the publication of the first federal decennial census published after August 30, 2009. A director holding office at the time of any such amendment to a charter may continue to serve until the expiration of his or her term of office if such director meets the qualifications of section 70-619 for holding office under the charter as so amended.

Source: Laws 1986, LB 949, § 15; Laws 2009, LB53, § 5.

ARTICLE 7
ELECTRIC COOPERATIVE CORPORATIONS

Section

70-701 Act, how cited.

Sections 70-701 to 70-738 may be cited as the Electric Cooperative Corporation Act.

Source: Laws 1937, c. 50, § 1, p. 203; C.S.Supp.,1941, § 70-801; R.S. 1943, § 70-701.

70-702 Terms, defined.

For purposes of the Electric Cooperative Corporation Act, unless the context otherwise requires: (1) Corporation means a corporation organized pursuant to the act; (2) board means a board of directors of a corporation organized under the act; (3) member means the incorporators of a corporation and each person thereafter lawfully admitted to membership therein; (4) federal agency includes the United States of America and any department administration, commission, board, bureau, office, establishment, agency, authority, or instrumentality of the

United States of America heretofore or hereafter ordered; (5) person includes any natural person, firm, association, corporation, business trust, partnership, limited liability company, federal agency, state, or political subdivision thereof, or any body politic; (6) acquire means and includes construct, acquire by purchase, lease, devise, gift, or other mode of acquisition; (7) obligations include bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness issued by a corporation; and (8) rural area means any area not included within the boundaries of any incorporated city, town, or village.

Source: Laws 1937, c. 50, § 2, p. 203; C.S.Supp.,1941, § 70-802; R.S. 1943, § 70-702; Laws 1993, LB 121, § 416.

70-703 Purpose.

Cooperative, nonprofit, membership corporations may be organized for the purpose of engaging in rural electrification and the furnishing of electric energy to persons in rural areas not served with electrical energy through existing facilities within such rural areas.

Source: Laws 1937, c. 50, § 3, p. 203; C.S.Supp.,1941, § 70-803; R.S. 1943, § 70-703.

70-704 Corporate powers.

Each corporation shall have power: (1) To sue and be sued, complain, and defend, in its corporate name; (2) to have perpetual succession unless a limited period of duration is stated in its articles of incorporation; (3) to adopt a corporate seal, which may be altered at pleasure, and to use it or a facsimile thereof, as required by law; (4) to generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy; (5) to acquire, own, hold, use, exercise and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and in any manner dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary, useful, or appropriate; (6) to purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein for the purposes expressed herein; (7) to borrow money and otherwise contract indebtedness, to issue its obligations therefor, and to secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenue, or income; (8) to sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets; (9) to have the same powers now exercised by law by public light and power districts or private corporations to use any of the streets, highways, or public lands of the state or its political subdivisions in the manner provided by law; (10) to have and exercise the power of eminent domain for the purposes expressed in section 70-703 in the manner set forth in sections 76-704 to 76-724 and to have the powers and be subject to the restrictions of electric light and power corporations and districts as regards the use and occupation of public highways and the manner or method of construction and physical operation of plants, systems, and transmission lines; (11) to accept gifts or grants of money, services, or property, real or personal; (12) to make any and all contracts necessary or convenient for the exercise of the powers granted herein; (13) to fix, regulate, and collect rates, fees, rents, or other charges for electric energy

furnished by the corporation; (14) to elect or appoint officers, agents, and employees of the corporation and to define their duties and fix their compensation; (15) to make and alter bylaws not inconsistent with the articles of incorporation or with the laws of this state for the administration and regulation of the affairs of the corporation; (16) to sell or lease its dark fiber pursuant to sections 86-574 to 86-578; and (17) to do and perform, either for itself or its members or for any other corporation organized under the Electric Cooperative Corporation Act or for the members thereof, any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized. Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each corporation may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act.

Source: Laws 1937, c. 50, § 4, p. 203; C.S.Supp.,1941, § 70-804; R.S. 1943, § 70-704; Laws 1951, c. 101, § 109, p. 498; Laws 1980, LB 954, § 63; Laws 1987, LB 23, § 2; Laws 2001, LB 827, § 16; Laws 2002, LB 1105, § 478.

Cross References

Nebraska Investment Finance Authority Act, see section 58-201.

70-705 Who may organize.

Any twenty or more natural persons, residents of the territory to be served by the corporation, of the age of twenty-one years or more, residents of this state, may act as incorporators of a corporation to be organized under sections 70-701 to 70-738 by executing articles of incorporation as provided in said sections.

Source: Laws 1937, c. 50, § 5, p. 205; C.S.Supp.,1941, § 70-805; R.S. 1943, § 70-705.

70-706 Articles of incorporation; contents.

The articles of incorporation shall state (1) the name of the corporation, which name shall include the words electric cooperative and the word corporation, incorporated, inc., association or company, and the name shall be such as to not be deceptively similar to any other corporation organized and existing under the laws of this state; (2) the purpose for which the corporation is formed; (3) the names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify; (4) the number of directors, not less than five, to be elected at the annual meetings of members; (5) the address of its principal office; (6) the period of duration of the corporation, which may be perpetual; (7) the terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but, if expressly so stated, the determination of such matter may be reserved to the directors by the bylaws; and (8) any provisions, not inconsistent with law, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in section 70-704.

Source: Laws 1937, c. 50, § 6, p. 205; C.S.Supp.,1941, § 70-806; R.S. 1943, § 70-706; Laws 2003, LB 464, § 10.

70-707 Electric cooperative; use of term restricted.

The words electric cooperative shall not be used in the corporate name of corporations organized under the laws of this state, or authorized to do business herein, other than those organized pursuant to the provisions of sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 7, p. 205; C.S.Supp.,1941, § 70-807; R.S. 1943, § 70-707.

70-708 Articles of incorporation; filing; certificate of incorporation; issuance.

The original copy of the articles of incorporation shall be signed by the incorporators, and acknowledged before any officer authorized by the law of this state to acknowledge the execution of deeds and conveyances. It shall be filed in the office of the Secretary of State. If the Secretary of State finds that the articles of incorporation conform to law, he shall, when the fees prescribed by section 70-733 have been paid, (1) endorse on the original copy the word filed, and the month, day and year of the filing thereof; (2) file the original in his office; and (3) issue a certificate of incorporation to the incorporators. The incorporators shall file for recording a true copy of the articles of incorporation in the office of the county clerk in the county in which the principal office of the corporation in this state is located.

Source: Laws 1937, c. 50, § 8, p. 206; C.S.Supp.,1941, § 70-808; R.S. 1943, § 70-708.

70-709 Certificate of incorporation; effect.

Upon the filing of articles of incorporation with the Secretary of State, the corporate existence of the corporation shall begin. The certificate of incorporation shall be conclusive evidence, except as against the state, that all conditions precedent required to be performed by the incorporators have been complied with, and that the corporation has been incorporated.

Source: Laws 1937, c. 50, § 9, p. 206; C.S.Supp.,1941, § 70-809; R.S. 1943, § 70-709.

70-710 Organizational meeting; bylaws; adoption; election of officers; notice; waiver.

After the issuance of the certificate of incorporation an organization meeting shall be held, at the call of a majority of the incorporators, for the purpose of adopting bylaws and electing officers, and for the transaction of such other business as may properly come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each incorporator, which notice shall state the time and place of the meeting, but such notice may be waived in writing.

Source: Laws 1937, c. 50, § 10, p. 206; C.S.Supp.,1941, § 70-810; R.S. 1943, § 70-710.

70-711 Bylaws; make, alter, amend, or repeal; contents.

The power to make, alter, amend or repeal the bylaws of the corporation shall be vested in the board of directors. The bylaws may contain any provisions

for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

Source: Laws 1937, c. 50, § 11, p. 206; C.S.Supp.,1941, § 70-811; R.S. 1943, § 70-711.

70-712 Membership; conditions.

All persons in rural areas proposed to be served by a corporation shall be eligible to membership in a corporation. No person shall become, be or remain a member of a corporation unless such person shall use or agree to use electric energy furnished by the corporation. A corporation organized under sections 70-701 to 70-738 may become a member of another corporation, and may avail itself fully of the facilities and services thereof.

Source: Laws 1937, c. 50, § 12, p. 207; C.S.Supp.,1941, § 70-812; R.S. 1943, § 70-712.

70-713 Meetings, where held; annual and special meetings.

Meetings of members may be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held in the principal office of the corporation in this state. An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work forfeiture or dissolution of the corporation. Special meetings of the members may be called by the president, by the board of directors, by a petition signed by not less than one-tenth of all the members, or by such other officers or persons as may be provided in the articles of incorporation or the bylaws.

Source: Laws 1937, c. 50, § 13, p. 207; C.S.Supp.,1941, § 70-813; R.S. 1943, § 70-713.

70-714 Meetings; notice; waiver.

Written or printed notice stating the place, day and hour of the meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than three nor more than five days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. Notice of meetings of members may be waived in writing.

Source: Laws 1937, c. 50, § 14, p. 207; C.S.Supp.,1941, § 70-814; R.S. 1943, § 70-714.

70-715 Members; voting rights.

Each member present shall be entitled to one, and only one, vote on each matter submitted to a vote at a meeting of members.

Source: Laws 1937, c. 50, § 15, p. 208; C.S.Supp.,1941, § 70-815; R.S. 1943, § 70-715.

70-716 Membership certificate; issuance; transfer; conditions.

When a member of a corporation has paid the membership fee in full, a certificate of membership shall be issued to such member. After such membership fee has been paid in full, memberships and certificates in the corporation shall be transferable upon the books of the corporation to other persons eligible for membership in such corporation; *Provided,* that, five days before the transfer thereof, such membership, and certificate, has been offered for redemption to the corporation at its book value and such corporation has refused to purchase the same.

Source: Laws 1937, c. 50, § 16, p. 208; C.S.Supp.,1941, § 70-816; R.S. 1943, § 70-716.

70-717 Meetings; quorum.

Unless otherwise provided in the articles of incorporation, a majority of the members present in person shall constitute a quorum for the transaction of business at a meeting of members.

Source: Laws 1937, c. 50, § 17, p. 208; C.S.Supp.,1941, § 70-817; R.S. 1943, § 70-717.

70-718 Board of directors; number; powers; qualifications.

The business and affairs of a corporation shall be managed by a board of directors, not less than five in number, which shall exercise all the powers of the corporation except such as are conferred upon the members by sections 70-701 to 70-738, by the articles of incorporation, or by the bylaws of the corporation. The bylaws may prescribe qualifications for directors.

Source: Laws 1937, c. 50, § 18, p. 208; C.S.Supp.,1941, § 70-818; R.S. 1943, § 70-718.

70-719 Directors; alternate directors; compensation; election.

The directors, other than those named in the certificate of incorporation to serve until the first annual meeting of members, shall be elected annually, or as otherwise provided in the bylaws, by the members. The directors shall be members of the corporation and shall be entitled to such compensation and reimbursement for expenses actually and necessarily incurred by them as provided in sections 81-1174 to 81-1177 for state employees. The bylaws may provide for the election of alternate directors, who shall be elected and serve in the same manner as members elected to the board of directors. Such alternate directors shall serve in the event of the absence, disability, disqualification, or death of an elected director.

Source: Laws 1937, c. 50, § 19, p. 208; C.S.Supp.,1941, § 70-819; R.S. 1943, § 70-719; Laws 1974, LB 833, § 1; Laws 1981, LB 204, § 106.

70-720 Directors; alternate directors; vacancy; how filled.

Any vacancy occurring in the board or in the position of alternate director, and any directorship to be filled, shall be filled as provided in the bylaws by persons who shall serve until directors or alternate directors may be regularly elected as provided for in section 70-719.

Source: Laws 1937, c. 50, § 20, p. 208; C.S.Supp.,1941, § 70-820; R.S. 1943, § 70-720; Laws 1974, LB 833, § 2.

70-721 Board of directors; quorum; how determined.

A majority of the board shall constitute a quorum for the transaction of business, unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board, unless the act of a greater number is required by the articles of incorporation or the bylaws. For the purpose of determining a quorum, alternate directors shall be considered in the event of the absence, disability, disqualification, or death of any director.

Source: Laws 1937, c. 50, § 21, p. 209; C.S.Supp.,1941, § 70-821; R.S. 1943, § 70-721; Laws 1974, LB 833, § 3.

70-722 Board meetings; notice; waiver.

Meetings of the board, regular or special, shall be held at such place and upon such notice as the bylaws may prescribe. Attendance of a director or alternate director at any meeting shall constitute a waiver of notice of such meeting, except where a director or alternate director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

Source: Laws 1937, c. 50, § 22, p. 209; C.S.Supp.,1941, § 70-822; R.S. 1943, § 70-722; Laws 1974, LB 833, § 4.

70-723 Officers; powers; duties; removal.

The board shall elect from its number a president, a vice president, a secretary, and a treasurer, but the same person may be elected to the office of secretary and treasurer. The powers and duties of the foregoing officers, as well as their terms of office and compensation, shall be provided for in the bylaws. The board shall appoint such other officers, agents and employees as it deems necessary, and fix their powers, duties and compensation. Any officer, agent or employee, elected or appointed by the board, may be removed by it whenever in its judgment the best interests of the corporation will be served.

Source: Laws 1937, c. 50, § 23, p. 209; C.S.Supp.,1941, § 70-823; R.S. 1943, § 70-723.

70-724 Executive committee; powers.

Any corporation may, by its bylaws, provide for an executive committee to be elected from and by its board of directors. To such committee may be delegated the management of the current and ordinary business of the corporation, and such other duties as the bylaws may prescribe, but the designation of such committee, and the delegation thereto of authority, shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 24, p. 209; C.S.Supp.,1941, § 70-824; R.S. 1943, § 70-724.

70-725 Rates for electric energy and other services; nonprofit operation.

Each corporation shall be operated without profit to its members, but the rates, fees, rents, or other charges, for electric energy, and any other facilities,

supplies, equipment, appliances or services furnished by the corporation, shall be sufficient at all times (1) to pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business, and the principal of and interest on the obligations issued or assumed by the corporation in the performance of the purpose for which it was organized, and (2) for the creation of reserves.

Source: Laws 1937, c. 50, § 25, p. 210; C.S.Supp.,1941, § 70-825; R.S. 1943, § 70-725.

70-726 Revenue; use; surplus; return to consumer.

The revenue of the corporation shall be devoted, first, to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter to such reserves for improvement, new construction, depreciation and contingencies, as the board may from time to time prescribe. Revenue not required for the purposes set forth in this section shall be returned from time to time to the users of the services or products of such corporation on a pro rata basis according to the amount of business done with each during the period, either in cash, in abatement of current charges for electric energy, or otherwise, as the board determines; but such return may be made by way of general rate reduction to such users, if the board so elects.

Source: Laws 1937, c. 50, § 25, p. 210; C.S.Supp.,1941, § 70-825; R.S. 1943, § 70-726.

70-727 Articles of incorporation; amendment; procedure.

A corporation may amend its articles of incorporation by a majority vote of the members present in person at any regular meeting, or at any special meeting of its members called for that purpose. The power to amend shall include the power to accomplish any desired change in the provisions of its articles of incorporation, and to include any purpose, power or provision which would be authorized to be included in original articles of incorporation if executed at the time the amendment is made. Articles of amendment signed by the president or vice president, and attested by the secretary, certifying to such amendment and its lawful adoption, shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738. As soon as the Secretary of State shall have accepted the articles of amendment for filing and recording, and issued a certificate of amendment, the amendment or amendments shall be in effect.

Source: Laws 1937, c. 50, § 26, p. 210; C.S.Supp.,1941, § 70-826; R.S. 1943, § 70-727.

70-728 Consolidation of corporations; how effected.

Any two or more corporations may enter into an agreement for the consolidation of such corporations. The agreement shall set forth the terms and conditions of the consolidation, the name of the proposed consolidated corporation, the number of its directors, not less than five, the time of the annual meeting and election, and the names of at least five persons to be directors until the first annual meeting. If such agreement is approved by the votes of a majority of the members of each corporation present in person at any regular meeting, or at any special meeting of its members called for that purpose, the directors named

in the agreement shall sign and acknowledge, as incorporators, articles of consolidation conforming substantially to original articles of incorporation of a corporation organized under sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 27, p. 211; C.S.Supp.,1941, § 70-827; R.S. 1943, § 70-728.

70-729 Articles of consolidation; filing.

The articles of consolidation shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738. As soon as the Secretary of State shall have accepted the articles of consolidation for filing and recording, and issued a certificate of consolidation, the proposed consolidated corporation, described in the articles under its designated name, shall be a body corporate with all of the powers of a corporation as originally organized hereunder.

Source: Laws 1937, c. 50, § 27, p. 211; C.S.Supp.,1941, § 70-827; R.S. 1943, § 70-729.

70-730 Dissolution; procedure.

Any corporation may dissolve by a majority vote of the members in person at any regular meeting, or at any special meeting of its members called for that purpose. A certificate of dissolution shall be signed by the president or vice president, and attested by the secretary, certifying to such dissolution, and stating that they have been authorized to execute and file such certificate by votes cast in person by a majority of the members of the corporation. A certificate of dissolution shall be executed, acknowledged, filed and recorded in the same manner as the original articles of incorporation of a corporation organized under sections 70-701 to 70-738, and as soon as the Secretary of State shall have accepted the certificate of dissolution for filing and recording, and issued a certificate of dissolution, the corporation shall be deemed to be dissolved.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-730.

70-731 Dissolution; discharge of liabilities; distribution of assets.

Such corporation shall continue for the purpose of paying, satisfying and discharging any existing liabilities or obligations, and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name. Any assets remaining, after all liabilities or obligations of the corporation have been satisfied or discharged, shall be distributed pro rata among the members of the corporation at the time of the filing of the certificate of dissolution.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-731.

70-732 Defective corporations; dissolution; procedure.

Any corporation which purports to have been incorporated or reincorporated under sections 70-701 to 70-738, but which has not complied with all of the requirements for legal corporate existence, may nevertheless file a certificate of

dissolution in the same manner as a validly existing corporation. The certificate of dissolution in such case may be authorized by a majority of the incorporators or directors at a meeting called by any incorporator upon ten days' notice mailed to the last-known post office address of each incorporator or director, and held at the principal office of the corporation named in the articles of incorporation.

Source: Laws 1937, c. 50, § 28, p. 211; C.S.Supp.,1941, § 70-828; R.S. 1943, § 70-732.

70-733 Filing fees.

The Secretary of State shall charge and collect for (1) filing articles of incorporation and issuing a certificate of incorporation, three dollars; (2) filing of articles of amendment and issuing a certificate of amendment, two dollars; (3) filing articles of consolidation and issuing a certificate with respect thereto, ten dollars; and (4) filing articles of dissolution, five dollars.

Source: Laws 1937, c. 50, § 29, p. 212; C.S.Supp.,1941, § 70-829; R.S. 1943, § 70-733.

70-734 Securities Act of Nebraska; inapplicable; when.

Whenever any corporation organized under the Electric Cooperative Corporation Act has borrowed money from any federal agency, the obligations issued to secure the payment of such money shall be exempt from the provisions of the Securities Act of Nebraska, and the act shall not apply to the issuance of membership certificates.

Source: Laws 1937, c. 50, § 30, p. 212; C.S.Supp.,1941, § 70-830; R.S. 1943, § 70-734; Laws 1967, c. 424, § 1, p. 1300; Laws 1998, LB 894, § 7.

Cross References

Securities Act of Nebraska, see section 8-1123.

70-735 Defective incorporation; correction; effect.

In the event any corporation has filed defective articles of incorporation, or has failed to do all things necessary to perfect its corporate organization, it may, nevertheless, file corrected articles of incorporation or amend the original articles, and do and perform all acts and things necessary in the premises for the correction of such defects. The action so taken shall be valid and binding upon all persons concerned, and the capacity of such corporation to file corrected articles of incorporation or amendments to the original articles, or to do and perform all acts and things necessary in the premises, shall not be questioned.

Source: Laws 1937, c. 50, § 31, p. 213; C.S.Supp.,1941, § 70-831; R.S. 1943, § 70-735.

70-736 Existing associations; compliance with sections.

Any existing cooperative or nonprofit corporation or association, organized under any other law of this state for the purpose of engaging in rural electrification, may, by a majority vote of the members present in person at a meeting

called for that purpose, amend its articles of incorporation so as to comply with sections 70-701 to 70-738.

Source: Laws 1937, c. 50, § 32, p. 213; C.S.Supp.,1941, § 70-832; R.S. 1943, § 70-736.

70-737 Sections, how construed.

Sections 70-701 to 70-738 shall be construed liberally. The enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things.

Source: Laws 1937, c. 50, § 33, p. 213; C.S.Supp.,1941, § 70-833; R.S. 1943, § 70-737.

70-738 Sections; exclusive; applicability of other law.

Sections 70-701 to 70-738 are complete in themselves, and shall be controlling. The provisions of any other law of this state, except as provided in said sections, shall not apply to a corporation organized under said sections.

Source: Laws 1937, c. 50, § 35, p. 213; C.S.Supp.,1941, § 70-835; R.S. 1943, § 70-738.

ARTICLE 8

RURAL POWER DISTRICTS

Section
70-801. District; how created.
70-802. Terms, defined.
70-803. Formation of district; petition; contents.
70-804. Formation of district; petition; investigation; hearing; notice; expenses.
70-805. Formation of district; petition; hearing; approval; procedure.
70-806. Formation of district; petitioner; appeal; procedure.
70-807. Formation of district; petition granted; interested person; appeal; procedure.
70-808. Sections, how construed.
70-809. Audit.

70-801 District; how created.

Independently of, and in addition to any and all other means or methods provided by the laws of this state for the creation of public power districts, such districts may also be created in the method and manner in sections 70-801 to 70-808 provided.

Source: Laws 1949, c. 196, § 1, p. 571.

70-802 Terms, defined.

As used in Chapter 70, article 8, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;

(2) The terms public power district and district as used in Chapter 70, article 8, each mean the same and also have the same meaning as the term public power district as applied to public corporations created under Chapter 70, article 6, and amendments thereof;

(3) Petitioner means the corporation or association which presents a petition to the Nebraska Power Review Board for the creation of a public power district pursuant to Chapter 70, article 8;

(4) Electric utility means the business of conducting or carrying on, in service to the public, any one or more of the functions or operations of generation, transmission, distribution, sale, and purchase of electrical energy, hydrogen, or ethanol for purposes of lighting, power, heating, and any and every other useful purpose whatsoever, and any and all plants, lines, systems, and any and all other property owned, used, operated, or useful for such operation;

(5) Electric cooperative corporation means a corporation organized under Chapter 70, article 7; and

(6) Rural area means any area not included within the boundaries of any incorporated city or village.

Source: Laws 1949, c. 196, § 2, p. 571; Laws 1981, LB 181, § 36; Laws 1986, LB 1230, § 50; Laws 2005, LB 139, § 18.

70-803 Formation of district; petition; contents.

Any electric cooperative corporation, whether organized or incorporated under the laws of this state or of any other state, which shall own and operate within this state any electric utility engaged in furnishing electric energy to customers in a rural area, may file in the office of the Nebraska Power Review Board a petition for the creation of a public power district, which petition must state and contain:

(1) The name of the proposed district, incorporating in each name the words public power district;

(2) The location of the principal place of business of the proposed district;

(3) The names of the municipalities within the proposed district and the boundaries thereof, including within the same, but not limited to all municipalities served by the petitioner in its electric utility business;

(4) A general description of the nature of the business in which the proposed district is to engage, the location and method of operation of the electric utility both theretofore operated by the petitioner and as proposed for the district when created;

(5) A statement that the proposed district shall not have the power to levy taxes nor to issue bonds which shall be general obligations of the district;

(6) The names and the addresses of the members of the board of directors of the district, which board shall consist of not less than five nor more than twenty-one members, except where the district comprises or proposes to operate in more than fifty counties in the state in which case the number shall be seven, who shall serve until their successors are elected and qualified as provided for in Chapter 70, article 8; the directors named shall be divided as nearly as possible into three equal groups, (a) the members of the first group to hold office until their successors elected at the first general state election thereafter shall have qualified, (b) the members of the second group to hold office until their successors elected at the second general state election thereafter shall have qualified, and (c) the members of the third group to hold office until their successors elected at the third general state election thereafter shall have qualified; and after the name of each director, it shall state to which of the three groups he or she belongs;

(7) A statement in substance that the proposed district when created pursuant to the provisions of Chapter 70, article 8, shall be a public power district subject to and governed by the provisions of Chapter 70, article 6, and all other

provisions of law, insofar as the same are applicable to public power districts in this state after their creation; and

(8) Duly certified copies of documents and records of proceedings preceding the filing of the petition which must include and show the following: (a) Due authorization of and an irrevocable covenant for the complete dissolution of the corporate existence of the petitioner, such dissolution to be effective when, as, and if the petition is approved and the proposed district created; (b) due authorization of and irrevocable covenant for the absolute assignment, transfer, grant, deed, and conveyance of all of the property and assets of the petitioner to the district when, as, and if the petition is approved and the district created, including an itemized and detailed description of all of said property and assets, the location thereof, and the exact nature and amount of the consideration and terms of each such assignment, transfer, grant, deed, and conveyance, and further including the names and addresses of the officers of the petitioner authorized to execute, acknowledge, and deliver any and all instruments and documents necessary or proper to fully consummate said transaction; and (c) duly certified copies of resolutions of the stockholders or members of the petitioner authorizing the execution and filing of the petition and the prosecution of the same to conclusion.

Source: Laws 1949, c. 196, § 3, p. 572; Laws 1981, LB 181, § 37.

70-804 Formation of district; petition; investigation; hearing; notice; expenses.

Upon receipt of such petition the board shall immediately make an investigation of the proposed district, of all matters set forth in the petition, and, as the board may deem necessary or proper, of any other facts and circumstances surrounding the existing business and operation of the petitioner, its proposed dissolution and transfer of its assets to the district. The board shall also conduct a public hearing upon such petition after publishing a notice of the time and place of such hearing for three consecutive weeks in any legal newspaper widely circulated in the territory comprising the proposed district. The petitioner shall pay the necessary expenses incurred by the board in making investigations and conducting hearings pursuant to the provisions of Chapter 70, article 8.

Source: Laws 1949, c. 196, § 4, p. 574; Laws 1981, LB 181, § 38.

70-805 Formation of district; petition; hearing; approval; procedure.

At such public hearing any interested person, firm, association, or corporation may appear and present evidence or argument in support of or opposition to such petition. After such hearing and such independent investigation as may be deemed advisable, if the board finds that the proposed district and its proposed operation of an electric utility are feasible and conform to public convenience and welfare, the board shall thereupon and without delay issue a certificate in duplicate, setting forth a true copy of the petition and declaring that the petition has been approved. The board shall cause said certificate to be filed as provided in section 70-608, and thereupon such district under its designated name shall be and constitute a body politic and corporate and thenceforth shall be a public power district governed by all provisions of

Chapter 70, article 6, and of other pertinent statutes, insofar as the same pertain to public power districts after their creation.

Source: Laws 1949, c. 196, § 5, p. 574; Laws 1981, LB 181, § 39.

70-806 Formation of district; petitioner; appeal; procedure.

The petitioner may appeal from the decision of the board dismissing the petitioner's petition, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1949, c. 196, § 6(1), p. 575; Laws 1981, LB 181, § 40; Laws 1988, LB 352, § 111.

Cross References

Administrative Procedure Act, see section 84-920.

70-807 Formation of district; petition granted; interested person; appeal; procedure.

Any interested person, firm, or corporation may likewise appeal from a decision of the board granting the petition, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1949, c. 196, § 6(2), p. 575; Laws 1981, LB 181, § 41; Laws 1988, LB 352, § 112.

Cross References

Administrative Procedure Act, see section 84-920.

70-808 Sections, how construed.

Sections 70-801 to 70-808 are and shall be construed to be cumulative, independent legislation, and complete in themselves.

Source: Laws 1949, c. 196, § 7, p. 576.

70-809 Audit.

The audit of any rural power district organized pursuant to Chapter 70, article 8, shall be conducted in the manner prescribed in section 84-304.01.

Source: Laws 1993, LB 310, § 11.

ARTICLE 9
PUBLIC POWER INDUSTRY

Section
70-901. Expiration of act.
70-902. Expiration of act.
70-903. Expiration of act.
70-904. Expiration of act.
70-905. Expiration of act.
70-906. Repealed. Laws 1996, LB 890, § 1.
70-907. Repealed. Laws 1996, LB 890, § 1.

70-901 Expiration of act.

70-902 Expiration of act.

70-903 Expiration of act.

70-904 Expiration of act.

70-905 Expiration of act.

70-906 Repealed. Laws 1996, LB 890, § 1.

70-907 Repealed. Laws 1996, LB 890, § 1.

ARTICLE 10

NEBRASKA POWER REVIEW BOARD

Section

70-1001 Declaration of policy.

In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

It is also the policy of the state to prepare for an evolving retail electricity market if certain conditions are met which indicate that retail competition is in the best interests of the citizens of the state. The determination on the timing and form of competitive markets is a matter properly left to the states as each state must evaluate the costs and benefits of a competitive retail market based on its own unique conditions. Consequently, there is a need for the State of Nebraska to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

Source: Laws 1963, c. 397, § 1, p. 1259; Laws 1971, LB 349, § 4; Laws 1981, LB 181, § 42; Laws 2000, LB 901, § 6.

Public policy underlying encouragement of publicly owned electric utilities is to provide power to consumers at reasonable rates at as low overall cost as possible and to avoid duplication of facilities. Nebraska P. P. Dist. v. City of York, 212 Neb. 747, 326 N.W.2d 22 (1982).

Before any electric generation facilities may be constructed, an application must be filed with the board, a hearing held at which any interested party may appear, and approval by the board obtained. Omaha P. P. Dist. v. Nebraska P. P. Project, 196 Neb. 477, 243 N.W.2d 770 (1976).

The 1971 amendment extended the policy of the act to wholesale as well as retail sales of electrical energy. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

Public policy of state with regard to electrical service stated. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

Legislature authorized board on notice and hearing to establish service areas in the event of nonagreement. City of Gering v. Gering Valley Rural P. P. Dist., 180 Neb. 241, 142 N.W.2d 155 (1966).

The article, of which this section is a part, is constitutional. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1001.01 Terms, defined.

For purposes of sections 70-1001 to 70-1027, unless the context otherwise requires:

(1) Board means the Nebraska Power Review Board;

(2) Electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;

(3) Regional transmission organization means an entity independent from those entities generating or marketing electricity at wholesale or retail, which has operational control over the electric transmission lines in a designated geographic area in order to reduce constraints in the flow of electricity and ensure that all power suppliers have open access to transmission lines for the transmission of electricity;

(4) Representative organization means an organization designated by the board and organized for the purpose of providing joint planning and encouraging maximum cooperation and coordination among electric suppliers. Such organization shall represent electric suppliers owning a combined electric generation plant capacity of at least ninety percent of the total electric generation plant capacity constructed and in operation within the state;

(5) State means the State of Nebraska; and

(6) Unbundled retail rates means the separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for the generation, transmission, and distribution of electricity.

Source: Laws 1981, LB 302, § 1; R.S.1943, (1996), § 70-1023; Laws 2000, LB 901, § 7; Laws 2003, LB 65, § 1.

70-1002 Suppliers of electricity; agreements; specify service areas; submission to board; purpose of section.

(1) All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, serving customers at retail in adjoining service areas shall have the authority to enter into written agreements with each other specifying either the service area or customers each shall serve with electric energy. Before such agreements shall be effective, except agreements referred to in subsection (2) of this section, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. In the event that such suppliers fail to consummate such agreements, except agreements referred to in subsection (2) of this section, the matter shall be referred to the Nebraska Power Review Board created by section 70-1003.

(2) When two or more suppliers serve the same municipality at retail, such agreements shall specify the service areas within such municipality which each supplier is to serve.

(3) It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and, except agreements referred to in subsection (2) of this section, shall require the approval of the Nebraska Power Review Board, and they shall be submitted to the board for amendment before the transfer of ownership or control of the facilities serving a service area.

Source: Laws 1963, c. 397, § 2, p. 1259; Laws 1981, LB 181, § 43.

Realignment agreement cannot confer greater rights on one than was possessed by other. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

Suppliers of electricity were required to enter into agreement specifying their service areas. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1002.01 Suppliers of electricity; agreements; wholesale electric energy; submission to board; considerations; investigation; approval; effect.

All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, shall have authority to enter into written agreements with each other limiting the areas in which or the customers to which a party to the agreement shall provide or sell electric energy at wholesale. Wholesale electric energy is hereby defined as electric energy which is sold to another agency for resale to the ultimate user, hereafter referred to as the retail customer. Before such agreements shall become effective, they shall be submitted to and approved by the Nebraska Power Review Board created by section 70-1003. It is declared to be the purpose of this section to promote and encourage the making of such agreements. Such agreements may be amended by the parties thereto at any time, and such amendments shall require the prior approval of the Nebraska Power Review Board. When requested to approve such an agreement or amendment thereto, the Nebraska Power Review Board shall consider whether or not the proposed agreement or amendment can be reasonably expected to provide a reliable wholesale power supply at a reasonable cost for the area covered by the agreement. It may make such investigation as it determines is necessary and hold a hearing if it determines one to be desirable. At the conclusion of its investigation, the Nebraska Power Review Board shall approve the agreement or amendment unless it determines that it cannot be reasonably expected to provide a reliable wholesale power supply at a reasonable cost for the area covered. Such agreements when approved by the Nebraska Power Review Board shall not be binding upon other suppliers that are not parties to the agreement and the Nebraska Power Review Board shall have no authority to impose conditions that will be binding or applicable to other suppliers that are not parties to such agreements. Such agreements shall not be considered as establishing service areas within the meaning of Chapter 70, article 10.

Source: Laws 1971, LB 349, § 1; Laws 1981, LB 181, § 44.

The provision requiring determination of whether the proposed agreement or amendment can reasonably be expected to provide a reliable wholesale power supply at a reasonable cost for the area is a sufficient standard to guide the Nebraska Power Review Board in the exercise of its delegated legislative power hereunder. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

70-1002.02 Suppliers of electricity; sale in violation of approved agreement; prohibited.

No supplier shall offer, provide or sell electric energy at wholesale in areas or to customers in violation of any agreement entered into and approved by the Nebraska Power Review Board pursuant to section 70-1002.01.

Source: Laws 1971, LB 349, § 2.

70-1002.03 New transmission facilities or interconnection; agreement by affected parties; disputes submitted to board; insure prudent utility practice; rate determination; effect.

When any electric generation facility or transmission facility over seventy thousand volts is constructed or acquired, either within or without the State of Nebraska, and the output of the generation or transmission facility would be transmitted over existing transmission facilities of others within this state or transmitted over new transmission facilities to be constructed or acquired within this state or through an interconnection with existing facilities of others within this state, and such transmission of the output would substantially affect

the reliability, operation, or safety of the transmission system of a generating power agency or a distribution power agency in this state, as defined in section 70-626.01, the party or parties that would jointly or individually receive the output from such electric generation or transmission facility and the party or parties whose existing transmission system would be so affected shall determine, pursuant to prudent utility practice, what new transmission facilities or interconnection, if any, should be constructed or acquired so that the output of the generation or transmission facility will be transmitted in a reliable and safe manner. As used in this section, prudent utility practice shall mean any of the practices, methods and acts at a particular time which, in the exercise of reasonable judgment in the light of the facts, including but not limited to the practices, methods, and acts engaged in or approved by a significant portion of the electrical utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety, and expedition. If the parties determine that new transmission facilities or interconnection are to be required, the parties will determine what new transmission facilities should be constructed or acquired and what interconnection should be provided, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. In the event that the parties are unable to agree, before construction begins or the acquisition is finalized, but after having made a reasonable effort to reach agreement, upon any of the terms or conditions of (1) what new transmission facilities are to be constructed or acquired, (2) who shall construct or acquire such new transmission facilities, or (3) agreement for the electrical interconnection of transmission facilities, the matter shall be submitted to the Nebraska Power Review Board for hearing and determination, before construction begins or the acquisition is finalized, in accordance with prudent utility practice as defined in this section and the provisions of sections 70-626.04 and 70-1014, utilizing to the fullest extent possible the existing transmission facilities for the maximum benefit of the electric ratepayers of this state. Any determination by such board regarding rates shall be advisory only and not binding upon the parties. Rates, tolls, and charges shall be as provided for in section 70-655.

Source: Laws 1975, LB 104, § 11; Laws 1981, LB 181, § 45.

70-1002.04 Municipalities; joint operation of electric systems; register with board; reports; action subject to review or approval.

Two or more municipalities owning or operating separate electric systems that join together for the purpose of facilitating the performance of any of their respective powers or duties shall, before such a group of municipalities commences operations, register with the Nebraska Power Review Board on such forms as the board may prescribe and containing such information as the board may request. Such a group shall comply with any additional reporting requirements the board imposes that are applied to individual municipalities. Any action taken by an individual municipality that is subjected to the Nebraska Power Review Board review or approval, shall, if taken by a group of municipalities, be subject to similar review or approval.

Source: Laws 1981, LB 181, § 56.

70-1003 Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; jurisdiction; officers; executive director; staff; reports.

(1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two laypersons. No person who is or who has within four years preceding his or her appointment been either a director, officer, or employee of any electric utility or an elective state officer shall be eligible for membership on the board. Members of the board shall be appointed by the Governor subject to the approval of the Legislature. Members of the board first appointed shall be appointed within thirty days of May 16, 1963. Of the members initially appointed, two shall serve until January 1, 1965, two until January 1, 1966, and one until January 1, 1967. Upon expiration of such terms, the successors shall be appointed for terms of four years. No member of the board shall serve more than two consecutive terms. Any vacancy on the board arising other than from the expiration of a term shall be filled by appointment for the unexpired portion of the term, and any person appointed to fill a vacancy on the board shall be eligible for reappointment for two more consecutive terms. No more than three members of the board shall be registered members of that political party represented by the Governor. Each member of the board shall receive sixty dollars per day for each day actually and necessarily engaged in the performance of his or her duties, but not to exceed six thousand dollars in any one year, and shall be reimbursed for his or her actual and necessary expenses while so engaged as provided in sections 81-1174 to 81-1177. The board shall have jurisdiction as provided in Chapter 70, article 10.

(2) The board shall meet promptly after its members have been appointed. They shall elect from their members a chairperson and a vice-chairperson. Decisions of the board shall require the approval of a majority of the members of the board.

(3) The board shall employ an executive director and may employ such other staff necessary to carry out the duties pursuant to Chapter 70, article 10. The executive director shall serve at the pleasure of the board and shall be solely responsible to the board. The executive director shall be responsible for the administrative operations of the board and shall perform such other duties as may be delegated or assigned to him or her by the board. The board may obtain the services of experts and consultants necessary to carry out the board's duties pursuant to Chapter 70, article 10.

(4) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with the State Energy Office. The State Energy Office shall consider the information in the Nebraska Power Review Board's report when the State Energy Office prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

(a) The assessments for the fiscal year imposed pursuant to section 70-1020;

(b) The gross income totals for each category of the industry and the industry total;

(c) The number of suppliers against whom the assessment is levied, by category and in total;

(d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;

(e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;

(f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;

(g) A statistical summary of board activities and an expenditure summary;

(h) A roster of power suppliers in Nebraska and the assessment each paid; and

(i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

(5) The board shall annually hold one or more public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market.

(6) The board shall submit an annual report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report shall include:

(a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;

(b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;

(c) To what extent retail rates have been unbundled in Nebraska;

(d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and

(e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(7) The board may submit periodic reports on the information set out in subsection (6) of this section if the board determines that significant changes to those conditions have occurred of which the Governor and the Legislature should be apprised prior to the submission of the next annual report.

(8) The board is authorized to establish working groups of interested parties to assist the board in carrying out the duties set forth in subsections (5) and (6) of this section.

Source: Laws 1963, c. 397, § 3, p. 1260; Laws 1971, LB 554, § 1; Laws 1978, LB 800, § 1; Laws 1980, LB 863, § 1; Laws 1981, LB 204, § 107; Laws 1981, LB 181, § 46; Laws 2000, LB 901, § 8.

70-1004 Suppliers of electricity; filing of maps and service area statements; exception.

Each supplier which becomes a party to an agreement under the provisions of section 70-1002 shall file with the secretary of the board a suitable map or maps, in such form as the board shall prescribe, showing either the service area or customers to be served. Whenever any changes occur in the service area, new maps shall be filed. Each supplier in the state which fails to file a map or maps showing its service area or customers to be served as established by agreement shall file a statement with the secretary showing the service area and customers actually served by it, what it claims to be its service area, stating the reason it has not entered into agreements with suppliers in adjoining service areas, and if a dispute exists as to furnishing service to any service area, the nature and extent thereof. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Source: Laws 1963, c. 397, § 4, p. 1261; Laws 1981, LB 181, § 47.

Suppliers of electricity were required to file a statement showing what it claims as its service area. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1005 Suppliers of electricity; service area; application to establish; notice of hearing; exception.

Any supplier may at any time on or after July 1, 1964, apply to the board to establish its service area. In such case and in all cases where agreements have not been entered into, including cases arising under section 70-1008, the secretary shall give written notice to the parties involved citing them to appear at a time, not less than thirty days thereafter, and at a place specified in the notice for a hearing upon the matter of establishing the service areas concerned in the notice. The provisions of this section shall not apply to service within the corporate limits of any municipality.

Source: Laws 1963, c. 397, § 5, p. 1262.

70-1006 Hearings; continuance; rules of procedure.

At the hearing the board shall hear testimony and receive other evidence relating to the matter and may continue the hearing from time to time. The board shall adopt such rules of procedure as are advisable and in conformity with law.

Source: Laws 1963, c. 397, § 6, p. 1262.

70-1007 Establishment of service areas; board; orders; policy considerations.

After the hearing, the board shall make an order establishing the service areas in the matter covered by the notice. In determining any such matter, the board shall seek to carry out the policy stated in section 70-1001. It shall give such consideration as is appropriate in each case to the following:

(1) The supplier best able to supply the load required;

(2) The most logical future supplier of the area;

(3) The desires of the supplier with respect to loads and service areas it wishes to serve;

(4) The ability to provide service at costs comparable to other suppliers in the service area and the immediate costs to the ultimate consumers involved in the transfer; and

(5) The ability of the supplier to cope with the problems of expanding loads and increased costs.

Source: Laws 1963, c. 397, § 7, p. 1262; Laws 1979, LB 223, § 1.

Absent annexation or concurrence of the adjoining supplier, the only present means for a municipal power supplier to obtain a modification of its service area is by establishing that the present supplier cannot or will not furnish adequate electrical service or that its doing so involves a wasteful and unwarranted duplication of facilities. In re Application of City of Lincoln, 243 Neb. 458, 500 N.W.2d 183 (1993).

Elements to be considered by Power Review Board in approving service area agreement stated; area service contracts must be respected until supplier is unable to provide service in accordance with guidelines set out in this section. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

70-1008 Certified service areas; established; municipalities; newly annexed areas; acquisition of facilities and customers; procedure; waiver of right to acquire; joint planning.

In the absence of an agreement between the suppliers affected and notwithstanding the provisions of subdivisions (1) to (5) of section 70-1007:

(1) Existing service areas presently designated by agreements and exhibits filed with and approved by the board, or previously ordered by the board, shall remain and be established as certified service areas.

(2) A municipally owned electric system, serving such municipality at retail, shall have the right, upon application to and approval by the board, to serve newly annexed areas of such municipality. Electric distribution facilities and customers of another supplier in such newly acquired certified service area may be acquired, in accordance with the procedure and criteria set forth in section 70-1010, within a period of one year and payment shall be made in respect to the value of any such facilities' customers or certified service area being transferred. The rights of a municipality to acquire such distribution facilities and customers within such newly annexed area shall be waived unless such acquisition and payment are made within one year of the date of annexation. If an application is made to the board within one year of the date of annexation for a determination of total economic impact as provided in section 70-1010, such right shall not be waived unless the municipality fails to make payment of the price determined by the board within one year of a final decision establishing such price. Notwithstanding other provisions of this section, the parties may extend the time for acquisition and payment by mutual written agreement.

(3) All retail power suppliers having adjoining certified service areas shall engage in joint planning with respect to customers, facilities, and services, taking into account the considerations specified in section 70-1007, including the possibility that an area may be annexed by a municipality within a reasonable period of time.

Source: Laws 1963, c. 397, § 8, p. 1262; Laws 1979, LB 223, § 2.

Under this section, a municipality is authorized to acquire the electric distribution facilities and customers of any other supplier within an area annexed by the municipality. This section does not require the municipality to make payment for the value of a rural power district area transferred to a city when there are no facilities or customers for a city to acquire. In re Application of City of Grand Island, 247 Neb. 446, 527 N.W.2d 864 (1995).

A municipality which operates a retail system has a preference to furnish service within its corporate limits and its zoning area. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

A municipality that furnishes electric energy at retail has the right to serve its zoning area with specified exception. City of Gering v. Gering Valley Rural P. P. Dist., 180 Neb. 241, 142 N.W.2d 155 (1966).

70-1009 Certified service areas; modification; application; transfer of facilities and customers; considerations; impairment of rights prohibited.

(1) When one supplier at the date of enactment has customers or distribution facilities extending into the certified service area of another supplier, the

customers and distribution facilities of the former supplier may be acquired by negotiation or by application of either party to the board for modification of certified service area as to ownership of facilities and customers to be served.

(2) Such amendment may be made by mutual agreement, or upon application of either party to and determination by the board, upon consideration of the factors set forth in section 70-1007, except that no transfer of facilities and customers shall be made which would impair the rights of bondholders or mortgage holders.

Source: Laws 1963, c. 397, § 9, p. 1263; Laws 1979, LB 223, § 3.

70-1010 Modification of service areas; application; procedure; suppliers agreements; exception; transfer of customers and facilities; price; how computed; impairment of obligations prohibited.

(1) The board shall have authority upon application by a supplier at any time to modify service areas or customers to be served as previously established. The same procedures as to notice, hearing, and decision shall be followed as in the case of an original application. Suppliers shall have authority by agreement to change service areas or customers to be served with the approval of the board. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

(2) In the event of a proposed transfer of customers and facilities from one supplier to another in accordance with this section or section 70-1008 or 70-1009, the parties shall attempt to agree upon the value of the certified service area and distribution facilities and customers being transferred. If the parties cannot agree upon the value, then the board shall determine the total economic impact on the selling supplier and establish the price accordingly based on, but not limited to, the following guidelines: The supplier acquiring the certified service area, distribution facilities, and customers shall purchase the electric distribution facilities of the supplier located within the affected area, together with the supplier's rights to serve within such area, for cash consideration which shall consist of (a) the current reproduction cost if the facilities being acquired were new, less depreciation computed on a straight-line basis at three percent per year not to exceed seventy percent, plus (b) an amount equal to the nonbetterment cost of constructing any facilities necessary to reintegrate the system of the supplier outside the area being transferred after detaching the portion to be sold, plus (c) an amount equal to two and one-half times the annual revenue received from power sales to existing customers of electric power within the area being transferred, except that for large commercial or industrial customers with peak demands of three hundred kilowatts or greater during the twelve months immediately preceding the date of filing with the board, the multiple shall be five times the net revenue, defined as gross power sales, less costs of wholesale power including facilities rental charges, received from power sales to large commercial or industrial customers with measured demand of three hundred kilowatts or greater during the twelve months immediately preceding the filing with the board for service area modification. After the board has determined the price in accordance with such guidelines, the acquiring supplier may acquire such distribution facilities and customers by payment of the established price within one year of the final order.

(3) Notwithstanding the provisions of sections 70-1008 to 70-1010, no transfer of facilities and customers shall be made or approved by the board if such transfer would impair the obligations of a power supplier to holders of its bonds or mortgages.

Source: Laws 1963, c. 397, § 10, p. 1263; Laws 1979, LB 223, § 4.

The plain meaning of ''existing customer'' under subsection (2)(c) of this section is a customer who is purchasing or has been purchasing electricity from a supplier of electricity at the time transfer of the service area becomes imminent. The proper date to determine valuation under this section is not the date of annexation, but, rather, the date on which the acquiring service provider firmly asserts its rights to acquire the service area by filing an application with the Nebraska Power Review Board to serve the newly annexed area. In re Application of City of North Platte, 257 Neb. 551, 599 N.W.2d 218 (1999).

Subsection (2) of this section clearly provides that the Nebraska Power Review Board shall determine economic impact on the selling supplier when a proposed transfer of customers and facilities from one supplier to another is involved and the parties are unable to agree upon the value of the certified service area, distribution facilities, and customers being transferred. In re Application of City of Grand Island, 247 Neb. 446, 527 N.W.2d 864 (1995).

In determining total economic impact on selling supplier, this section authorizes the Nebraska Power Review Board to consider factors other than those specifically named. In re Application of City of Lexington, 244 Neb. 62, 504 N.W.2d 532 (1993).

A service area is subject to modification at any time by procedure prescribed. City of Schuyler v. Cornhusker P. P. Dist., 181 Neb. 704, 150 N.W.2d 588 (1967).

70-1011 Suppliers; service outside area; application for approval; when granted; applicability of section.

Except by agreement of the suppliers involved, no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted duplication of facilities. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

Source: Laws 1963, c. 397, § 11, p. 1264; Laws 1981, LB 181, § 48.

Absent annexation or concurrence of the adjoining supplier, the only present means for a municipal power supplier to obtain a modification of its service area is by establishing that the present supplier cannot or will not furnish adequate electrical service or that its doing so involves a wasteful and unwarranted duplication of facilities. In re Application of City of Lincoln, 243 Neb. 458, 500 N.W.2d 183 (1993).

Where there is no competent evidence to sustain elements necessary to warrant invasion of area service rights of supplier, order of board permitting it is arbitrary and in conflict with public policy. Cornhusker P. P. Dist. v. Loup River P. P. Dist., 184 Neb. 789, 172 N.W.2d 235 (1969).

70-1012 Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.

Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired by any supplier, an application, filed with the board and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (1) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (2) for any generation facility when the board finds that: (a) Such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of

municipalities with a capacity not greater than that of the plant being replaced, (b) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (c) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (3) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (4) for the construction of a qualified facility as defined in section 70-2002.

Source: Laws 1963, c. 397, § 12, p. 1264; Laws 1979, LB 119, § 1; Laws 1981, LB 181, § 49; Laws 1984, LB 729, § 1; Laws 2009, LB436, § 6.

The requirement that the hearing be held within thirty days unless a continuance has been requested by the applicant is directory, not mandatory. Omaha P. P. Dist. v. Nebraska P. P. Project, 196 Neb. 477, 243 N.W.2d 770 (1976).

This section is not limited to retail suppliers of electricity. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1012.01 Suppliers; electric generation and transmission facilities; terminate construction or acquisition; filing; reasons; hearing; effect; section, how construed.

In the event a supplier terminates construction or acquisition of electric generation or transmission facilities after receiving approval for the facilities from the Nebraska Power Review Board, the supplier shall file with the board within thirty days of the action taken to terminate construction or acquisition, a statement of the factors or reasons relied upon by the supplier in taking such action. Within ten days after receipt of such a filing, the board shall give notice of the filing to such other suppliers as it deems interested or affected by such action and it shall hold a hearing for the purpose of obtaining such additional information as the board deems advisable or necessary to inform other suppliers and the public of the reasons for such termination. Notice of any such hearing shall be given to those suppliers previously given notice of the filing and to any other parties expressing interest in the approved application. The board shall not have authority to approve or deny the action of a supplier terminating construction or acquisition, and any such filing or hearing shall be advisory and solely for the purpose of informing the board, other suppliers, interested parties, and the ratepayers of this state of the factors or reasons relied upon in taking action to terminate construction or acquisition. Nothing in this section shall constitute or be construed as a defense to any cause of action, including a claim for breach of contract, resulting from such termination.

Source: Laws 1979, LB 119, § 2; Laws 1981, LB 181, § 50.

70-1012.02 Repealed. Laws 1984, LB 729, § 2.

70-1013 Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.

Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such alternate power suppliers as it deems to be affected by the application. The hearing shall be had within thirty days unless for good cause shown, the applicant shall request in writing that such hearing not be scheduled until a later time, but in

any event such hearing shall not be more than ninety days from the filing of the application, and the board shall give its decision within thirty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence; *Provided,* the board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 70-1014 can be made without a hearing. Such hearing shall be conducted as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

Source: Laws 1963, c. 397, § 13, p. 1265; Laws 1967, c. 425, § 1, p. 1301.

The requirement that the hearing be held within thirty days unless a continuance has been requested by the applicant is directory, not mandatory. Omaha P. P. Dist. v. Nebraska P. P. Project, 196 Neb. 477, 243 N.W.2d 770 (1976).

This section provides for filing of application, notice, and hearing of matters authorized under preceding section. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1014 Electric generation facilities and transmission lines; approval or denial of application; findings required.

After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

Source: Laws 1963, c. 397, § 14, p. 1265; Laws 1981, LB 181, § 51; Laws 2003, LB 65, § 2.

In determining whether a proposed application should be approved, the Nebraska Power Review Board does not have the power to determine that the proposed transmission line should be built along a particular route. Lincoln Electric System v. Terpsma, 207 Neb. 289, 298 N.W.2d 366 (1980).

Nebraska Power Review Board is authorized, after hearing, to decide which of two competing facilities shall furnish service. City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 138 N.W.2d 629 (1965).

70-1014.01 Special generation application; approval; findings required.

(1) Except as provided in subsection (2) of this section, an application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (a) the application qualifies as a special generation application, (b) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (c) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

(2)(a) An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using renewable energy sources

such as solar, wind, biomass, landfill gas, methane gas, or new hydropower generation technology or an emerging technology, including, but not limited to, fuel cells and micro-turbines, may be filed with the board if (i) the total production from all such renewable projects, excluding sales from such projects to other electric-generating entities, does not exceed ten percent of total energy sales as shown in the producer's Annual Electric Power Industry Report to the United States Department of Energy and (ii) the applicant's governing body conducts at least one advertised public hearing which affords the ratepayers of the applicant a chance to review and comment on the subject of the application.

(b) The application shall be approved by the board if the board finds that (i) the applicant is using renewable energy sources described in this subsection, (ii) total production from all renewable projects of the applicant does not exceed ten percent of the producer's total energy sales as described in subdivision (2)(a) of this section, and (iii) the applicant's governing body has conducted at least one advertised public hearing which affords its ratepayers a chance to review and comment on the subject of the application.

(3) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act which intends to develop renewable energy sources for sale to one or more Nebraska electric utilities described in this section may also make an application to the board pursuant to subsection (2) of this section if (a) the purchasing electric utilities conduct a public hearing described in such subsection and (b) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years.

Source: Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2.

Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction.

If any supplier shall commence the construction or finalize or attempt to finalize the acquisition of any generation facilities, any transmission lines, or any related facilities, or any customers are served in violation of the provisions of Chapter 70, article 10, such construction, acquisition, or service of such customers shall be enjoined in an action brought in the name of the State of Nebraska, until such supplier has complied with the provisions of Chapter 70, article 10.

Source: Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52.

70-1016 Appeals; procedure.

An appeal of any final action of the board may be taken to the Court of Appeals. Such appeal shall be in accordance with rules provided by law for appeals in civil cases.

Source: Laws 1963, c. 397, § 16, p. 1265; Laws 1991, LB 732, § 123; Laws 2003, LB 187, § 13.

Decision of the Nebraska Power Review Board will be affirmed on appeal if it is supported by the evidence in the record and is not arbitrary, capricious, unreasonable, or otherwise

illegal. In re Complaint of Federal Land Bank of Omaha, 223 Neb. 897, 395 N.W.2d 488 (1986).

This section provides for an appeal and necessarily contemplates the board must have evidence before it can determine whether an agreement can be reasonably expected to provide a reliable wholesale power supply at a reasonable cost to the area. City of Lincoln v. Nebraska P. P. Dist., 191 Neb. 556, 216 N.W.2d 722 (1974).

70-1017 Suppliers; duty to furnish service; disputes submitted to board.

Any supplier of electricity at retail shall furnish service, upon application, to any applicant within the service area of such supplier if it is economically feasible to service and supply the applicant. The electric service shall be furnished by the supplier within a reasonable time after the application is made. If the supplier and the applicant cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination within the same rate class, the matter shall be submitted to the board for hearing and determination.

Source: Laws 1963, c. 397, § 17, p. 1266; Laws 1974, LB 674, § 1; Laws 1981, LB 181, § 53.

The Nebraska Power Review Board lacks authority to determine whether a supplier of electricity may insist upon the payment of another's delinquent charges as a condition of providing electric service. Keith County Bank v. Wheat Belt Pub. Power Dist., 226 Neb. 850, 415 N.W.2d 459 (1987).

Payment of another's past-due electric use charges is not a term "under which service is to be furnished" of the nature which this section empowers the board to consider. In re Complaint of Federal Land Bank of Omaha, 223 Neb. 897, 395 N.W.2d 488 (1986).

Potentially conflicting interests within a class are incompatible with the maintenance of a true class action and this aspect may be disposed of upon motion for summary judgment. Blankenship v. Omaha P. P. Dist., 195 Neb. 170, 237 N.W.2d 86 (1976).

This section referred to in connection with holding that an ordinance fixing rates for electrical energy supplied by city-owned plant is not subject to referendum. Hoover v. Carpenter, 188 Neb. 405, 197 N.W.2d 11 (1972).

Zoning area of city and service area of power district may overlap. City of Gering v. Gering Valley Rural P. P. Dist., 180 Neb. 241, 142 N.W.2d 155 (1966).

70-1018 Suppliers; disputes over rates; submission to board; hearing; recommendations.

In the event of any dispute between suppliers concerning rates for service between such suppliers which cannot be settled by negotiations, the dispute shall be submitted to the board. The board may intervene in any such dispute on its own motion. Upon the submission of such dispute or the board's decision to intervene, the board shall set a time and place for hearing thereon and give notice as provided in section 70-1013. Following such hearing the board shall make its recommendations for the settlement of such dispute, which recommendations shall be advisory only.

Source: Laws 1963, c. 397, § 18, p. 1266.

70-1019 Board; proceedings; compel attendance of witnesses and production of documents; contempt proceedings authorized.

In any proceeding had before it under the provisions of Chapter 70, article 10, the board shall have authority, by subpoena, to compel the attendance of witnesses, and the production of any books, papers, records, accounts, or other documents which may be necessary to assist in a determination of any matter pending before the board. If any person shall disobey any such subpoena or refuse to testify concerning any matter regarding which he or she may be lawfully interrogated, the district court of Lancaster County, upon application by the board, may compel obedience by proceedings for contempt as in the case of disobedience to the requirements of a subpoena issued from such court or a refusal to testify therein.

Source: Laws 1963, c. 397, § 19, p. 1266; Laws 1981, LB 181, § 54.

70-1020 Board; expenses; assessments levied against suppliers; apportionment; collection; interest; Nebraska Power Review Fund; created; investment.

In order to defray the expenses of the Nebraska Power Review Board, there shall be imposed upon each public power district, public power and irrigation district, electric membership association, electric cooperative company, and municipality having an electric distribution system or generation and distribution system, and also upon all registered groups of municipalities, an assessment each fiscal year in such sum as shall be determined by the board and approved by the Governor. The total of such assessments shall not exceed the expenses of the board which may reasonably be anticipated for the fiscal year for which assessment is made and shall be apportioned among the various agencies in proportion to their gross income in the preceding calendar year. The board shall determine and certify such assessment to each supplier after approval of the board's budget by the Legislature and Governor. The supplier shall remit the amount of its assessment to the board within forty-five days after the mailing of the assessment. Any assessment not paid when due shall draw interest at a rate equal to the rate of interest allowed per annum under section 45-104.02, as such rate may from time to time be adjusted. The proceeds of such assessment shall be remitted to the State Treasurer for credit to the Nebraska Power Review Fund, which fund is hereby created and which, when appropriated by the Legislature, shall be used to administer the powers granted to the Nebraska Power Review Board. 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.

Source: Laws 1963, c. 397, § 20, p. 1266; Laws 1965, c. 407, § 1, p. 1307; Laws 1969, c. 584, § 65, p. 2385; Laws 1981, LB 181, § 55; Laws 1984, LB 730, § 1; Laws 1992, Fourth Spec. Sess., LB 1, § 10; Laws 1994, LB 1066, § 64.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

70-1021 Microwave communication facilities; authorization; procedure; protest; hearing; when.

After April 24, 1978, except as provided in section 70-1022, a public power district shall not construct microwave communication facilities unless such district is authorized to construct and operate its own microwave facilities by order of the Nebraska Power Review Board. Before such microwave construction is authorized, the Nebraska Power Review Board shall find (1) that in the judgment of the board the district is not receiving the required quality of service, and will not within a reasonable time receive the required quality of service from the regulated carrier or carriers involved, or (2) that the regulated carriers would not provide the required quality of service by the same or alternate methods, at the same or lower costs to the district, and (3) that such construction would be in the public interest. Upon the filing of an application to construct microwave communication facilities under this section, the board shall give notice thereof by mail to any regulated carrier or carriers involved. The regulated carrier or carriers involved shall have ten days to file specific written protests to such application which shall set forth in detail on what points the application is being protested. Upon filing of a protest or protests by the regulated carrier or carriers involved, the Nebraska Power Review Board

shall set the matter for hearing, except that if no protests are filed the board may grant the application without hearing.

Source: Laws 1978, LB 800, § 2; Laws 1980, LB 857, § 1.

70-1022 Microwave facilities or system; authorization; when not required.

Nebraska Power Review Board authorization shall not be required for the following:

(1) Construction of microwave facilities to be completed in a reasonable time where the district has, prior to April 24, 1978, entered into binding contractual obligations with respect to such facilities;

(2) Extensions of fifty miles or less of any single portion of a microwave system if such portion was in existence on or before April 24, 1978; or

(3) The addition of new equipment to modernize or upgrade but not to extend microwave facilities.

Source: Laws 1978, LB 800, § 3.

70-1023 Transferred to section 70-1001.01.

70-1024 Power supply plan; board; powers and duties; special assessment.

The board shall, prior to October 1, 1981, designate the representative organization responsible for the preparation and filing of those reports required pursuant to sections 70-1025 and 70-1026. The board may utilize a preexisting representative group from the industry if such group is willing to perform the task in the prescribed time and manner. The board shall prepare and publish the long-range power supply plan itself, if the board determines that no representative group is willing to complete such a study or that the product of any group so assembled has substantial deficiencies or cannot be completed by the prescribed date. The board shall have the power and duty to levy a special assessment in the manner described in section 70-1020 to defray the costs of such power supply plans, if the board must produce such power supply plan by itself or with consultants.

Source: Laws 1981, LB 302, § 2.

70-1025 Power supply plan; contents; filing; annual report.

(1) The representative organization shall file with the board a coordinated long-range power supply plan containing the following information:

(a) The identification of all electric generation plants operating or authorized for construction within the state that have a rated capacity of at least twenty-five thousand kilowatts;

(b) The identification of all transmission lines located or authorized for construction within the state that have a rated capacity of at least two hundred thirty kilovolts; and

(c) The identification of all additional planned electric generation and transmission requirements needed to serve estimated power supply demands within the state for a period of twenty years.

(2) Beginning in 1986, the representative organization shall file with the board the coordinated long-range power supply plan specified in subsection (1) of this section, and the board shall determine the date on which such report is

to be filed, except that such report shall not be required to be filed more often than biennially.

(3) An annual load and capability report shall be filed with the board by the representative organization. The report shall include statewide utility load forecasts and the resources available to satisfy the loads over a twenty-year period. The annual load and capability report shall be filed on dates specified by the board.

Source: Laws 1981, LB 302, § 3; Laws 1986, LB 948, § 1.

70-1026 Power supply plan; research and conservation report; contents.

The representative organization shall file, at the request of the board but no more often than biennially, a research and conservation report, which shall include the following information relative to programs enacted by the representative organization and its members:

(1) Research and development;

(2) Energy conservation;

(3) Load management;

(4) Renewable energy sources; and

(5) Cogeneration.

Source: Laws 1981, LB 302, § 4; Laws 1986, LB 948, § 2.

70-1027 Power supply plan; research and conservation report; board; include data in biennial report; hearing.

The board shall, in its biennial report, include data from any coordinated long-range power supply plan or research and conservation report filed with it. Before publishing its biennial report, if a coordinated long-range power plan or a research and conservation report has been filed with the board in the previous reporting period, the board shall consider, at a public hearing after giving notice of such hearing, the coordinated long-range power supply plan or the research and conservation report.

Source: Laws 1981, LB 302, § 5; Laws 1986, LB 948, § 3.

ARTICLE 11

RETAIL ELECTRIC SERVICE

Section

70-1101 Declaration of policy.

It is hereby declared to be the policy of the state to provide for dependable electric service at the lowest practical cost to all of the citizens of the state, including the residents of cities and villages.

The maintenance of competing electric systems within such cities or villages results in duplication of facilities and personnel and the needless expenditure of public funds by both such competing systems; that such needless expenditure for duplicating service by publicly owned agencies is not in accord with sound public policy. Whenever such duplicating competition exists in any municipality between a public power district organized under the provisions of Chapter 70, article 6, and other public agencies, including municipalities, such competition should be eliminated in the public interest for economy of operation and lower rates to the consumer.

Source: Laws 1963, c. 398, § 2, p. 1270.

This section is applicable in instances where two or more electric systems are competing against each other for consumer business within a given municipality. The intended purpose of this section is limited to legalizing service area boundary agreements between public power districts and municipally owned electric systems and to establishing a power review board. Southern Neb. Rural P.P. Dist. v. Nebraska Electric, 249 Neb. 913, 546 N.W.2d 315 (1996).

70-1102 Public power districts; agreements with municipalities; operation until January 1, 1972.

Whenever any public power district organized under Chapter 70, article 6, is engaged in competitive retail electric service in any incorporated municipality within this state, with a system for the retail sale of electric energy owned by such municipality, such district is hereby directed, within one year from October 19, 1963, to enter into appropriate agreements with such municipality for the operation by the municipality (1) of the distribution system of the district in the municipality; (2) of all its retail business served through such distribution system; and (3) its system in all areas over which the municipality has zoning power, including such secondary transmission lines as are used in the service of the defined area. Such agreement shall provide for such operation by the municipality until January 1, 1972, or such time as such district shall have fully paid or accumulated reserves for the payment of all of the bonds or other obligations of the district incurred as the cost of construction or the purchase price of such system.

Source: Laws 1963, c. 398, § 3, p. 1270.

70-1103 Public power districts; no impairment of obligation to bondholders; municipal operation; books and records; revenue.

Nothing contained in sections 70-650.01 and 70-1101 to 70-1106 shall in any manner be construed so as to impair the obligations of the public power district to the holders of its outstanding bonds. The municipalities shall properly operate and maintain such system according to the obligations of the district to its bondholders. The municipalities shall maintain and keep separate books and records of the operations of the property of the district in the same manner as such books and records were kept by the district and shall account and pay to the district the same revenue from the property it acquires which the district would have received from the property it transfers to the city if the district had remained the operator of such property.

Source: Laws 1963, c. 398, § 4, p. 1271.

70-1104 Public power districts; municipal operation; employees' rights respected.

Any municipality assuming the management of the distribution system of any public power district under the provisions of sections 70-1101 to 70-1103 shall

take over and employ all of the employees of the district theretofore operating such property on the same salary, terms and conditions as their previous employment, including their rights of seniority, pension and retirement plan without prejudice to any of such rights.

Source: Laws 1963, c. 398, § 5, p. 1271.

70-1105 Obligation of public power district to convey to municipality; no election necessary; when.

The provisions of section 70-650.01 shall be and remain in full force and effect with reference to the transfer and conveyance of its distribution system by the district as therein required. In those cases in which the municipality shall be operating the distribution system of the district, as provided in sections 70-1102 to 70-1104 at the time of the retirement of the district's bonds as described in section 70-650.01, no election shall be required as a condition of said transfer to the municipality.

Source: Laws 1963, c. 398, § 6, p. 1271.

70-1106 Sections, how construed.

Sections 70-650.01 and 70-1101 to 70-1106 shall be deemed to be complete within themselves, to cover the entire subject to which it relates and to be an independent act.

Source: Laws 1963, c. 398, § 7, p. 1272.

ARTICLE 12

STATE GRID SYSTEM

Section
70-1201. Repealed. Laws 1969, c. 793, § 1.
70-1202. Repealed. Laws 1969, c. 793, § 1.
70-1203. Repealed. Laws 1969, c. 793, § 1.
70-1204. Repealed. Laws 1969, c. 793, § 1.
70-1205. Repealed. Laws 1969, c. 793, § 1.
70-1206. Repealed. Laws 1969, c. 793, § 1.
70-1207. Repealed. Laws 1969, c. 793, § 1.
70-1208. Repealed. Laws 1969, c. 793, § 1.
70-1209. Repealed. Laws 1969, c. 793, § 1.
70-1210. Repealed. Laws 1969, c. 793, § 1.
70-1211. Repealed. Laws 1969, c. 793, § 1.
70-1212. Repealed. Laws 1969, c. 793, § 1.
70-1213. Repealed. Laws 1969, c. 793, § 1.
70-1214. Repealed. Laws 1969, c. 793, § 1.
70-1215. Repealed. Laws 1969, c. 793, § 1.
70-1216. Repealed. Laws 1969, c. 793, § 1.
70-1217. Repealed. Laws 1969, c. 793, § 1.
70-1218. Repealed. Laws 1969, c. 793, § 1.
70-1219. Repealed. Laws 1969, c. 793, § 1.
70-1220. Repealed. Laws 1969, c. 793, § 1.
70-1221. Repealed. Laws 1969, c. 793, § 1.
70-1222. Repealed. Laws 1969, c. 793, § 1.
70-1223. Repealed. Laws 1969, c. 793, § 1.
70-1224. Repealed. Laws 1969, c. 793, § 1.
70-1225. Repealed. Laws 1969, c. 793, § 1.
70-1226. Repealed. Laws 1969, c. 793, § 1.
70-1227. Repealed. Laws 1969, c. 793, § 1.

70-1201 Repealed. Laws 1969, c. 793, § 1.

70-1202 Repealed. Laws 1969, c. 793, § 1.

70-1203 Repealed. Laws 1969, c. 793, § 1.

70-1204 Repealed. Laws 1969, c. 793, § 1.

70-1205 Repealed. Laws 1969, c. 793, § 1.

70-1206 Repealed. Laws 1969, c. 793, § 1.

70-1207 Repealed. Laws 1969, c. 793, § 1.

70-1208 Repealed. Laws 1969, c. 793, § 1.

70-1209 Repealed. Laws 1969, c. 793, § 1.

70-1210 Repealed. Laws 1969, c. 793, § 1.

70-1211 Repealed. Laws 1969, c. 793, § 1.

70-1212 Repealed. Laws 1969, c. 793, § 1.

70-1213 Repealed. Laws 1969, c. 793, § 1.

70-1214 Repealed. Laws 1969, c. 793, § 1.

70-1215 Repealed. Laws 1969, c. 793, § 1.

70-1216 Repealed. Laws 1969, c. 793, § 1.

70-1217 Repealed. Laws 1969, c. 793, § 1.

70-1218 Repealed. Laws 1969, c. 793, § 1.

70-1219 Repealed. Laws 1969, c. 793, § 1.

70-1220 Repealed. Laws 1969, c. 793, § 1.

70-1221 Repealed. Laws 1969, c. 793, § 1.

70-1222 Repealed. Laws 1969, c. 793, § 1.

70-1223 Repealed. Laws 1969, c. 793, § 1.

70-1224 Repealed. Laws 1969, c. 793, § 1.

70-1225 Repealed. Laws 1969, c. 793, § 1.

70-1226 Repealed. Laws 1969, c. 793, § 1.

70-1227 Repealed. Laws 1969, c. 793, § 1.

ARTICLE 13
ARBITRATION OF DISPUTES

Section
70-1301. Statement of policy.
70-1302. Electric rate disputes; legislative determination.
70-1303. Wholesale purchaser; payment to supplier; when.

Section

70-1301 Statement of policy.

It is hereby declared to be the public policy of this state to provide adequate electrical service at as low overall cost as possible, consistent with sound business practices and, in furtherance of such policy, electric service should be provided by nonprofit entities including public power districts, public power and irrigation districts, nonprofit electric cooperatives, and municipalities.

Source: Laws 1979, LB 207, § 1.

70-1302 Electric rate disputes; legislative determination.

In order to meet the policies set out in section 70-1301, protect the financial integrity of suppliers of electricity at wholesale, avoid imposing a discriminatory burden on purchasers of electricity at wholesale, and insure that wholesale rates are adequate, fair, reasonable, and nondiscriminatory, it is necessary to provide a method to expeditiously and fairly resolve wholesale electric rate disputes, including rate disputes relating to transmission and delivery of electrical energy, between the supplier of electrical energy and any and all of its purchasers of electricity at wholesale. To carry out such policies, the necessity for the enactment of sections 70-1301 to 70-1329 is hereby declared to be a matter of legislative determination.

Source: Laws 1979, LB 207, § 2.

70-1303 Wholesale purchaser; payment to supplier; when.

A purchaser of electricity at wholesale shall pay to the supplier of such electricity the entire amount of the charge for such electricity within the time set forth in the power contract between the purchaser and supplier or, if no

such contract exists or no time is set forth in the contract, within thirty days after the date on which the supplier mails the billing to the purchaser.

Source: Laws 1979, LB 207, § 3.

70-1304 Wholesale purchaser; billing; dispute; notice; contents.

If a purchaser of electricity at wholesale elects to dispute all or any portion of the wholesale electric charge established by the supplier, the purchaser shall nevertheless pay the full amount of the charge stated in the billing within the time established in section 70-1303 and shall give notice in writing to the supplier stating such election. The notice shall fully describe the basis for the dispute and set forth a detailed statement of disputed issues and the relief sought by the purchaser. Written notice of a dispute concerning a mathematical, metering, or quantity error in the billing shall be given by either party to the other within the time set forth in the power contract or, if no contract exists or no time is set forth in the contract, within sixty days after the discovery of the error.

Source: Laws 1979, LB 207, § 4.

70-1305 Wholesale purchaser; dispute; supplier establish escrow account.

Upon written demand by the purchaser made at the time of the notice of dispute as provided in section 70-1304, the supplier shall, each month, deposit the disputed portion of the monthly payment as specified by the purchaser, but not to exceed twenty percent of the total amount billed, into an escrow account, in a bank located within the county of the principal place of business of the supplier. Such deposits shall be made from the date of the demand until settlement of the dispute as provided by sections 70-1301 to 70-1329. The escrow funds shall be invested, to the extent possible, in securities of the United States Government and the balance in other insured interest-bearing accounts of the bank.

Source: Laws 1979, LB 207, § 5.

70-1306 Unresolved dispute; submitted to arbitration; rules applicable.

If the dispute remains unresolved forty-five days after the receipt by the supplier of the notice in writing of such dispute and payment of the full amount of the charge as provided in section 70-1304 has been made, the dispute shall be submitted to arbitration in accordance with sections 70-1301 to 70-1329.

Except as otherwise provided in sections 70-1301 to 70-1329, the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1977, shall be used to the extent that they are determined by the arbitration board to be applicable to the procedures set forth in sections 70-1301 to 70-1329. The Administrative Fee Schedule contained in such rules shall not apply.

Source: Laws 1979, LB 207, § 6.

70-1307 Arbitration board; membership.

An arbitration board shall be formed to arbitrate the wholesale electric rate dispute in conformity with the standards set out in section 70-1302. The arbitration board shall consist of three members, one of whom shall be selected

by the purchaser, one of whom shall be selected by the supplier, and a third shall be selected by the other two arbitrators.

Source: Laws 1979, LB 207, § 7.

70-1308 Arbitrators; disqualifications.

The arbitrators shall not be employees, agents, or consultants of any party to the dispute and shall have no financial or personal interest in the result of the arbitration.

Source: Laws 1979, LB 207, § 8.

70-1309 Arbitration board; appointed; when; manner.

The arbitration board shall be appointed within ninety days after the receipt of the notice of the dispute. Each party shall notify the other in writing of the name and address of the arbitrator selected by it within sixty days after receipt of the notice of the dispute. The two arbitrators selected by the parties shall notify the parties in writing of the name and address of the third arbitrator selected by them.

Source: Laws 1979, LB 207, § 9.

70-1310 Arbitration costs and expenses; how assessed.

Each of the parties to the dispute shall pay the costs and expenses of the arbitrator selected by it together with one-half of the costs and expenses of the third arbitrator and one-half of the costs and expenses of the hearing, unless the parties otherwise agree or the arbitration board, in its discretion, assesses such costs and expenses, or any part thereof, in a different manner.

Source: Laws 1979, LB 207, § 10.

70-1311 Arbitration board; personnel; hire.

The arbitration board shall hire an official stenographer to report its hearings and may hire an attorney to assist it in ruling on the admissibility of evidence offered and in the preparation of the record which will constitute the bill of exceptions in any appeal from the decision of the arbitration board and may hire such other personnel as it deems necessary to conduct the hearing.

Source: Laws 1979, LB 207, § 11.

70-1312 Arbitration board; meetings; chairperson; disputed issues.

The arbitration board shall meet within thirty days of the appointment of the third arbitrator. The third arbitrator shall be the chairperson and preside at all meetings and hearings of the arbitration board and shall provide notice to the parties at least five days before the first meeting. The parties shall meet with the arbitration board at its first meeting for the purpose of clarifying and narrowing the specific issues from those set forth in the detailed statement of disputed issues.

Source: Laws 1979, LB 207, § 12.

70-1313 Failure to appoint an arbitrator; effect.

If a party to the dispute fails or refuses to appoint its arbitrator within the time established in section 70-1309, the arbitrator appointed by the other party

shall, within ten days after such failure apply to the American Arbitration Association for the appointment of the second arbitrator. Within ten days after the appointment of the second arbitrator, the two arbitrators so selected shall appoint a third arbitrator.

Source: Laws 1979, LB 207, § 13.

70-1314 Arbitration board; proceedings; duties.

The arbitration board may proceed in the absence of any party who, after due notice, fails to appear or obtain a continuance. An award shall not be made without a hearing or based solely on the default of a party. The arbitration board shall (1) consider only those matters necessary for the resolution of the disputed issues, (2) have no authority to add to, subtract from, or alter the issues except as otherwise agreed to by the parties, and (3) not alter or modify any existing contract.

Source: Laws 1979, LB 207, § 14.

70-1315 Supplier; notice to other wholesale purchasers; when.

The supplier shall give written notice, by certified mail, to its other purchasers at wholesale within fifteen days after receipt of the notice of the appointment of the third arbitrator.

Source: Laws 1979, LB 207, § 15.

70-1316 Arbitration board; preliminary written statements; hearing; notice.

The parties shall submit preliminary written statements to the arbitration board within sixty days after the convening of the first meeting of the arbitration board. The arbitration board shall fix the time and place for a hearing which shall commence not more than seventy-five days after the convening of the first meeting of the arbitration board. The board shall give each party written notice of the hearing by certified mail, at least ten days in advance of the hearing, unless the parties waive such notice.

Source: Laws 1979, LB 207, § 16.

70-1317 Dispute; production of documents and records; depositions.

At all times after receipt of the notice of the dispute, each party shall make available to the other, for inspection and copying, all documents, data, and records with respect to the dispute for the presentation of the matter to the arbitration board. If the parties fail to agree on the production of documents and records, the arbitration board shall determine the matter. The parties may also take depositions with respect to the dispute.

Source: Laws 1979, LB 207, § 17.

70-1318 Arbitration board; hearing; testimony; evidence; witnesses.

At the hearing the arbitration board shall hear testimony and receive evidence in person or by deposition relating to the dispute and may continue the hearing from time to time. The arbitration board shall be bound by the rules of evidence applicable in district court. The arbitration board may require a party to submit such evidence as the board may deem necessary or desirable for making its decision and the board is authorized to subpoena witnesses and

documents. Opportunity shall be afforded to both parties to present evidence and cross-examine witnesses. The parties may be represented by counsel.

Source: Laws 1979, LB 207, § 18.

70-1319 Arbitration board; hearing; duration.

The arbitration board shall seek to complete its hearing on the issues submitted to it within forty-five days after the commencement of the hearing. The arbitration board may extend the time to complete the hearing beyond the forty-five-day period if the board determines that such extension is necessary.

Source: Laws 1979, LB 207, § 19.

70-1320 Arbitration board; decision; findings.

The arbitration board shall render its decision within thirty days after completion of the hearing. The decision shall be in writing, be accompanied by findings of fact, and be signed by the arbitrators supporting the decision. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The decision of a majority of the arbitrators shall be the decision of the arbitration board.

Source: Laws 1979, LB 207, § 20.

70-1321 Arbitration board; decision; findings; provided to parties; filed with Nebraska Power Review Board.

A copy of the decision and accompanying findings and conclusions shall be mailed to each party and its attorney of record by certified mail. The arbitration board shall file its decision, together with all pleadings and exhibits filed with the arbitration board, with the secretary of the Nebraska Power Review Board within five days of the date of the decision.

Source: Laws 1979, LB 207, § 21.

70-1322 Escrow account; distribution.

Within thirty days after the decision of the arbitration board, the funds and investments in the escrow account established pursuant to section 70-1305, together with the interest thereon, shall be distributed or apportioned in accordance with the decision of the arbitration board.

Source: Laws 1979, LB 207, § 22.

70-1323 Escrow account; deficiency; effect; interest.

In the event that the escrow and interest thereon are insufficient to satisfy the provisions of the arbitration board's decision, the party liable for such deficiency shall take all actions necessary to obtain such funds and make payment thereof, including interest, within thirty days from the date of the decision. Interest shall be at the rate set forth in the contract between the parties or in the absence of a contract or if no rate of interest is set forth in the contract, at the average rate of interest earned by the escrow account established pursuant to section 70-1305.

Source: Laws 1979, LB 207, § 23.

70-1324 Arbitration; time limits; extension.

Except as otherwise provided in section 70-1326, the parties may, by mutual written agreement filed with the arbitration board, extend any of the time limits prescribed in sections 70-1301 to 70-1329.

Source: Laws 1979, LB 207, § 24.

70-1325 Arbitration board; final decision; appeal.

The final decision of the arbitration board shall be binding upon the parties. If a party to any arbitration proceeding is not satisfied with the decision entered by the arbitration board, such party may appeal as provided in section 70-1326 to reverse, vacate, or modify the decision, and such decision shall be in abeyance until the appellate court has issued its opinion.

Source: Laws 1979, LB 207, § 25; Laws 1991, LB 732, § 124.

70-1326 Arbitration board; decision; reversal, modification, or vacation; procedure.

The procedure to obtain reversal, modification, or vacation of a decision rendered by the arbitration board shall be (1) by filing notice of appeal with the Nebraska Power Review Board within thirty days after the date of the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321 or (2) by filing with the arbitration board and with the Nebraska Power Review Board a motion for rehearing within ten days after the filing of the decision with the Nebraska Power Review Board as provided in section 70-1321. If the arbitration board denies the motion for rehearing, a notice of appeal must be filed with the arbitration board and with the Nebraska Power Review Board within thirty days after the date of the filing by the arbitration board with the Nebraska Power Review Board of the decision denying the motion to the party appealing, except that when the arbitration board fails to file a decision on the motion for rehearing within thirty days after such motion is filed, the appeal to the Court of Appeals may be perfected by filing a notice of appeal before the arbitration board files a decision on the motion for rehearing and the review shall be the same as if the board had denied the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested. An appeal shall be deemed perfected and the appellate court shall have jurisdiction of the cause when a notice of an appeal has been filed with the Nebraska Power Review Board and appeal has been taken in the manner provided by law for appeals from the district court in civil cases.

Source: Laws 1979, LB 207, § 26; Laws 1991, LB 732, § 125; Laws 1992, LB 360, § 31.

70-1327 Appellate court; trial; de novo on the record.

Trial in the appellate court shall be de novo on the record. Such case shall be advanced in the same manner as other causes which involve the public welfare and convenience and shall be set for an early hearing.

Source: Laws 1979, LB 207, § 27; Laws 1991, LB 732, § 126.

70-1328 Record on appeal.

The verbatim testimony transcribed by the official stenographer, including all exhibits received, shall constitute the bill of exceptions. The decision appealed

and the bill of exceptions duly certified by the members of the arbitration board shall constitute the complete record on appeal.

Source: Laws 1979, LB 207, § 28; Laws 1991, LB 732, § 127.

70-1329 Wholesale purchaser; failure or refusal to make payment; supplier; remedies.

If a purchaser fails or refuses to make payment to the supplier as required by sections 70-1301 to 70-1329, the supplier may, after a charge remains unpaid thirty days after the due date, file suit in the district court in which the supplier or purchaser resides for a writ of mandamus to compel payment of the disputed amount, plus interest, pursuant to sections 70-1301 to 70-1329. If the court issues a writ of mandamus and the purchaser gives the written notice of disputed issues as required by section 70-1304 the matter shall proceed to arbitration as provided by sections 70-1301 to 70-1329. If the court declines to issue a writ of mandamus, it shall nevertheless retain jurisdiction of the matter for the purpose of determining the amount due to the supplier.

Source: Laws 1979, LB 207, § 29.

ARTICLE 14

JOINT PUBLIC POWER AUTHORITY ACT

Section

70-1401 Act, how cited.

Sections 70-1401 to 70-1423 shall be known and may be cited as the Joint Public Power Authority Act.

Source: Laws 1982, LB 852, § 1.

70-1402 Terms, defined.

As used in the Joint Public Power Authority Act, unless the context otherwise requires:

(1) Agency shall mean any public body, authority, or commission which is engaged in the generation, transmission, or distribution of electric power and energy and which issues indebtedness;

(2) Bonds shall mean electric revenue bonds, notes, warrants, certificates, or other obligations of indebtedness of a joint authority issued under the Joint Public Power Authority Act and shall include refunding bonds and notes issued pending permanent revenue bond financing;

(3) Cost or cost of a project shall mean, but shall not be limited to, the cost of acquisition, construction, reconstruction, improvement, enlargement, or extension of any project, including the cost of studies, plans, specifications, surveys, and estimates of related costs and revenue; the cost of land, land rights, rights-of-way, easements, water rights, fees, permits, approvals, licenses, certificates, franchises, and the preparation of applications for and securing the same; administrative, legal, engineering, and inspection expenses; financing fees, expenses, and costs; working capital; initial fuel costs; interest on the bonds during the period of construction and for such reasonable period thereafter as may be determined by the joint authority; establishment of reserves; and all other expenditures of the joint authority incidental, necessary, or convenient to the acquisition, construction, reconstruction, improvement, enlargement, or extension of any project and the placing of such project in operation;

(4) Governing body shall mean the board of directors of a public power district;

(5) Joint authority shall mean a public body and body corporate and politic organized in accordance with the Joint Public Power Authority Act;

(6) Public power district shall mean a public power district organized under or subject to Chapter 70, article 6; and

(7) Project shall mean any system or facilities for the generation, transmission, and transformation, or any combination thereof, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site or any interest in any of the foregoing or any right to the output, capacity, use, or services of such units, any system or facilities for the production, storage, or distribution of hydrogen, or any system or facilities for the production or distribution of ethanol.

Source: Laws 1982, LB 852, § 2; Laws 1986, LB 1230, § 51; Laws 2005, LB 139, § 19.

70-1403 Legislative findings.

The Legislature hereby finds and determines that:

(1) Certain public power districts in this state which are empowered severally to engage in the generation, transmission, and distribution of electric power and energy have for many years owned and operated systems for the distribution of electric power and energy to customers in their respective service areas, have the resources and ability to facilitate the development of a hydrogen production and distribution industry, and have the resources and ability to facilitate the development of an ethanol production and distribution industry;

(2) Such public power districts owning electric distribution systems have an obligation to provide the inhabitants and customers of the district an adequate, reliable, and economical source of electric power and energy in the future;

(3) In order to enhance the economy within the state, to achieve the economies and efficiencies made possible by the proper planning, financing, and location of facilities for the generation and transmission of electric power and energy, the production, storage, and distribution of hydrogen, and the production and distribution of ethanol which are not practical for any public power district acting alone, and to ensure an adequate, reliable, and economical supply of electric power and energy, hydrogen, and ethanol to the people of this state, it is desirable for the state to authorize public power districts to jointly plan, finance, develop, own, and operate electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities appropriate to their needs in order to provide for their present and future power requirements for all uses without supplanting or displacing the service at retail of other electric suppliers operating in this state;

(4) In order for public power districts of this state to secure long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes, it is also desirable to authorize public power districts to join together to create joint authorities which can issue revenue bonds and other obligations and make loans to its member public power districts at less cost than if the individual public power district secured its own financing; and

(5) The creation of joint authorities by public power districts which own electric distribution systems, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities, hydrogen production, storage, or distribution facilities, and ethanol production and distribution facilities and the issuance of revenue bonds by such joint authorities for such purposes as provided by the Joint Public Power Authority Act is for a public use and for public purposes and is a means of achieving economies, adequacy, and reliability in the generation or transmission of electric power and energy and in the meeting of future needs of this state and its inhabitants.

Source: Laws 1982, LB 852, § 3; Laws 1986, LB 1230, § 52; Laws 2005, LB 139, § 20.

70-1404 Public power district; joint project authorized; limitation; study.

(1) A public power district may plan, finance, develop, acquire, purchase, construct, reconstruct, improve, enlarge, own, operate, and maintain an undivided interest as a tenant in common in a project situated within or without the state jointly with one or more public power districts in this state owning electric distribution facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities or with any political subdivision or agency of this state or of any other state and may make such plans and enter into such contracts not inconsistent with the Joint Public Power Authority Act as are necessary or appropriate, except that membership of public power districts in a joint authority shall consist only of public power districts located within this state.

(2) Nothing in the Joint Public Power Authority Act shall prevent public power districts from undertaking studies to determine whether there is a need for a project or whether such project is feasible.

Source: Laws 1982, LB 852, § 4; Laws 1986, LB 1230, § 53; Laws 2005, LB 139, § 21.

70-1405 Creation of joint authority; procedure; resolution; membership; considerations; notice; challenge.

(1) The governing body of two or more public power districts may by resolution determine that it is in the best interests of the respective public power districts and their electric customers to create a joint authority. Such resolution shall be approved by a majority of the members of the governing body of the public power district. Each public power district which will be a member of the joint authority must approve for membership every other district that will be a member of the joint authority.

(2) In determining whether or not the creation of a joint authority for such purpose is in the best interests of the public power districts and their electric customers, the governing body shall take into consideration, but shall not be limited to:

(a) Whether or not a separate entity may be able to finance the costs of a project or projects or provide financing for its members in a more efficient and economical manner;

(b) Whether or not a better financial market acceptance may result if one entity is responsible for issuing all of the bonds required for a project or projects or providing financing for its members in a timely and orderly manner; and

(c) Whether or not savings and other advantages may be obtained by providing a separate entity responsible for the acquisition, purchase, construction, ownership, and operation of a project or projects or for issuing bonds in order to make loans to its member districts.

(3) If the proposed creation of a joint authority is found to be in the best interests of two or more public power districts, the governing body of each public power district shall cause notice of its action to be published once a week for two consecutive weeks in a newspaper of general circulation within the operating area of each public power district. Any elector of the district affected by the action of the governing body of such public power district may, by action de novo, instituted in the district court for the county in which the principal office of such public power district is located, within twenty days following the last publication of the prescribed notice, challenge the action of the public power district on the grounds that creation of a joint authority is not in the best interest of that public power district.

Source: Laws 1982, LB 852, § 5.

70-1406 Proposed joint authority; members; application; Nebraska Power Review Board; duties; proof of authority's establishment.

(1) Upon fulfilling the requirements set forth in section 70-1405, the governing body of each public power district which determines that its participation in the proposed joint authority is in its best interest shall by resolution appoint one representative to the proposed joint authority. Any two or more representatives

so appointed shall file with the Nebraska Power Review Board an application signed by a representative of each proposed member public power district setting forth:

(a) The names of all the proposed member public power districts and their respective appointed representatives;

(b) A certified copy of the resolution of each member public power district determining it is in its best interest to participate in the proposed joint authority and the resolution appointing such representative;

(c) The desire that the joint authority be organized as a public body and a body corporate and politic under sections 70-1401 to 70-1423; and

(d) The name which is proposed for the joint authority.

(2) The Nebraska Power Review Board shall examine the application and shall determine whether the application complies with the requirements set forth in subsection (1) of this section and that the proposed name of the joint authority is not identical with that of any other corporation of the state or any state agency or instrumentality, or so nearly similar as to lead to confusion and uncertainty. The Nebraska Power Review Board shall then receive and file the application.

(3) Upon receipt of such application, it shall be the duty of the Nebraska Power Review Board at once to make an investigation of the proposed joint authority to determine whether the application complies with the requirements set forth in subsection (1) of this section and that the proposed name of the joint authority is not identical with the name of any other corporation of the state or any state agency or instrumentality, or so nearly similar as to lead to confusion and uncertainty. If the board determines that the joint authority is in the best interest of each of the public power districts, the board or its successor by its executive board shall, within thirty days of receipt of such application, execute a certificate in duplicate, setting forth a true copy of the application and declaring that the application has been approved.

(4) The Nebraska Power Review Board shall immediately cause one copy of the certificate to be forwarded to and filed with the Secretary of State and the other one in the office of the county clerk of the county where the principal place of business of each member of the joint authority is located. Thereupon such joint authority under its designated name shall constitute a body politic and corporate.

(5) In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract of the joint authority, the joint authority, in the absence of the establishment of fraud, shall be conclusively deemed to have been established in accordance with sections 70-1401 to 70-1423 upon proof of the issuance of the prescribed certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action, or proceeding, and shall be conclusive proof of the filing and contents of such certificate.

Source: Laws 1982, LB 852, § 6.

70-1407 Joint authority; board of directors; appointment; votes; oath; officers; quorum; expenses; additional districts; withdrawal; dissolution.

(1) The management and control of a joint authority shall be vested in a board of directors. The governing body of each member public power district of

a joint authority shall appoint a representative who shall be a director of the joint authority. The representative, at the discretion of the public power district, may be an officer or employee of the public power district. Each director shall have not less than one vote and may have such additional votes as a two-thirds majority of the members of the joint authority shall determine. In determining any such additional votes of each director, consideration shall be given to the financial obligations to the joint authority of each member. Each director shall serve at the pleasure of the governing body by which he or she was appointed. Each appointed director, before entering upon his or her duties, shall take and subscribe to an oath before a person authorized by law to administer oaths to execute the duties of his or her office faithfully and impartially, and a record of each such oath shall be filed with the governing body of the appointing public power district.

The board of directors of the joint authority shall annually elect, with each representative of member public power districts having one vote, one of the directors as chairperson, another as vice-chairperson, and another person or persons who may but need not be directors as treasurer, secretary, and, if desired, assistant secretary. The office of treasurer may be held by the secretary or assistant secretary. The board of directors may also appoint such additional officers as it deems necessary. The secretary or assistant secretary of the joint authority shall keep a record of the proceedings of the joint authority, and the secretary shall be the custodian of all books, records, documents, and papers filed with the joint authority, the minute book or journal of the joint authority, and its official seal, in compliance with the provisions of section 70-622.

A majority of the directors of the joint authority then in office shall constitute a quorum. A vacancy on the board of directors of the joint authority shall not impair the right of a quorum to exercise all rights and perform all the duties of a joint authority. Any action taken by the joint authority under the provisions of sections 70-1401 to 70-1423 may be authorized by resolution at any regular or special meeting held pursuant to notice in accordance with the bylaws of the joint authority, and each such resolution shall take effect immediately and need not be published or posted. Three-fourths of the votes which the directors present are entitled to cast, with a quorum present, shall be necessary and sufficient to take any action or to pass any resolution. No director of a joint authority shall receive any compensation for the performance of duties provided under sections 70-1401 to 70-1423, except that each director may be paid his or her actual and necessary expenses incurred while engaged in the performance of such duties.

(2) After the creation of a joint authority, any other public power district may become a member (a) upon application to such joint authority, and (b) with the unanimous consent of the members of the joint authority evidenced by the resolutions of their respective governing bodies. Notice of additional members shall be given to the Secretary of State and the Nebraska Power Review Board.

(3) Any public power district may withdraw from the joint authority at any time, except that all contractual rights acquired and contractual obligations incurred by a public power district while such public power district was a member shall remain in full force and effect.

Whenever the board of directors of a joint authority and the governing body of each of its member public power districts shall by resolution determine that the purposes for which the joint authority was formed have been substantially

fulfilled and that all bonds issued and all other obligations incurred by the joint authority have been fully paid or satisfied, such board of directors and governing bodies may declare the joint authority to be dissolved. On the effective date of such resolution, the title to all funds and other property owned by the joint authority at the time of such dissolution shall vest in the member public power districts of the joint authority as provided in sections 70-1401 to 70-1423 and the bylaws of the joint authority.

Source: Laws 1982, LB 852, § 7.

70-1408 Joint authority; executive committee; creation; exercise powers of board.

The board of directors of a joint authority may create an executive committee the composition of which shall be set forth in the bylaws of the joint authority. The executive committee shall have and shall exercise the powers and authority of the board of directors during intervals between the board's meetings in accordance with the board's bylaws, rules, motions, or resolutions. The terms of office of the members of the executive committee and the method of filling vacancies shall be fixed by the bylaws of the joint authority.

Source: Laws 1982, LB 852, § 8.

70-1409 Joint authority; rights and powers; enumerated.

Each joint authority shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of the Joint Public Power Authority Act including, but not limited to, the right and power:

(1) To adopt bylaws for the regulation of the affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;

(2) To adopt an official seal and alter the same at pleasure;

(3) To maintain an office at such place or places as it may determine;

(4) To sue and be sued in its own name and to plead and be impleaded;

(5) To receive, administer, and comply with the conditions and requirements respecting any gift, grant, or donation of any property or money;

(6) To acquire by purchase, lease, gift, or otherwise, or to obtain options for the acquisition of, any property, real or personal, improved or unimproved, including an interest in land less than an interest in fee;

(7) To sell, lease, exchange, transfer, or otherwise dispose of, or to grant options for any such purposes with respect to, any real or personal property or interest in such property;

(8) To pledge or assign any money, rents, charges, or other revenue and any proceeds derived by the joint authority from the sales of property, insurance, or condemnation awards;

(9) To issue bonds of the joint authority for the purpose of providing funds for any of its corporate purposes;

(10) To authorize the construction, operation, or maintenance of any project or projects by any person, firm, or corporation, including political subdivisions and agencies of any state or of the United States;

(11) To acquire by negotiated purchase or lease an existing project, a project under construction, or other property, either individually or jointly, with one or

more public power districts in this state or with any political subdivisions or agencies of this state or any other state or with other joint authorities created pursuant to the Joint Public Power Authority Act;

(12) To dispose of by negotiated sale or lease an existing project, a project under construction, or other property, either individually or jointly, with one or more public power districts in this state, with any political subdivisions or agencies of this state or any other state or, with other joint authorities created pursuant to the Joint Public Power Authority Act, except that no such sale or lease of any project located in this state shall be made to any private person, firm, or corporation engaged in the business of generating, transmitting, or distributing electricity for profit;

(13) To fix, charge, and collect rents, rates, fees, and charges for electric power or energy, hydrogen, or ethanol and other services, facilities, and commodities sold, furnished, or supplied through any project;

(14) To generate, produce, transmit, deliver, exchange, purchase, or sell for resale only electric power or energy, to produce, store, deliver, or distribute hydrogen for use in fuel processes, or to produce, deliver, or distribute ethanol and to enter into contracts for any or all such purposes, subject to sections 70-1410 and 70-1413;

(15) To negotiate and enter into contracts for the purchase, exchange, interchange, wheeling, pooling, or transmission of electric power and energy with any public power district, any other joint authority, any political subdivision or agency of this state or any other state, any electric cooperative, or any municipal agency which owns electric generation, transmission, or distribution facilities in this state or any other state;

(16) To negotiate and enter into contracts for the sale or use of electric power and energy, hydrogen, or ethanol with any joint authority, electric cooperative, any political subdivision or agency or any public or private electric utility of this state or any other state, any joint agency, electric cooperative, municipality, public or private electric utility, or any state or federal agency or political subdivision, subject to sections 70-1410 and 70-1413;

(17) To make and execute contracts and other instruments necessary or convenient in the exercise of the powers and functions of the joint authority under the Joint Public Power Authority Act, including contracts with persons, firms, corporations, and others;

(18) To apply to the appropriate agencies of the state, the United States, or any other state and to any other proper agency for such permits, licenses, certificates, or approvals as may be necessary to construct, maintain, and operate projects in accordance with such licenses, permits, certificates, or approvals, and to obtain, hold, and use the same rights granted in any licenses, permits, certificates, or approvals as any other person or operating unit would have under such documents;

(19) To employ engineers, architects, attorneys, appraisers, financial advisors, and such other consultants and employees as may be required in the judgment of the joint authority and to fix and pay their compensation from funds available to the joint authority. The joint authority may employ technical experts and such other officers, agents, and employees as it may require and shall assess their qualifications, duties, compensation, and term of office. The board may delegate to one or more of the joint authority's employees or agents such powers and duties as the board may deem proper;

(20) To make loans or advances for long-term, supplemental, short-term, and interim financing for both capital projects and operational purposes to those member districts on such terms and conditions as the board of directors of the joint authority may deem necessary and to secure such loans or advances by assignment of revenue, receivables, or other sums of the member district and such other security as the board of directors of the joint authority may determine; and

(21) To sell or lease its dark fiber pursuant to sections 86-574 to 86-578.

Any joint authority shall have the same power of eminent domain as the public power districts have under section 70-670.

Source: Laws 1982, LB 852, § 9; Laws 1986, LB 1230, § 54; Laws 2001, LB 827, § 17; Laws 2002, LB 1105, § 479; Laws 2005, LB 139, § 22.

70-1410 Joint authority; statutory restrictions applicable; when.

Any joint authority created pursuant to sections 70-1401 to 70-1423 which is itself engaged in the generation, transmission, or sale of electrical energy, at wholesale or retail, or which is itself engaged in the construction, maintenance, expansion, improvement, or operation of a power generating plant or other facility for the production or transmission of electrical energy shall comply with the restrictions contained in Chapter 70, articles 10 and 13, and the provisions of sections 70-624 to 70-680.

Source: Laws 1982, LB 852, § 10.

70-1411 Joint authority; annual audit.

Any joint financing authority created pursuant to sections 70-1401 to 70-1423 shall be required to submit to an annual audit in the same manner as a public power district pursuant to sections 70-623 to 70-623.03.

Source: Laws 1982, LB 852, § 11.

70-1412 Joint authority member; power and energy contracts; conditions; payments; member; furnish authority money, property, and services; authority; lend member funds.

(1) Any public power district which is a member of the joint authority may contract to buy from the joint authority power and energy required for its present or future requirements, including the capacity and output of one or more specified projects. As the creation of a joint authority is an alternative method whereby a public power district may obtain the benefits and assume the responsibilities of ownership in a project, any such contract may provide that the public power district so contracting shall be obligated to make the payments required by the contract whether or not a project is completed, operable, or operating notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance of the joint authority or any other member of the joint authority under the contract or any other instrument. Any contract with respect to the sale or purchase of capacity or output of a project entered into between a joint authority and its member public power districts

may also provide that if one or more of such public power districts shall default in the payment of its or their obligations with respect to the purchase of such capacity or output, then the remainder of the member public power districts, which are purchasing capacity and output under the contract, shall be required to accept and pay for and shall be entitled proportionately to use or otherwise dispose of the capacity or output which was to be purchased by the defaulting public power district.

Any such contracts with respect to the sale or purchase of capacity, output, power, or energy from a project may extend for a period not exceeding fifty years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness of such contract shall not be subject to any authorizations or approvals by the state or any agency, commission, or instrumentality, or political subdivision thereof.

(2) Payments by a public power district under any contract for the purchase of capacity and output from a joint authority shall be made from the revenue derived from the ownership and operation of the electric system of such public power district. A public power district shall be obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through its electric system sufficient to provide revenue adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenue, including amounts sufficient to pay the principal of and interest on bonds, if any, issued by the public power district for purposes related to its electric system.

(3) Any public power district which is a member of a joint authority may furnish the joint authority with money derived from the ownership and operation of its electric system or facilities and provide the joint authority with personnel, equipment, and property, both real and personal. Any public power district may also provide any services to a joint authority.

(4) Any member of a joint authority may contract for, advance, or contribute funds derived solely from the ownership and operation of its electric system or facilities to a joint authority as may be agreed upon by the joint authority and the member, and the joint authority shall repay such advances or contributions from proceeds of bonds, from operating revenue, or from other funds of the joint authority, together with interest at a rate agreed upon by the member and the joint authority.

(5) The joint authority may advance and lend to its members funds derived from the issuance of its bonds as may be agreed upon by the joint authority and the member, and such member shall repay such advances or contributions together with interest at a rate agreed upon by the members and the joint authority.

Source: Laws 1982, LB 852, § 12.

70-1413 Joint authority project; sale of excess capacity; limitations; applicability.

Excess capacity or output of a project not then required by any of the members of a joint authority shall be first offered for sale or exchange pursuant to section 70-626.01. Any sale of available capacity and energy from the joint authority's project shall only be for the period required for the joint authority to fully utilize the amount of capacity and energy originally purchased in the

project. The limitations provided in this section shall not apply to the temporary sale of excess capacity and energy without the state in cases of emergency or when required to fulfill obligations under any pooling or reserve-sharing agreements, except that sales of excess capacity or output of a project to electric cooperatives, electric or public utilities, and other persons, the interest on whose securities and other obligations is not exempt from taxation by the federal government, shall not be made in such amounts, for such periods of time, and under such terms and conditions as will cause the interest on bonds issued to finance the cost of a project to become taxable by the federal government. This section shall not apply to sales of ethanol or hydrogen.

Source: Laws 1982, LB 852, § 13; Laws 1986, LB 1230, § 55; Laws 2005, LB 139, § 23.

70-1414 Joint authority; issue bonds; pledge revenue; restrictions.

A joint authority may issue bonds and pledge the revenue, or any portion thereof, derived or to be derived from all or any of its projects, and any additions and improvements to or extensions of such projects, or contributions or advances from or loans to its members to pay for the principal and interest of such bonds. Bonds of a joint authority shall be authorized by resolution adopted by its board of directors. Any bonds so issued shall be subject to the restrictions contained in sections 70-644 to 70-648.

Source: Laws 1982, LB 852, § 14.

70-1415 Joint authority projects; bonds; issuance; proceeds; uses.

(1) No joint authority shall undertake any project required to be financed, in whole or in part, with the proceeds of bonds without the approval of two-thirds of its members. A joint authority is hereby authorized to issue at one time or from time to time its bonds to pay all or any part of the cost of any of the authorized purposes. The principal of, premium, if any, and the interest on such bonds shall be payable solely from the funds provided for such payment. The bonds of each issue may be sold at public or private sale, may be sold at such price, and shall bear interest at such rate or rates, as may be determined by the board of directors of the joint authority. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding fifty years from their respective date or dates, as may be determined by the board of directors of the joint authority and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors of the joint authority prior to issuing the bonds. The board of directors of the joint authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the state. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until such delivery. The board of directors of the joint authority may also provide for the authentication of the bonds by a trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the directors of the joint authority may

determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds.

(2) The proceeds of the bonds of each issue shall be used solely for the purposes for which such bonds have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the board of directors of the joint authority may provide in the resolution authorizing the issuance of such bonds or in any trust agreement securing the same. The joint authority may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The joint authority may also provide for the replacement of any bonds which shall have become mutilated or shall have been destroyed or lost.

(3) Bonds may be issued under sections 70-1401 to 70-1423 without obtaining the consent or approval of the state or any political subdivision or any agency, commission, or instrumentality thereof.

Source: Laws 1982, LB 852, § 15.

70-1416 Bonds; secured by trust agreement; covenants authorized.

In the discretion of the board of directors of the joint authority, any bonds issued under the Joint Public Power Authority Act may be secured by a trust agreement by and between the joint authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Such trust agreement or the resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders and of the trustee as may be reasonable and proper and not in violation of law and may restrict the individual right of action by bondholders. The trust agreement or the resolution providing for the issuance of such bonds may contain covenants including, but not limited to, the following:

(1) The pledge of all or any part of the revenue derived or to be derived from the project or projects to be financed by the bonds or from the electric system or facilities, hydrogen production, storage, or distribution facilities, or ethanol production or distribution facilities of a joint authority;

(2) The rents, rates, fees, and charges to be established, maintained, and collected and the use and disposal of revenue, gifts, grants, and funds received or to be received by the joint authority;

(3) The setting aside of reserves and the investment, regulation, and disposition of such reserves;

(4) The custody, collection, securing, investment, and payment of any money held for the payment of bonds;

(5) Limitations or restrictions on the purposes to which the proceeds of sale of bonds to be issued may be applied;

(6) Limitations or restrictions on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, or the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended, the percentage of bonds the holders of which must consent to, and the manner in which such consent may be given;

(8) Events of default and the rights and liabilities arising from such default, the terms and conditions upon which bonds issued under the Joint Public Power Authority Act shall become or may be declared due before maturity, and the terms and conditions upon which such declaration and its consequences may be waived;

(9) The preparation and maintenance of a budget;

(10) The retention or employment of consulting engineers, independent auditors, and other technical consultants;

(11) Limitations on or the prohibition of free service to any person, firm, or corporation, public or private;

(12) The acquisition and disposal of property, except that no project or part of such project shall be mortgaged by such trust agreement or resolution, except that the same may be mortgaged in the same manner as provided for a public power district by section 70-644;

(13) Provisions for insurance and for accounting reports and the inspection and audit of such reports; and

(14) The continuing operation and maintenance of the project.

Source: Laws 1982, LB 852, § 16; Laws 1986, LB 1230, § 56; Laws 2005, LB 139, § 24.

70-1417 Directors; establish rates and fees; limitation; pledge; lien.

A two-thirds majority vote of the directors of the joint authority present, with each member casting the number of votes to which he or she is entitled, is authorized to fix, charge, and collect rents, rates, fees, and charges for electric power and energy, hydrogen, ethanol, and other services, related to the generation, transmission, and sale of electric energy, to the production, storage, or distribution of hydrogen, or to the production or distribution of ethanol. For so long as any bonds of a joint authority are outstanding and unpaid, the rents, rates, fees, and charges shall be so fixed as to provide revenue at least sufficient, together with other available funds, to pay all costs of and charges and expenses in connection with the proper operation and maintenance of its projects and all necessary repairs, replacements, or renewals of such projects, to pay when due the principal of, premium, if any, and interest on all bonds payable from such revenue, to create and maintain reserves and comply with such covenants as may be required by any resolution or trust agreement authorizing and securing bonds, and to pay any and all amounts which the joint authority may be obligated to pay from such revenue by law or contract.

Any pledge made by a joint authority pursuant to the Joint Public Power Authority Act shall be valid and binding from the date the pledge is made. The revenue, securities, and other money so pledged and then held or thereafter received by the joint authority or any fiduciary shall immediately be subject to the lien of the pledge without any physical delivery of such pledge or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the member

district or joint authority without regard to whether such parties have notice of such lien.

Source: Laws 1982, LB 852, § 17; Laws 1986, LB 1230, § 57; Laws 2005, LB 139, § 25.

70-1418 Funds from bond issuance; investment authorized; conditions.

The resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide that any of such money may be temporarily invested and reinvested pending disbursements of such money in such securities and other investments as shall be provided in such resolution or trust agreement, and shall provide that any bank or trust company with which such money shall be deposited shall act as trustee of such money and shall hold and apply the same for purposes pursuant to this section, subject to such regulation as sections 70-1401 to 70-1423 and such resolution or trust agreement may provide.

Source: Laws 1982, LB 852, § 18.

70-1419 Bondholder; trustee; enforcement of rights.

Any holder of bonds issued under sections 70-1401 to 70-1423 or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights pursuant to this section may be restricted by such trust agreement or the resolution authorizing the issuance of such bonds, may, either at law or in equity, by suit, action, mandamus, or other proceeding, protect and enforce any and all rights under the laws of the state or granted in sections 70-1401 to 70-1423, or, to the extent permitted by law, under such trust agreement or resolution authorizing the issuance of such bonds or under any agreement or other contract executed by the joint authority pursuant to sections 70-1401 to 70-1423, and may enforce and compel the performance of all duties required by sections 70-1401 to 70-1423 or by such trust agreement or resolution to be performed by any joint authority or member district or by any officer of such joint authority, including the fixing, charging, and collecting of rents, rates, fees, and charges.

Source: Laws 1982, LB 852, § 19.

70-1420 Refunding bonds; issuance; conditions.

A joint authority is hereby authorized to provide by resolution for the issuance of refunding bonds of the joint authority for the purpose of refunding any bonds then outstanding, in advance of their maturity or earlier redemption date, which shall have been issued under sections 70-1401 to 70-1423, including the payment of any redemption premium on such bonds and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities, and other details of such bonds, the rights of the holders of such bonds, and the rights, duties, and obligations of the joint authority in respect to the same shall be governed by the appropriate provisions of sections 70-1401 to 70-1423 which relate to the issuance of bonds.

Source: Laws 1982, LB 852, § 20.

70-1421 Board of directors; grants-in-aid and loans; authorized; powers.

The board of directors of a joint authority is hereby authorized to make application and to enter into contracts for and to accept grants-in-aid and loans from the federal and state governments and their agencies for planning, acquiring, constructing, expanding, maintaining, and operating any project or facility, or participating in any research or development program, or performing any function which such joint authority may be authorized by general or local law to provide or perform.

In order to exercise the authority granted by this section, the board of directors of a joint authority may:

(1) Enter into and carry out contracts with the state or federal government or any agency or institution thereof under which such government, agency, or institution grants financial or other assistance to the joint authority;

(2) Accept such assistance or funds as may be granted or loaned by the state or federal government with or without such a contract;

(3) Agree to and comply with any reasonable conditions which are imposed upon such grants or loans; and

(4) Make expenditures from any funds so granted.

Source: Laws 1982, LB 852, § 21.

70-1422 Sections, supplemental to other provisions.

Sections 70-1401 to 70-1421 shall be deemed to provide an additional, alternative, and complete method for the doing of the things authorized thereby and shall be deemed and construed to be supplemental and additional to powers conferred by existing laws, and shall not be regarded as in degradation of any powers not existing, except that insofar as provisions of sections 70-1401 to 70-1423 are inconsistent with the provisions of any other special or local law, the provisions of sections 70-1401 to 70-1423 shall be controlling. Nothing in sections 70-1401 to 70-1423 shall be construed to authorize the issuance of the bonds for the purpose of financing facilities to be owned wholly or in part by any private corporation.

Source: Laws 1982, LB 852, § 22.

70-1423 Sections, how construed.

In order to effectuate the purposes and policies prescribed in sections 70-1401 to 70-1423, the provisions of sections 70-1401 to 70-1423 shall be liberally construed.

Source: Laws 1982, LB 852, § 23.

ARTICLE 15

SUPPLIERS OF ELECTRIC POWER AND ENERGY

Section
70-1501. Statement of policy.
70-1502. Suppliers; agreements authorized.
70-1503. Agreement; Nebraska Power Review Board; approval required; procedure.
70-1504. Agreement; dispute; hearing.
70-1505. Supplier; competition and antitrust provisions; exemption.

70-1501 Statement of policy.

It is the public policy of this state to provide its citizens with adequate electric service at as low an overall cost as possible, consistent with sound

business practices, and in furtherance of such policy it is necessary to avoid and eliminate conflict and competition among and between suppliers of electric power and energy and to avoid duplication of facilities and resources which result from such conflict and competition.

Source: Laws 1984, LB 805, § 1.

70-1502 Suppliers; agreements authorized.

In furtherance of the policy of this state as set forth in section 70-1501, suppliers of electric power and energy, including public power districts, nonprofit corporations, public power and irrigation districts, individual municipalities, registered groups of municipalities, public corporations, electric membership associations, cooperatives, and any other entities, are authorized to enter into written agreements between or among themselves which (1) prohibit, limit, or set conditions on the right of any party to the agreement to sell power and energy at wholesale to any entity which is then or thereafter served by another party to the agreement or to any entity listed in the agreement as a customer of another party to the agreement or (2) require any party to the agreement which sells power and energy at wholesale to any entity which is then or thereafter served by another party to the agreement or to any entity listed in the agreement as a customer of another party to the agreement to purchase power and energy from another party to the agreement.

Source: Laws 1984, LB 805, § 2.

70-1503 Agreement; Nebraska Power Review Board; approval required; procedure.

Before any agreement made pursuant to section 70-1502 or amendment to such agreement shall become effective, it shall be submitted to and approved by the Nebraska Power Review Board. When requested to approve such agreement or amendment, the Nebraska Power Review Board shall determine whether such agreement or amendment is in furtherance of the public policy of this state as set forth in section 70-1501. The board may make such investigation as it determines is necessary, give ten days' notice by mail to such alternate power suppliers as it deems affected by the agreement or amendment, and hold a hearing if it determines one to be desirable. At the conclusion of its investigation, the Nebraska Power Review Board shall approve the agreement or amendment unless it determines that the agreement or amendment cannot be reasonably expected to fulfill the purposes of sections 70-1501 to 70-1505. The purpose of this section is to promote and encourage the making of agreements pursuant to section 70-1502.

Source: Laws 1984, LB 805, § 3.

70-1504 Agreement; dispute; hearing.

In the event of any disagreement arising among the parties to an agreement authorized by sections 70-1501 to 70-1505 which cannot be settled by negotiations, the dispute may be submitted to the Nebraska Power Review Board. Upon the submission of any such disagreement to the board, the board shall set a time and place for hearing thereon and give notice as provided in section 70-1013. Following such hearing, the board shall make its recommendations

for the settlement of such disagreement, which recommendations shall be advisory only.

Source: Laws 1984, LB 805, § 4.

70-1505 Supplier; competition and antitrust provisions; exemption.

In the exercise of the powers granted in sections 70-1501 to 70-1505 and in Chapter 70, article 10, to execute agreements authorized by sections 70-1501 to 70-1505 or other agreements authorized by Chapter 70, article 10, a supplier of electric power and energy shall be exempt from any law, rule, or regulation of this state regulating competition. It is intended that a supplier of electric power and energy carrying out the activities described by an agreement authorized by sections 70-1501 to 70-1505 or any other agreement authorized by Chapter 70, article 10, receive full exemption and immunity from state and federal antitrust laws in light of the public purposes and regulatory provisions of sections 70-1501 to 70-1505.

Source: Laws 1984, LB 805, § 5.

ARTICLE 16

DENIAL OR DISCONTINUANCE OF UTILITY SERVICE

Cross References

Unlawful reconnection of discontinued service, penalty, see section 28-515.02.

Section
70-1601. Applicant for service; denial prohibited, when.
70-1602. Domestic subscriber, defined.
70-1603. Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.
70-1604. Municipal utility; owned and operated by a village; discontinuance of service; conference; notice; procedure.
70-1605. Discontinuance of service; notice; procedure.
70-1606. Discontinuance of service; notice; contents.
70-1607. Discontinuance of service; third-party notice procedure.
70-1608. Discontinuance of service; dispute; conference.
70-1609. Discontinuance of service; dispute; statement; effect.
70-1610. Conference; employee; duties.
70-1611. Conference; employee; decision to terminate service; when.
70-1612. Appeal; hearing; procedure.
70-1613. Appeal; hearing; domestic subscriber; rights.
70-1614. Appeal; hearing; management office; duties.
70-1615. Sections; not applicable; when.

70-1601 Applicant for service; denial prohibited, when.

No applicant for the services of a public or private utility company furnishing water, natural gas, or electricity at retail in this state shall be denied service because of unpaid bills for similar service which are not collectible at law because of statutes of limitations or discharge in bankruptcy proceedings.

Source: Laws 1972, LB 1201, § 2; R.S.1943, (1987), § 18-417; Laws 1988, LB 792, § 1.

70-1602 Domestic subscriber, defined.

As used in sections 70-1603 to 70-1615, unless the context otherwise requires, domestic subscriber shall not include municipalities, cities, villages, political

subdivisions, companies, corporations, partnerships, limited liability companies, or businesses of any nature.

Source: Laws 1979, LB 143, § 2; R.S.1943, (1987), § 19-2703; Laws 1988, LB 792, § 2; Laws 1993, LB 121, § 417.

70-1603 Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.

No municipal utility owned and operated by a village furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless such utility first gives written notice by mail to any subscriber whose service is proposed to be terminated at least seven days prior to termination. As to any subscriber who has previously been identified as a welfare recipient to the utility by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the department.

Source: Laws 1979, LB 143, § 16; Laws 1982, LB 522, § 2; R.S.1943, (1987), § 19-2716; Laws 1988, LB 792, § 3; Laws 1996, LB 1044, § 369.

70-1604 Municipal utility; owned and operated by a village; discontinuance of service; conference; notice; procedure.

Prior to the discontinuance of service to any domestic subscriber by a municipal utility owned and operated by a village, the domestic subscriber, upon request, shall be provided a conference with the board of trustees of the village. A municipal utility owned and operated by a village shall not be subject to sections 70-1608 to 70-1614, but the board of trustees shall establish a procedure to resolve utility bills when a conference is requested by a domestic subscriber. The procedure shall be in writing and a copy of such procedure shall be furnished upon the request of any domestic subscriber. The board of trustees shall notify the domestic subscriber of the time, place, and date scheduled for such conference.

Source: Laws 1979, LB 143, § 17; R.S.1943, (1987), § 19-2717; Laws 1988, LB 792, § 4.

70-1605 Discontinuance of service; notice; procedure.

No public or private utility company, other than a municipal utility owned and operated by a village, furnishing water, natural gas, or electricity at retail in this state shall discontinue service to any domestic subscriber for nonpayment of any past-due account unless the utility company first gives notice by first-class mail or in person to any subscriber whose service is proposed to be terminated. If notice is given by first-class mail, such mail shall be conspicuously marked as to its importance. Service shall not be discontinued for at least seven days after notice is sent or given. Holidays and weekends shall be excluded from the seven days. As to any subscriber who has previously been identified as a welfare recipient to the company by the Department of Health and Human Services, such notice shall be by certified mail and notice of such proposed termination shall be given to the department.

Source: Laws 1972, LB 1201, § 1; R.R.S.1943, (1977), § 18-416; Laws 1979, LB 143, § 1; Laws 1982, LB 522, § 1; R.S.1943, (1987), § 19-2702; Laws 1988, LB 792, § 5; Laws 1996, LB 1044, § 370.

70-1606 Discontinuance of service; notice; contents.

The notice required by section 70-1605 shall contain the following information:

(1) The reason for the proposed disconnection;

(2) A statement of intention to disconnect unless the domestic subscriber either pays the bill or reaches an agreement with the utility regarding payment of the bill;

(3) The date upon which service will be disconnected if the domestic subscriber does not take appropriate action;

(4) The name, address, and telephone number of the utility's employee or department to whom the domestic subscriber may address any inquiry or complaint;

(5) The domestic subscriber's right, prior to the disconnection date, to request a conference regarding any dispute over such proposed disconnection;

(6) A statement that the utility may not disconnect service pending the conclusion of the conference;

(7) A statement to the effect that disconnection may be postponed or prevented upon presentation of a duly licensed physician's certificate which shall certify that a domestic subscriber or resident within such subscriber's household has an existing illness or handicap which would cause such subscriber or resident to suffer an immediate and serious health hazard by the disconnection of the utility's service to that household. Such certificate shall be filed with the utility within five days of receiving notice under this section and will prevent the disconnection of the utility's service for a period of thirty days from such filing. Only one postponement of disconnection shall be allowed under this subdivision for each incidence of nonpayment of any past-due account;

(8) The cost that will be borne by the domestic subscriber for restoration of service;

(9) A statement that the domestic subscriber may arrange with the utility for an installment payment plan;

(10) A statement to the effect that those domestic subscribers who are welfare recipients may qualify for assistance in payment of their utility bill and that they should contact their caseworker in that regard; and

(11) Any additional information not inconsistent with this section which has received prior approval from the board of directors or administrative board of any utility.

Source: Laws 1979, LB 143, § 3; R.S.1943, (1987), § 19-2704; Laws 1988, LB 792, § 6.

70-1607 Discontinuance of service; third-party notice procedure.

Each utility subject to section 70-1603 or 70-1605 shall establish a third-party notice procedure for the notification of a designated third party of any proposed discontinuance of service and shall advise its subscribers, including new subscribers, of the availability of such procedures.

Source: Laws 1979, LB 143, § 4; R.S.1943, (1987), § 19-2705; Laws 1988, LB 792, § 7.

70-1608 Discontinuance of service; dispute; conference.

A domestic subscriber may request a conference in regard to any dispute over a proposed discontinuance of service before an employee designated by the utility to hear such matters. The employee designated by the utility shall hear and decide all matters disputed by domestic subscribers. The subjects to be heard shall include matters relating to a disputed bill.

Source: Laws 1979, LB 143, § 5; R.S.1943, (1987), § 19-2706; Laws 1988, LB 792, § 8.

70-1609 Discontinuance of service; dispute; statement; effect.

A domestic subscriber may dispute the proposed discontinuance of water, natural gas, or electricity by notifying the utility with a written statement that sets forth the reasons for the dispute and the relief requested. If a statement has been made by the subscriber, a conference shall be held before the utility may discontinue service.

Source: Laws 1979, LB 143, § 7; R.S.1943, (1987), § 19-2708; Laws 1988, LB 792, § 9.

70-1610 Conference; employee; duties.

Upon notice to the employee designated by the utility of any request for a conference by a domestic subscriber, the employee shall:

(1) Notify the domestic subscriber, in writing, of the time, place, and date scheduled for the conference; and

(2) Hold a conference within fourteen days of the receipt of the domestic subscriber's request. Such conference shall be informal and not governed by the Nebraska Evidence Rules. If the employee determines at the conference that the domestic subscriber did not receive proper notice or was denied any other right afforded under sections 70-1605 to 70-1615, the employee shall recess and continue the conference at such time as the subscriber has been afforded his or her rights. Failure of a domestic subscriber to attend a scheduled conference shall relieve the utility of any further action prior to the discontinuance of service. If a domestic subscriber contacts the utility prior to the scheduled conference and demonstrates that failure to attend is for a legitimate reason, the utility shall make a reasonable effort to reschedule the conference.

Source: Laws 1979, LB 143, § 8; R.S.1943, (1987), § 19-2709; Laws 1988, LB 792, § 10.

Cross References

Nebraska Evidence Rules, see section 27-1103.

70-1611 Conference; employee; decision to terminate service; when.

The employee of the utility shall, based solely on the evidence presented at the conference, affirm, reverse, or modify any decision by the utility involving a disputed bill which results in a threatened termination of utility service. The employee shall allow termination of utility service only as a measure of last resort after the utility has exhausted all other remedies less drastic than termination.

Source: Laws 1979, LB 143, § 9; R.S.1943, (1987), § 19-2710; Laws 1988, LB 792, § 11.

70-1612 Appeal; hearing; procedure.

Any domestic subscriber may appeal an adverse decision of the utility employee to a management office designated by the utility or to the utility board when designated by the utility. Each utility shall establish a hearing procedure to resolve utility bills appealed by domestic subscribers. The procedure shall be in writing and a copy of such procedure shall be furnished upon the request of any domestic subscriber. Such appeal shall be filed with the management office or utility board within the time specified in the procedures established by the utility. Nothing in sections 70-1602 to 70-1615 shall prohibit any utility from providing such additional stages of appeal as it may deem appropriate.

Source: Laws 1979, LB 143, § 10; R.S.1943, (1987), § 19-2711; Laws 1988, LB 792, § 12.

70-1613 Appeal; hearing; domestic subscriber; rights.

At any hearing held pursuant to section 70-1612, the domestic subscriber may:

(1) Be represented by legal counsel or other representative or spokesperson;

(2) Examine and copy, not less than three business days prior to such hearing, the utility's file and records pertaining to all matters directly relevant to the dispute or utilized in any way by the utility in reaching the decision to propose termination or to take other action which is the subject of the hearing;

(3) Present witnesses and offer evidence;

(4) Confront and cross-examine such other witnesses as may appear and testify at the hearing; and

(5) Make or have made a record of the proceedings at his or her own expense.

Source: Laws 1979, LB 143, § 12; R.S.1943, (1987), § 19-2713; Laws 1988, LB 792, § 13.

70-1614 Appeal; hearing; management office; duties.

In any appeal filed pursuant to section 70-1612, the management office designated by the utility shall notify the domestic subscriber of the time, place, and date scheduled for such hearing. The notice requirements, hearing procedures, and other rights of domestic subscribers shall be set forth in the procedures established under sections 70-1612 and 70-1613.

Source: Laws 1979, LB 143, § 13; R.S.1943, (1987), § 19-2714; Laws 1988, LB 792, § 14.

70-1615 Sections; not applicable; when.

Sections 70-1602 to 70-1614 shall not apply to any disconnections or interruptions of services made necessary by the utility for reasons of repair or maintenance or to protect the health or safety of the domestic subscriber or of the general public.

Source: Laws 1979, LB 143, § 14; R.S.1943, (1987), § 19-2715; Laws 1988, LB 792, § 15.

ARTICLE 17
ELECTRICAL SERVICE PURCHASE AGREEMENTS

Section

70-1701 Terms, defined.

For purposes of sections 70-1701 to 70-1705:

(1) Power has the same meaning as in section 70-601; and

(2) Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental body or subdivision of government.

Source: Laws 2004, LB 969, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-1702 Purchase agreement; contents.

Notwithstanding any other provision of Nebraska law, any public entity may enter into an agreement for the purchase of power to be generated by a project consisting of one or more electric generating facilities. A purchase agreement may contain such terms and conditions as the public entity may determine, including provisions whereby the public entity agrees to accept and pay for additional power generated by a project if another public entity that is a purchaser of power from the same project defaults or otherwise is unable to take or pay for such power. A purchase agreement may further provide that the public entity is obligated to make payments regardless of whether power is provided, produced, or delivered to the public entity or whether the project contemplated by a purchase agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the output of power from such project.

Source: Laws 2004, LB 969, § 2.

70-1703 Agreement; other provisions applicable.

Any municipality that enters into an agreement for the purchase of power containing any of the provisions described in section 70-1702 shall be deemed to have entered into such agreement under the provisions of this section and sections 18-412.06 and 70-1705. No agreement shall be deemed an agreement entered into pursuant to sections 18-412.09 and 70-1704 unless such agreement specifically states that it is entered into pursuant to such sections.

Source: Laws 2004, LB 969, § 3.

70-1704 Ownership agreement; terms and conditions.

If a public entity enters into an ownership agreement of any electric facility pursuant to section 18-412.09, the agreement may contain such terms and conditions as the public entity may determine.

Source: Laws 2004, LB 969, § 4.

70-1705 Sections; how construed.

Sections 70-1701 to 70-1705 shall be liberally construed to effectuate their purposes. The provisions of sections 70-1701 to 70-1705 shall be independent of and supplemental to any other applicable provisions of law, petition for creation, or charter.

Source: Laws 2004, LB 969, § 5.

ARTICLE 18

PUBLIC ENTITIES MANDATED PROJECT CHARGES ACT

Section

70-1801 Act, how cited.

Sections 70-1801 to 70-1817 shall be known and may be cited as the Public Entities Mandated Project Charges Act.

Source: Laws 2006, LB 548, § 1.

70-1802 Definitions, where found.

For purposes of the Public Entities Mandated Project Charges Act, the definitions found in sections 70-1803 to 70-1811 apply.

Source: Laws 2006, LB 548, § 2.

70-1803 Financing costs, defined.

Financing costs means:

(1) Interest, including, but not limited to, capitalized interest, and redemption premiums that are payable on mandated project bonds;

(2) The cost of retiring or refunding a public entity's existing debt in connection with the issuance of mandated project bonds, but only to the extent the debt was issued for the purposes of financing mandated project costs;

(3) Any cost related to the issuing and servicing of mandated project bonds, including, but not limited to, servicing fees, trustee fees, legal fees, administrative fees, bond counsel fees, bond placement or underwriting fees, remarketing fees, broker dealer fees, payments under an interest rate swap agreement, financial advisor fees, accounting or engineering report fees, and rating agency fees;

(4) Any expense associated with any bond insurance policy, credit enhancement, or other financial arrangement entered into in connection with the issuance of mandated project bonds; and

(5) The funding of one or more reserve accounts related to mandated project bonds.

Source: Laws 2006, LB 548, § 3.

70-1804 Mandate, defined.

Mandate means a requirement imposed by a statute of the United States or the State of Nebraska, a rule, a regulation, an administrative or a judicial order, a licensing requirement or condition, any agreement with or requirement of a regional transmission organization, or any consent order or agreement between the United States or the State of Nebraska, or any agency thereof, and a public entity.

Source: Laws 2006, LB 548, § 4.

70-1805 Mandated project, defined.

Mandated project means the construction, retrofitting, rebuilding, acquisition, or installation of any equipment, device, structure, improvement, process, facility, technology, or other property owned, licensed, or controlled by a public entity or operated for the benefit of a public entity through a power participation or purchase agreement, either within or outside the State of Nebraska, and used in connection with a new or existing facility related to electrical power generation, transmission, or distribution, which construction, retrofitting, rebuilding, acquisition, or installation is undertaken to satisfy a mandate, including, but not limited to, any equipment, device, structure, improvement, process, facility, technology, or other property related to environmental pollution control, safety, or useful life extension of an existing plant or facility.

Source: Laws 2006, LB 548, § 5.

70-1806 Mandated project bonds, defined.

Mandated project bonds means bonds, notes, or other evidences of indebtedness that are issued by a public entity, the proceeds of which are used directly or indirectly to pay or reimburse mandated project costs and financing costs and which bonds are secured by and payable from mandated project charges.

Source: Laws 2006, LB 548, § 6.

70-1807 Mandated project charge, defined.

Mandated project charge means a charge paid by customers of a public entity to pay or reimburse the public entity for mandated project costs, including any adjustment of the charge pursuant to subdivision (1)(d) of section 70-1812, or financing costs.

Source: Laws 2006, LB 548, § 7.

70-1808 Mandated project costs, defined.

Mandated project costs means capital costs incurred or to be incurred by a public entity with respect to a mandated project, including the payment of debt service on mandated project bonds, either directly or through a power participation or purchase agreement, and any related operating expenses.

Source: Laws 2006, LB 548, § 8.

70-1809 Public entity, defined.

Public entity means a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity.

Source: Laws 2006, LB 548, § 9.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-1810 Related operating expenses, defined.

Related operating expenses means any necessary operating expenses of a project or system required to be paid from the mandated project charge by an order of a court pursuant to 11 U.S.C. 928(b), as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 10.

70-1811 Special revenue, defined.

Special revenue has the definition found in 11 U.S.C. 902(2) as such section existed on January 1, 2006.

Source: Laws 2006, LB 548, § 11.

70-1812 Mandated project charges authorized; resolution of governing body; payment by customers; records required; judicial review authorized; procedure.

(1) A public entity may elect to pay or reimburse mandated project costs and financing costs through the use of mandated project charges. Public entities are hereby authorized to impose and collect mandated project charges as provided in the Public Entities Mandated Project Charges Act. The election to use mandated project charges shall be made and evidenced by the adoption of a resolution of the governing body of the public entity authorizing the mandated project as set forth in the public entity's capital budget. The authorizing resolution shall include the following:

(a) A statement that the project is a mandated project and a description of the mandate that will be addressed by the mandated project;

(b) A statement that the public entity is electing to pay or reimburse the mandated project costs and financing costs with mandated project charges in accordance with the Public Entities Mandated Project Charges Act;

(c) An authorization to add a separate charge to each customer's electric service bill, representing such customer's portion of the mandated project charge;

(d) A description of the financial calculation, formula, or other method that the public entity utilizes to determine the mandated project charges that customers will be required to pay for the mandated project, including a periodic adjustment method, applied at least annually, that shall be utilized by the public entity to correct for any overcollection or undercollection of such mandated project charges or any other adjustment necessary to assure payment of debt service on mandated project bonds, including, but not limited to, the adjustment of the mandated project charges to pay related operating expenses and any debt service coverage requirement. The financial calculation, formula, or other method, including the periodic adjustment method, established in the authorizing resolution pursuant to this subdivision, and the allocation of mandated project charges to and among its customers, shall be decided solely by the governing body of the public entity and shall be final and conclusive, subject to the procedures set forth in subsection (4) of this section. In no event shall the periodic adjustment method established in the authorizing resolution pursuant to this subdivision be applied less frequently than required by the governing documents of any mandated project bonds issued to finance the mandated project. Once the financial calculation, formula, or other method for determining the mandated project charges, and the periodic adjustment method, have been established in the authorizing resolution and have become final and conclusive as provided in the act, they shall not be changed; and

(e) If mandated project bonds are to be issued for the mandated project, a requirement that the public entity shall enter into a servicing agreement for the bonds with a trustee selected by the governing body and the public entity shall act as a servicing agent for purposes of collecting the mandated project charges. Money collected by the public entity, acting as a servicing agent on behalf of a trustee, shall be held for the exclusive benefit of holders of mandated project bonds.

(2) The determination of the governing body that a project is a mandated project shall be final and conclusive, and any mandated project bonds issued and mandated project charges imposed relating to such determination shall be valid and enforceable in accordance with their terms. The public entity shall require, in its authorizing resolution with respect to mandated project charges, that so long as any customer obtains electric distribution service from the public entity, the customer shall pay the mandated project charge to the public entity regardless of whether or not the customer obtains electric energy service from the public entity or another energy supplier other than the public entity. All provisions of the authorizing resolution adopted pursuant to this section shall be binding on the public entity and on any successor or assignee of the public entity.

(3) The timely and complete payment of all mandated project charges shall be a condition of receiving electric service for customers of the public entity, and

the public entity shall be authorized to use its established collection policies and all rights and remedies provided by the law to enforce payment and collection of the mandated project charges. In no event shall any customer of a public entity be entitled or authorized to withhold payment, in whole or in part, of any mandated project charges for any reason.

(4) The secretary or other duly designated officer of the governing body of the public entity shall prepare and maintain a complete record of all documents submitted to and all oral and written comments made to the governing body in connection with an authorizing resolution adopted pursuant to this section. Within ten days after adoption of an authorizing resolution, an aggrieved party may file a petition for judicial review in the Supreme Court and pay the docket fee established in section 33-103. The petition shall name the public entity as the respondent and shall be served upon the public entity in the manner provided by law for service of process. Within ten business days after service of the petition for judicial review upon the public entity, the secretary or other duly designated officer of the public entity shall prepare and file with the Clerk of the Supreme Court, at the public entity's expense, the record of all documents submitted to and all oral and written comments made to the governing body in connection with the authorizing resolution. Judicial review pursuant to this subsection shall be based solely upon the record submitted by the public entity, and briefs to the court shall be limited to determining whether the financial calculation, formula, or other method adopted by the public entity pursuant to subdivision (1)(d) of this section is a fair, reasonable, and nondiscriminatory allocation to the public entity's customers of the mandated project charges needed to pay for the mandated project. Because the process of judicial review may delay the issuance of mandated project bonds to the financial detriment of customers of the public entity, the Supreme Court shall proceed to hear and determine a petition for judicial review under this section as expeditiously as practicable and shall give the matter precedence over other civil matters on the docket. The authorizing resolution shall become final and conclusive if there is no petition for judicial review filed within the time set forth in this subsection or upon the effective date of the court's decision in favor of the public entity. If the court rules against the public entity on a petition for judicial review under this subsection, the public entity's authorizing resolution shall be void and of no further force or effect.

For purposes of this subsection, aggrieved party means a retail customer of the public entity that receives electric service pursuant to a published rate schedule.

Source: Laws 2006, LB 548, § 12.

70-1813 Issuance of mandated project bonds; authorized; proceeds; use.

(1) A public entity has the authority to issue mandated project bonds, including refunding bonds, in one or more series. Mandated project charges to which the public entity may at any time be entitled shall be pledged, without any necessity for specific authorization of the pledge by the public entity, to the mandated project bonds. Each such series of mandated project bonds shall be secured by and payable from a first lien on mandated project charges pledged for such purpose. Any separate consensual lien or security interest shall be created in accordance with and governed by the Nebraska Governmental Unit Security Interest Act. The proceeds of such bonds shall be applied exclusively to

payment of mandated project costs and financing costs and, in the case of proceeds of refunding bonds, the retirement or defeasance of mandated project bonds.

(2) The public entity and any successor or assignee of the public entity shall be obligated to impose and collect the mandated project charges in amounts sufficient to pay debt service on the mandated project bonds as due. The pledge of mandated project charges shall be irrevocable, and the state, the public entity, or any successor or assignee of the public entity may not reduce, impair, or otherwise adjust mandated project charges, except that the public entity and any successor or assignee thereof shall implement the periodic adjustment method established by the authorizing resolution pursuant to subdivision (1)(d) of section 70-1812. Revenue from mandated project charges shall be deemed special revenue and shall not constitute revenue of the public entity for purposes of any pledge of revenue, receipts, or other income that such public entity has made or will make for the security of debt other than the mandated project bonds to which the revenue from the mandated project charges is expressly pledged.

Source: Laws 2006, LB 548, § 13.

Cross References

Nebraska Governmental Unit Security Interest Act, see section 10-1101.

70-1814 Mandated project charges; use.

Mandated project charges shall be applied exclusively for the purpose of paying mandated project costs, including any adjustments of such charges pursuant to subdivision (1)(d) of section 70-1812, and financing costs.

Source: Laws 2006, LB 548, § 14.

70-1815 Public entity; discretionary actions.

A public entity undertaking a mandated project is not required to pay or reimburse the costs of the mandated project with mandated project charges, and such public entity is not required to issue mandated project bonds. The use of mandated project charges and issuance of mandated project bonds are elective actions wholly within the discretion of the public entity.

Source: Laws 2006, LB 548, § 15.

70-1816 Public entity collecting mandated project charges; billing explanation required.

A public entity collecting mandated project charges shall annually provide its customers with a concise explanation of mandated project charges billed to customers. Such explanation may be by billing insert, web site information, or other appropriate means.

Source: Laws 2006, LB 548, § 16.

70-1817 Act and grants of power; how construed.

The Public Entities Mandated Project Charges Act and all grants of power and authority in the act shall be liberally construed to effectuate their purpose,

and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon public entities.

Source: Laws 2006, LB 548, § 17.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section
70-1901. Act, how cited.
70-1902. Legislative intent.
70-1903. Terms, defined.
70-1904. C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.
70-1905. Electric utility; duties.
70-1906. Construction of new renewable generation facilities; electric utility; governing body; duties.
70-1907. C-BED project developer; provide ownership opportunity to property owner.
70-1908. Sections; how construed.
70-1909. Electric supplier; limit on eminent domain.

70-1901 Act, how cited.

Sections 70-1901 to 70-1909 shall be known and may be cited as the Rural Community-Based Energy Development Act.

Source: Laws 2007, LB629, § 1.

70-1902 Legislative intent.

It is the intent of the Legislature to create new rural economic development opportunities through rural community-based energy development.

Source: Laws 2007, LB629, § 2.

70-1903 Terms, defined.

For purposes of the Rural Community-Based Energy Development Act:

(1) C-BED project or community-based energy development project means a new wind energy project that:

(a) Has an ownership structure as follows:

(i) For a C-BED project that consists of more than two turbines, has one or more qualified owners with no single individual qualified owner owning directly or indirectly more than fifteen percent of the project and with at least thirty-three percent of the gross power purchase agreement payments flowing to the qualified owner or owners or local community; or

(ii) For a C-BED project that consists of one or two turbines, has one or more qualified owners with at least thirty-three percent of the gross power purchase agreement payments flowing to a qualified owner or owners or local community; and

(b) Has a resolution of support adopted:

(i) By the county board of each county in which the C-BED project is to be located; or

(ii) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(2) Debt financing payments means principal, interest, and other typical financing costs paid by the C-BED project company to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments does not include the repayment of principal at the time of a refinancing;

(3) Electric utility means an electric supplier that:

(a) Owns more than one hundred miles of one-hundred-fifteen-kilovolt or larger transmission lines in the State of Nebraska;

(b) Owns more than two hundred megawatts of electric generating facilities; and

(c) Has the obligation to directly serve more than two hundred megawatts of wholesale or retail electric load in the State of Nebraska;

(4) Gross power purchase agreement payments means the total amount of payments during the life of the agreement. For power purchase agreements entered into on or before December 31, 2011, if the qualified owners have a combined total of at least thirty-three percent of the equity ownership in the C-BED project, gross power purchase agreement payments shall be reduced by the debt financing payments; and

(5) Qualified owner means:

(a) A Nebraska resident;

(b) A limited liability company that is organized under the Limited Liability Company Act and that is made up of members who are Nebraska residents;

(c) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(d) An electric supplier as defined in section 70-1001.01, except that ownership in a single C-BED project is limited to no more than:

(i) Fifteen percent either directly or indirectly by a single electric supplier; and

(ii) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(e) A tribal council.

Source: Laws 2007, LB629, § 3; Laws 2008, LB916, § 1; Laws 2009, LB561, § 3.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.

70-1904 C-BED project developer; electric utility; negotiation; power purchase agreement; development of project; restriction on transfer; eligibility for net energy billing; approval or certification; notice of change in ownership.

(1) A C-BED project developer and an electric utility are authorized to negotiate in good faith mutually agreeable power purchase agreement terms.

(2) A qualified owner or any combination of qualified owners may develop a C-BED project with an equity partner that is not a qualified owner, if not more than sixty-seven percent of the gross power purchase agreement payments flow to the nonqualified owners.

(3) Except for an inherited interest, the transfer of a C-BED project to any person other than a qualified owner is prohibited during the initial ten years of the power purchase agreement.

(4) A C-BED project that is operating under a power purchase agreement is not eligible for any applicable net energy billing.

(5) A C-BED project shall be subject to approval by the Nebraska Power Review Board in accordance with Chapter 70, article 10, or shall receive certification as a qualifying facility in accordance with the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., with written notice of such certification provided to the Nebraska Power Review Board.

(6) A C-BED project developer shall notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in project ownership which makes the project no longer eligible as a C-BED project.

Source: Laws 2007, LB629, § 4; Laws 2008, LB916, § 2; Laws 2009, LB561, § 4.

70-1905 Electric utility; duties.

An electric utility shall:

(1) Consider mechanisms to encourage the aggregation of C-BED projects located in the same general geographical area;

(2) Require any qualified owner to provide sufficient security to assure performance under the power purchase agreement; and

(3) Annually prepare a statement by March 1 summarizing its efforts to purchase energy from C-BED projects, including a list of the C-BED projects under a power purchase agreement and the amount of C-BED project energy purchased. The statement shall be posted on the electric utility's web site.

Source: Laws 2007, LB629, § 5; Laws 2008, LB916, § 3.

70-1906 Construction of new renewable generation facilities; electric utility; governing body; duties.

The governing body of an electric utility that has determined a need to construct new renewable generation facilities shall take reasonable steps to determine if one or more C-BED projects are available and are technically, economically, and operationally feasible to provide some or all of the identified generation need.

Source: Laws 2007, LB629, § 6.

70-1907 C-BED project developer; provide ownership opportunity to property owner.

To the extent feasible, a C-BED project developer shall provide, in writing, an opportunity to become a qualified owner in the C-BED project to each property owner on whose property a turbine will be located.

Source: Laws 2007, LB629, § 7; Laws 2008, LB916, § 4.

70-1908 Sections; how construed.

Nothing in sections 70-1901 to 70-1907 shall be construed to obligate an electric utility to enter into a power purchase agreement under a C-BED project.

Source: Laws 2007, LB629, § 8.

70-1909 Electric supplier; limit on eminent domain.

An electric supplier as defined in section 70-1001.01 may agree to limit its exercise of the power of eminent domain to acquire a C-BED project which is a renewable energy generation facility producing electricity with wind and any related facilities if such electric supplier enters into a contract to purchase output from such facility for a term of ten years or more.

Source: Laws 2007, LB629, § 9.

ARTICLE 20

NET METERING

Section
70-2001. Legislative findings.
70-2002. Terms, defined.
70-2003. Local distribution utility; interconnect qualified facility of customer-generator; interconnection agreement; requirements; powers and duties.
70-2004. Customer-generator; inspection required; notice to local distribution utility; ownership of credits.
70-2005. Annual net metering report; contents.

70-2001 Legislative findings.

The Legislature finds that it is in the public interest to:

(1) Encourage customer-owned renewable energy resources;

(2) Stimulate the economic growth of this state;

(3) Encourage diversification of the energy resources used in this state; and

(4) Maintain low-cost, reliable electric service.

Source: Laws 2009, LB436, § 1.

70-2002 Terms, defined.

For purposes of sections 70-2001 to 70-2005:

(1) Customer-generator means an end-use electricity customer that generates electricity on the customer's side of the meter from a qualified facility;

(2) Interconnection agreement means an agreement between a local distribution utility and a customer-generator that establishes the financial, interconnection, safety, performance, and reliability requirements relating to the installation and operation of a qualified facility in accordance with the standards prescribed in sections 70-2001 to 70-2005;

(3) Local distribution system means the equipment and facilities used for the distribution of electric energy to the end-use electricity customer;

(4) Local distribution utility means the owner or operator of the local distribution system;

(5) Net excess generation means the net amount of energy, if any, by which the output of a qualified facility exceeds a customer-generator's total electricity requirements during a billing period;

(6) Net metering means a system of metering electricity in which a local distribution utility:

(a) Credits a customer-generator at the applicable retail rate for each kilowatt-hour produced by a qualified facility during a billing period up to the total of the customer-generator's electricity requirements during that billing period. A customer-generator may be charged a minimum monthly fee that is the same as other noncustomer-generators in the same rate class but shall not be charged any additional standby, capacity, demand, interconnection, or other fee or charge; and

(b) Compensates the customer-generator for net excess generation during the billing period at a rate equal to the local distribution utility's avoided cost of electric supply over the billing period. The monetary credits shall be applied to the bills of the customer-generator for the preceding billing period and shall offset the cost of energy owed by the customer-generator. If the energy portion of the customer-generator's bill is less than zero in any month, monetary credits shall be carried over to future bills of the customer-generator until the balance is zero. At the end of each annualized period, any excess monetary credits shall be paid out to coincide with the final bill of that period; and

(7) Qualified facility means a facility for the production of electrical energy that:

(a) Uses as its energy source either methane, wind, solar resources, biomass, hydropower resources, or geothermal resources;

(b) Is controlled by the customer-generator and is located on premises owned, leased, or otherwise controlled by the customer-generator;

(c) Interconnects and operates in parallel with the local distribution system;

(d) Is intended to meet or offset the customer-generator's requirements for electricity;

(e) Is not intended to offset or provide credits for electricity consumption at another location owned, operated, leased, or otherwise controlled by the customer-generator or for any other customer;

(f) Has a rated capacity at or below twenty-five kilowatts;

(g) Meets all applicable safety, performance, interconnection, and reliability standards established by the National Electrical Code filed with the Secretary of State and adopted by the State Electrical Board under subdivision (5) of section 81-2104, the National Electrical Safety Code, the Institute of Electrical and Electronics Engineers, and the Underwriters Laboratories, Inc.; and

(h) Is equipped to automatically isolate the qualified facility from the electrical system in the event of an electrical power outage or other conditions where the line is de-energized.

Source: Laws 2009, LB436, § 2.

70-2003 Local distribution utility; interconnect qualified facility of customer-generator; interconnection agreement; requirements; powers and duties.

(1) A local distribution utility shall interconnect the qualified facility of any customer-generator that enters into an interconnection agreement with the local distribution utility, satisfies the requirements for a qualified facility and all other requirements of sections 70-2001 to 70-2005, and pays for costs incurred by the local distribution utility for equipment or services required for intercon-

nection that would not be necessary if the qualified facility were not interconnected to the local distribution system, except as provided in subsection (2) of this section and as may be provided for in the utility's aid in construction policy.

(2) A local distribution utility shall provide at no additional cost to any customer-generator with a qualified facility a metering system that is capable of measuring the flow of electricity in both directions and may be accomplished through use of a single, bidirectional electric revenue meter that has only a single register for billing purposes, a smart metering system, or another meter configuration that can easily be read by the customer-generator.

(3) A local distribution utility may, at its own expense, install additional monitoring equipment to separately monitor the flow of electricity in each direction as may be necessary to accomplish the reporting requirements of sections 70-2001 to 70-2005.

(4) Subject to the requirements of sections 70-2001 to 70-2005 and the interconnection agreement, a local distribution utility shall provide net metering to any customer-generator with a qualified facility. The local distribution utility shall allow a customer-generator's retail electricity consumption to be offset by a qualified facility that is interconnected with the local distribution system. A qualified facility's net excess generation during a billing period, if any, shall be determined by the local distribution utility in accordance with section 70-2002 and shall be credited to the customer-generator at a rate equal to the local distribution utility's avoided cost of electricity supply during the billing period, and the monetary credits shall be carried forward from billing period to billing period and credited against the customer-generator's retail electric bills in subsequent billing periods. Any excess monetary credits shall be paid out to coincide with the final bill at the end of each annualized period or within sixty days after the date the customer-generator terminates its retail service.

(5) A local distribution utility shall not be required to provide net metering to additional customer-generators, regardless of the output of the proposed generation unit, after the date during a calendar year on which the total generating capacity of all customer-generators using net metering served by such local distribution utility is equal to or exceeds one percent of the capacity necessary to meet the local distribution utility's average aggregate customer monthly peak demand forecast for that calendar year.

(6) No local distribution utility may require a customer-generator whose qualified facility meets the standards established under sections 70-2001 to 70-2005 to:

(a) Comply with additional safety or performance standards or pay additional charges for equipment or services for interconnection that are additional to those necessary to meet the standards established under sections 70-2001 to 70-2005;

(b) Perform or pay for additional tests; or

(c) Purchase additional liability insurance if all safety and interconnection requirements are met.

(7) Nothing in sections 70-2001 to 70-2005 prevents a local distribution utility from entering into other arrangements with customers desiring to install electric generating equipment or from providing net metering to customer-

generators having renewable generation units with a rated capacity above twenty-five kilowatts.

Source: Laws 2009, LB436, § 3.

70-2004 Customer-generator; inspection required; notice to local distribution utility; ownership of credits.

(1) A customer-generator shall request an inspection from the State Electrical Division pursuant to subsection (1) of section 81-2124 or subsection (1) of section 81-2125 and shall provide documentation of the completed inspection to the local distribution utility prior to interconnection with the local distribution system.

(2) A customer-generator is responsible for notifying the local distribution utility of its intent to install a qualified facility at least sixty days prior to its installation and is responsible for all costs associated with the qualified facility.

(3) A local distribution utility shall not be required to interconnect with a qualified facility that fails to meet or maintain the local distribution utility's requirements for safety, reliability, and interconnection.

(4) A customer-generator owns the renewable energy credits of the electricity its qualified facility generates.

Source: Laws 2009, LB436, § 4.

70-2005 Annual net metering report; contents.

Beginning March 1, 2010, and on each March 1 thereafter, each local distribution utility shall produce and publish on its web site, or if no web site is available, in its main office, and provide to the Nebraska Power Review Board an annual net metering report that shall include the following information:

(1) The total number of qualified facilities;

(2) The total estimated rated generating capacity of qualified facilities;

(3) The total estimated net kilowatt-hours received from customer-generators; and

(4) The total estimated amount of energy produced by the customer-generators.

Source: Laws 2009, LB436, § 5.

ARTICLE 21

PUBLIC POWER INFRASTRUCTURE PROTECTION ACT

Section
70-2101. Act, how cited.
70-2102. Legislative findings.
70-2103. Public power supplier, defined.
70-2104. Prohibited acts; penalty.
70-2105. Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

70-2101 Act, how cited.

Sections 70-2101 to 70-2105 shall be known and may be cited as the Public Power Infrastructure Protection Act.

Source: Laws 2009, LB238, § 3.

70-2102 Legislative findings.

The Legislature finds that the public has an interest in the uninterrupted generation and transmission of electricity by public power suppliers in this state. The Legislature finds that it is in the public interest to protect facilities and infrastructure used in the generation, transmission, and distribution of electricity from damage as a result of knowingly unlawful and malicious acts.

Source: Laws 2009, LB238, § 4.

70-2103 Public power supplier, defined.

For purposes of the Public Power Infrastructure Protection Act, public power supplier means a public power district organized under Chapter 70, article 6, a public power and irrigation district, a municipality, a registered group of municipalities, an electric cooperative, an electric membership association, a joint entity formed under the Interlocal Cooperation Act, a joint public agency formed under the Joint Public Agency Act, an agency formed under the Municipal Cooperative Financing Act, or any other governmental entity providing electric service.

Source: Laws 2009, LB238, § 5.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Municipal Cooperative Financing Act, see section 18-2401.

70-2104 Prohibited acts; penalty.

A person shall be guilty of a Class IV felony if he or she willfully and maliciously:

(1) Damages, injures, or destroys or attempts to damage, injure, or destroy:

(a) Any machine, appliance, facility, or apparatus owned by a public power supplier that is used for generating electricity; or

(b) Any facility or electric wire owned by a public power supplier that is used for the purpose of conducting, transforming, transmitting, or distributing electricity or any pole, bracket, insulator, or other appliance or apparatus owned by a public power supplier that supports or carries any electric wire owned by a public power supplier; or

(2) Does any act for the purpose of interrupting the generation, transmission, or distribution of electricity by a public power supplier.

Source: Laws 2009, LB238, § 6.

70-2105 Nuclear electrical generating facility; nuclear fuel; prohibited acts; penalty.

(1) A person shall be guilty of a Class II felony if he or she willfully and maliciously (a) destroys or causes or attempts to cause damage or loss to a nuclear electrical generating facility or its components, including the electrical transmission lines or switching equipment used in direct connection with such a facility, or (b) takes, steals and carries away, or removes, alters, or otherwise renders unusable or unsafe the spent or unspent nuclear fuel used or stored in a nuclear electrical generating facility or nuclear storage facility.

(2) This section shall be construed to cover acts and omissions of persons employed at such nuclear facilities, persons otherwise rightfully upon the premises of such nuclear facilities, and all other persons. This section does not

apply to acts or omissions carried out in accordance with official rules or directives relating to plant operation or within the scope of responsibility of judgment delegated to persons employed at such nuclear facilities.

Source: Laws 2009, LB238, § 7.

CHAPTER 71
PUBLIC HEALTH AND WELFARE

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    - (c) Emergency Box Drug Act. 71-2410 to 71-2417.
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ARTICLE 1

LICENSES; PROFESSIONAL AND OCCUPATIONAL

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Cremation of Human Remains Act, see section 71-1355.
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(a) DEFINITIONS

Section
71-101. Transferred to section 38-101.
71-101.01. Repealed. Laws 2007, LB 463, § 1319.
71-101.02. Repealed. Laws 1988, LB 1100, § 185.

(b) LICENSES AND CERTIFICATES

71-102. Transferred to section 38-121.
71-103. Transferred to section 38-129.
71-104. Repealed. Laws 2007, LB 463, § 1319.
71-104.01. Transferred to section 38-131.
71-105. Transferred to section 38-122.
71-106. Repealed. Laws 2007, LB 463, § 1319.
71-107. Transferred to section 38-124.
71-108. Transferred to section 38-130.
71-109. Repealed. Laws 2003, LB 242, § 154.
71-110. Transferred to section 38-142.
71-110.01. Transferred to section 38-143.

(c) PROFESSIONAL BOARDS

71-111. Transferred to section 38-158.
71-112. Transferred to section 38-167.
71-112.01. Repealed. Laws 2007, LB 463, § 1319.
71-112.02. Repealed. Laws 1990, LB 818, § 1.
71-112.03. Transferred to section 38-161.
71-112.04. Repealed. Laws 1987, LB 473, § 63.
71-112.05. Repealed. Laws 1987, LB 473, § 63.
71-112.06. Repealed. Laws 1987, LB 473, § 63.
71-113. Transferred to section 38-162.
71-114. Transferred to section 38-164.
71-115. Repealed. Laws 1987, LB 473, § 63.
71-115.01. Transferred to section 38-168.
71-115.02. Repealed. Laws 1987, LB 473, § 63.
71-115.03. Repealed. Laws 1987, LB 473, § 63.
71-115.04. Repealed. Laws 1987, LB 473, § 63.
71-116. Transferred to section 38-163.
71-117. Transferred to section 38-159.
71-118. Transferred to section 38-160.
71-119. Repealed. Laws 2007, LB 463, § 1319.

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71-120. Transferred to section 38-169.
71-121. Transferred to section 38-170.
71-121.01. Transferred to section 38-174.
71-122. Transferred to section 38-171.
71-122.01. Repealed. Laws 1986, LB 926, § 65.
71-123. Repealed. Laws 2007, LB 463, § 1319.
71-124. Transferred to section 38-172.
71-124.01. Transferred to section 38-141.

(d) EXAMINATIONS

71-125. Transferred to section 38-132.
71-126. Repealed. Laws 1991, LB 703, § 83.
71-127. Repealed. Laws 1986, LB 926, § 65.
71-128. Transferred to section 38-133.
71-129. Transferred to section 38-135.
71-130. Repealed. Laws 1990, LB 1064, § 33.
71-131. Transferred to section 38-136.
71-132. Repealed. Laws 2007, LB 463, § 1319.
71-133. Transferred to section 38-134.
71-134. Repealed. Laws 1988, LB 1100, § 185.
71-134.01. Repealed. Laws 1988, LB 1100, § 185.
71-134.02. Repealed. Laws 1988, LB 1100, § 185.
71-134.03. Repealed. Laws 1988, LB 1100, § 185.
71-135. Repealed. Laws 1990, LB 1064, § 33.
71-136. Repealed. Laws 1990, LB 1064, § 33.
71-137. Repealed. Laws 1990, LB 1064, § 33.
71-138. Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

71-139. Repealed. Laws 2007, LB 463, § 1319.
71-139.01. Repealed. Laws 2007, LB 463, § 1319.
71-139.02. Repealed. Laws 2007, LB 463, § 1319.
71-140. Repealed. Laws 2007, LB 463, § 1319.
71-141. Repealed. Laws 2007, LB 463, § 1319.
71-142. Repealed. Laws 2007, LB 463, § 1319.
71-143. Repealed. Laws 2007, LB 463, § 1319.
71-144. Repealed. Laws 2007, LB 463, § 1319.
71-145. Transferred to section 38-125.
71-146. Repealed. Laws 1980, LB 94, § 19.

(f) REVOCATION OF LICENSES AND CERTIFICATES

71-147. Transferred to section 38-178.
71-147.01. Transferred to section 38-1,128.
71-147.02. Transferred to section 38-183.
71-148. Transferred to section 38-179.
71-149. Transferred to section 38-144.
71-150. Transferred to section 38-185.
71-151. Repealed. Laws 2007, LB 463, § 1319.
71-152. Transferred to section 38-187.
71-153. Transferred to section 38-188.
71-154. Transferred to section 38-189.
71-155. Transferred to section 38-196.
71-155.01. Transferred to section 38-1,101.
71-155.02. Repealed. Laws 1988, LB 1100, § 185.
71-155.03. Transferred to section 38-198.
71-156. Transferred to section 38-191.
71-157. Transferred to section 38-194.
71-158. Transferred to section 38-195.
71-159. Transferred to section 38-1,102.
71-160. Repealed. Laws 2007, LB 463, § 1319.
71-161. Repealed. Laws 1988, LB 352, § 190.

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71-161.02. Transferred to section 38-197.
71-161.03. Transferred to section 38-190.
71-161.04. Transferred to section 38-148.
71-161.05. Repealed. Laws 2007, LB 463, § 1319.
71-161.06. Transferred to section 38-149.
71-161.07. Repealed. Laws 2007, LB 463, § 1319.
71-161.08. Repealed. Laws 1988, LB 1100, § 185.
71-161.09. Transferred to section 38-145.
71-161.10. Transferred to section 38-146.
71-161.11. Transferred to section 38-1,109.
71-161.12. Repealed. Laws 2007, LB 463, § 1319.
71-161.13. Transferred to section 38-1,110.
71-161.14. Transferred to section 38-1,111.
71-161.15. Transferred to section 38-1,112.
71-161.16. Transferred to section 38-1,113.
71-161.17. Repealed. Laws 2007, LB 463, § 1319.
71-161.18. Repealed. Laws 2007, LB 463, § 1319.
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71-161.20. Repealed. Laws 2007, LB 463, § 1319.

(g) FEES

71-162. Transferred to section 38-151.
71-162.01. Transferred to section 38-152.
71-162.02. Transferred to section 38-153.
71-162.03. Transferred to section 38-154.
71-162.04. Transferred to section 38-155.
71-162.05. Transferred to section 38-156.
71-163. Transferred to section 38-157.

(h) VIOLATIONS, CRIMES, PUNISHMENT

71-164. Transferred to section 38-1,114.
71-164.01. Transferred to section 38-1,116.
71-165. Repealed. Laws 2007, LB 463, § 1319.
71-166. Transferred to section 38-1,117.
71-167. Transferred to section 38-1,118.

(i) ENFORCEMENT PROVISIONS

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71-168.01. Transferred to section 38-1,138.
71-168.02. Transferred to section 38-1,127.
71-169. Transferred to section 38-126.
71-170. Transferred to section 38-127.
71-171. Transferred to section 38-1,139.
71-171.01. Transferred to section 38-1,107.
71-171.02. Transferred to section 38-1,108.
71-172. Repealed. Laws 2007, LB 463, § 1319.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01. Transferred to section 38-175.
71-172.02. Repealed. Laws 2007, LB 463, § 1319.

(k) PRACTICE OF PODIATRY

71-173. Transferred to section 38-3006.
71-174. Transferred to section 38-3007.
71-174.01. Repealed. Laws 2007, LB 463, § 1319.
71-174.02. Transferred to section 38-3011.
71-175. Transferred to section 38-3008.
71-175.01. Repealed. Laws 2007, LB 463, § 1319.
71-176. Transferred to section 38-3010.
71-176.01. Transferred to section 38-3012.
71-176.02. Repealed. Laws 1972, LB 1044, § 1.

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71-176.03. Repealed. Laws 2007, LB 463, § 1319.

(l) PRACTICE OF CHIROPRACTIC

71-177. Transferred to section 38-805.
71-178. Transferred to section 38-806.
71-179. Transferred to section 38-807.
71-179.01. Repealed. Laws 2007, LB 463, § 1319.
71-180. Transferred to section 38-803.
71-180.01. Repealed. Laws 1988, LB 1100, § 185.
71-180.02. Repealed. Laws 1988, LB 1100, § 185.
71-180.03. Repealed. Laws 1988, LB 1100, § 185.
71-180.04. Repealed. Laws 1988, LB 1100, § 185.
71-180.05. Repealed. Laws 1988, LB 1100, § 185.
71-181. Transferred to section 38-809.
71-182. Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

71-183. Transferred to section 38-1115.
71-183.01. Transferred to section 38-1116.
71-183.02. Transferred to section 38-1107.
71-184. Repealed. Laws 2007, LB 463, § 1319.
71-185. Transferred to section 38-1117.
71-185.01. Transferred to section 38-1125.
71-185.02. Transferred to section 38-1123.
71-185.03. Transferred to section 38-1124.
71-186. Repealed. Laws 2007, LB 463, § 1319.
71-187. Repealed. Laws 1986, LB 926, § 65.
71-188. Repealed. Laws 2007, LB 463, § 1319.
71-189. Transferred to section 38-1127.
71-190. Transferred to section 38-1128.
71-191. Transferred to section 38-1129.
71-192. Repealed. Laws 1988, LB 1100, § 185.
71-193. Repealed. Laws 1971, LB 587, § 15.
71-193.01. Transferred to section 38-1149.
71-193.02. Transferred to section 38-1150.
71-193.03. Transferred to section 38-1151.
71-193.04. Transferred to section 38-1118.
71-193.05. Repealed. Laws 2007, LB 463, § 1319.
71-193.06. Repealed. Laws 1971, LB 587, § 15.
71-193.07. Repealed. Laws 1971, LB 587, § 15.
71-193.08. Repealed. Laws 1971, LB 587, § 15.
71-193.09. Repealed. Laws 1986, LB 572, § 8.
71-193.10. Repealed. Laws 1971, LB 587, § 15.
71-193.11. Repealed. Laws 1953, c. 238, § 7.
71-193.12. Repealed. Laws 1971, LB 587, § 15.
71-193.13. Transferred to section 38-1135.
71-193.14. Transferred to section 38-1136.
71-193.15. Transferred to section 38-1130.
71-193.16. Repealed. Laws 2007, LB 463, § 1319.
71-193.17. Transferred to section 38-1131.
71-193.18. Transferred to section 38-1132.
71-193.19. Transferred to section 38-1133.
71-193.20. Transferred to section 38-1134.
71-193.21. Repealed. Laws 2007, LB 463, § 1319.
71-193.22. Repealed. Laws 2007, LB 463, § 1319.
71-193.23. Transferred to section 38-1137.
71-193.24. Repealed. Laws 2007, LB 463, § 1319.
71-193.25. Transferred to section 38-1138.
71-193.26. Transferred to section 38-1139.
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71-193.29. Transferred to section 38-1141.
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71-193.32. Transferred to section 38-1146.
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(n) PRACTICE OF EMBALMING

71-194. Transferred to section 71-1301.
71-195. Transferred to section 71-1302.
71-196. Transferred to section 71-1303.
71-197. Repealed. Laws 1980, LB 94, § 19.
71-198. Transferred to section 71-1304.
71-199. Transferred to section 71-1305.
71-1,100. Transferred to section 71-1306.
71-1,101. Repealed. Laws 1993, LB 187, § 39.

(o) PRACTICE OF MEDICINE AND SURGERY

71-1,102. Transferred to section 38-2024.
71-1,103. Transferred to section 38-2025.
71-1,104. Transferred to section 38-2026.
71-1,104.01. Transferred to section 71-551.
71-1,104.02. Repealed. Laws 1991, LB 456, § 40.
71-1,104.03. Repealed. Laws 1991, LB 456, § 40.
71-1,104.04. Repealed. Laws 1991, LB 456, § 40.
71-1,104.05. Repealed. Laws 1991, LB 456, § 40.
71-1,104.06. Repealed. Laws 2007, LB 463, § 1319.
71-1,105. Transferred to section 38-2004.
71-1,106. Repealed. Laws 2007, LB 463, § 1319.
71-1,106.01. Repealed. Laws 2009, LB 195, § 111.
71-1,107. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.01. Transferred to section 38-2002.
71-1,107.02. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.03. Transferred to section 38-2038.
71-1,107.04. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.05. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.06. Transferred to section 38-2042.
71-1,107.07. Transferred to section 38-2039.
71-1,107.08. Transferred to section 38-2040.
71-1,107.09. Transferred to section 38-2041.
71-1,107.10. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.11. Transferred to section 38-2043.
71-1,107.12. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.13. Transferred to section 38-2044.
71-1,107.14. Transferred to section 38-2045.
71-1,107.15. Transferred to section 38-2046.
71-1,107.16. Transferred to section 38-2014.
71-1,107.17. Transferred to section 38-2047.
71-1,107.18. Transferred to section 38-2048.
71-1,107.19. Transferred to section 38-2049.
71-1,107.20. Transferred to section 38-2050.
71-1,107.21. Transferred to section 38-2052.
71-1,107.22. Repealed. Laws 1981, LB 545, § 52.
71-1,107.23. Transferred to section 38-2051.
71-1,107.24. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.25. Transferred to section 38-2056.
71-1,107.26. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.27. Repealed. Laws 2007, LB 463, § 1319.
71-1,107.28. Transferred to section 38-2053.
71-1,107.29. Transferred to section 38-2054.

Section
71-1,107.30. Transferred to section 38-2055.

(p) PRACTICE OF NURSING

71-1,108. Repealed. Laws 1953, c. 245, § 21.
71-1,109. Repealed. Laws 1953, c. 245, § 21.
71-1,110. Repealed. Laws 1953, c. 245, § 21.
71-1,111. Repealed. Laws 1953, c. 245, § 21.
71-1,112. Repealed. Laws 1953, c. 245, § 21.
71-1,113. Repealed. Laws 1953, c. 245, § 21.
71-1,114. Repealed. Laws 1953, c. 245, § 21.
71-1,115. Repealed. Laws 1953, c. 245, § 21.
71-1,115.01. Repealed. Laws 1953, c. 245, § 21.
71-1,115.02. Repealed. Laws 1953, c. 245, § 21.
71-1,115.03. Repealed. Laws 1953, c. 245, § 21.
71-1,116. Repealed. Laws 1953, c. 245, § 21.
71-1,117. Repealed. Laws 1953, c. 245, § 21.
71-1,118. Repealed. Laws 1953, c. 245, § 21.
71-1,119. Repealed. Laws 1953, c. 245, § 21.
71-1,120. Repealed. Laws 1953, c. 245, § 21.
71-1,121. Repealed. Laws 1953, c. 245, § 21.
71-1,122. Repealed. Laws 1953, c. 245, § 21.
71-1,123. Repealed. Laws 1953, c. 245, § 21.
71-1,124. Repealed. Laws 1953, c. 245, § 21.
71-1,125. Repealed. Laws 1953, c. 245, § 21.
71-1,126. Repealed. Laws 1953, c. 245, § 21.
71-1,127. Repealed. Laws 1953, c. 245, § 21.
71-1,128. Repealed. Laws 1953, c. 245, § 21.
71-1,129. Repealed. Laws 1953, c. 245, § 21.
71-1,130. Repealed. Laws 1953, c. 245, § 21.
71-1,131. Repealed. Laws 1953, c. 245, § 21.
71-1,132. Repealed. Laws 1953, c. 245, § 21.
71-1,132.01. Transferred to section 38-2201.
71-1,132.02. Act, expired.
71-1,132.03. Act, expired.
71-1,132.04. Transferred to section 38-2217.
71-1,132.05. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.06. Transferred to section 38-2218.
71-1,132.07. Transferred to section 38-2213.
71-1,132.08. Transferred to section 38-2214.
71-1,132.09. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.10. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.11. Transferred to section 38-2216.
71-1,132.12. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.13. Transferred to section 38-2220.
71-1,132.14. Transferred to section 38-2222.
71-1,132.15. Transferred to section 38-2223.
71-1,132.16. Transferred to section 38-2225.
71-1,132.17. Transferred to section 38-2228.
71-1,132.18. Transferred to section 38-2229.
71-1,132.19. Transferred to section 38-2224.
71-1,132.20. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.21. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.22. Repealed. Laws 2003, LB 242, § 154.
71-1,132.23. Repealed. Laws 1976, LB 692, § 6.
71-1,132.24. Transferred to section 38-2232.
71-1,132.25. Transferred to section 38-2233.
71-1,132.26. Transferred to section 38-2234.
71-1,132.27. Transferred to section 38-2235.
71-1,132.28. Transferred to section 38-2236.
71-1,132.29. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.30. Transferred to section 38-2219.

Section
71-1,132.31. Transferred to section 38-2215.
71-1,132.32. Repealed. Laws 1983, LB 472, § 8.
71-1,132.33. Repealed. Laws 1983, LB 472, § 8.
71-1,132.34. Repealed. Laws 1983, LB 472, § 8.
71-1,132.35. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.36. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.37. Transferred to section 38-2221.
71-1,132.38. Transferred to section 38-2231.
71-1,132.39. Repealed. Laws 1975, LB 422, § 21.
71-1,132.40. Repealed. Laws 1975, LB 422, § 21.
71-1,132.41. Transferred to section 38-2230.
71-1,132.42. Repealed. Laws 1975, LB 422, § 21.
71-1,132.43. Repealed. Laws 1978, LB 756, § 59.
71-1,132.44. Repealed. Laws 1983, LB 472, § 8.
71-1,132.45. Repealed. Laws 1983, LB 472, § 8.
71-1,132.46. Repealed. Laws 1983, LB 472, § 8.
71-1,132.47. Repealed. Laws 2003, LB 242, § 154.
71-1,132.48. Repealed. Laws 2007, LB 463, § 1319.
71-1,132.49. Repealed. Laws 2003, LB 242, § 154.
71-1,132.50. Repealed. Laws 2003, LB 242, § 154.
71-1,132.51. Repealed. Laws 1981, LB 379, § 38.
71-1,132.52. Repealed. Laws 1995, LB 563, § 50.
71-1,132.53. Repealed. Laws 2007, LB 463, § 1319.

(q) PRACTICE OF OPTOMETRY

71-1,133. Transferred to section 38-2605.
71-1,134. Transferred to section 38-2607.
71-1,135. Transferred to section 38-2608.
71-1,135.01. Transferred to section 38-2604.
71-1,135.02. Transferred to section 38-2613.
71-1,135.03. Repealed. Laws 2007, LB 236, § 47.
71-1,135.04. Transferred to section 38-2610.
71-1,135.05. Repealed. Laws 2007, LB 236, § 47.
71-1,135.06. Transferred to section 38-2617.
71-1,135.07. Transferred to section 38-2618.
71-1,136. Transferred to section 38-2616.
71-1,136.01. Transferred to section 38-2611.
71-1,136.02. Repealed. Laws 2003, LB 242, § 154.
71-1,136.03. Repealed. Laws 2007, LB 463, § 1319.
71-1,136.04. Transferred to section 38-2619.
71-1,136.05. Transferred to section 38-2620.
71-1,136.06. Transferred to section 38-2621.
71-1,136.07. Transferred to section 38-2622.
71-1,136.08. Transferred to section 38-2623.
71-1,136.09. Repealed. Laws 2007, LB 463, § 1319.

(r) PRACTICE OF OSTEOPATHY

71-1,137. Transferred to section 38-2029.
71-1,138. Transferred to section 38-2030.
71-1,139. Transferred to section 38-2031.
71-1,139.01. Transferred to section 38-2032.
71-1,140. Transferred to section 38-2005.
71-1,140.01. Repealed. Laws 1969, c. 565, § 6.
71-1,140.02. Repealed. Laws 1969, c. 565, § 6.
71-1,140.03. Repealed. Laws 1969, c. 565, § 6.
71-1,141. Transferred to section 38-2033.

(s) PRACTICE OF PHARMACY

71-1,142. Repealed. Laws 2007, LB 463, § 1319.
71-1,143. Transferred to section 38-2850.
71-1,143.01. Transferred to section 38-2851.

Section
71-1,143.02. Transferred to section 38-2853.
71-1,143.03. Transferred to section 38-2866.
71-1,144. Transferred to section 38-2854.
71-1,144.01. Repealed. Laws 2007, LB 463, § 1319.
71-1,144.02. Repealed. Laws 2000, LB 1135, § 34.
71-1,144.03. Repealed. Laws 2002, LB 1021, § 111.
71-1,144.04. Repealed. Laws 2002, LB 1021, § 111.
71-1,144.05. Repealed. Laws 2002, LB 1021, § 111.
71-1,145. Transferred to section 71-1,143.01.
71-1,145.01. Transferred to section 71-1,143.02.
71-1,146. Transferred to section 38-2804.
71-1,146.01. Transferred to section 38-2870.
71-1,146.02. Transferred to section 38-2871.
71-1,147. Transferred to section 38-2867.
71-1,147.01. Repealed. Laws 2000, LB 819, § 163.
71-1,147.02. Repealed. Laws 2000, LB 819, § 163.
71-1,147.03. Repealed. Laws 2000, LB 819, § 163.
71-1,147.04. Repealed. Laws 2000, LB 819, § 163.
71-1,147.05. Repealed. Laws 2000, LB 819, § 163.
71-1,147.06. Repealed. Laws 2000, LB 819, § 163.
71-1,147.07. Repealed. Laws 2000, LB 819, § 163.
71-1,147.08. Repealed. Laws 2000, LB 819, § 163.
71-1,147.09. Repealed. Laws 2000, LB 819, § 163.
71-1,147.10. Repealed. Laws 2000, LB 819, § 163.
71-1,147.11. Repealed. Laws 2000, LB 819, § 163.
71-1,147.12. Repealed. Laws 2000, LB 819, § 163.
71-1,147.13. Transferred to section 38-28,103.
71-1,147.14. Repealed. Laws 2001, LB 398, § 96.
71-1,147.15. Repealed. Laws 2008, LB 308, § 18.
71-1,147.16. Repealed. Laws 2007, LB 463, § 1319.
71-1,147.17. Repealed. Laws 2007, LB 463, § 1319.
71-1,147.18. Transferred to section 38-2846.
71-1,147.19. Transferred to section 38-2824.
71-1,147.20. Transferred to section 38-2803.
71-1,147.21. Transferred to section 38-2805.
71-1,147.22. Transferred to section 38-2855.
71-1,147.23. Transferred to section 38-2856.
71-1,147.24. Transferred to section 38-2857.
71-1,147.25. Transferred to section 38-2858.
71-1,147.26. Transferred to section 38-2859.
71-1,147.27. Transferred to section 38-2860.
71-1,147.28. Transferred to section 38-2861.
71-1,147.29. Transferred to section 38-2862.
71-1,147.30. Transferred to section 38-2863.
71-1,147.31. Transferred to section 38-2864.
71-1,147.32. Transferred to section 38-2865.
71-1,147.33. Repealed. Laws 2007, LB 236, § 47.
71-1,147.34. Repealed. Laws 2007, LB 236, § 47.
71-1,147.35. Transferred to section 38-2869.
71-1,147.36. Transferred to section 38-2868.
71-1,147.37. Repealed. Laws 1999, LB 594, § 75.
71-1,147.38. Repealed. Laws 1999, LB 594, § 75.
71-1,147.39. Repealed. Laws 2001, LB 398, § 97.
71-1,147.40. Repealed. Laws 2001, LB 398, § 97.
71-1,147.41. Repealed. Laws 2001, LB 398, § 97.
71-1,147.42. Transferred to section 38-2875.
71-1,147.43. Transferred to section 38-2876.
71-1,147.44. Transferred to section 38-2877.
71-1,147.45. Transferred to section 38-2878.
71-1,147.46. Transferred to section 38-2879.
71-1,147.47. Transferred to section 38-2880.

Section
71-1,147.48. Transferred to section 38-2881.
71-1,147.49. Repealed. Laws 2001, LB 398, § 97.
71-1,147.50. Transferred to section 38-2882.
71-1,147.51. Repealed. Laws 2001, LB 398, § 97.
71-1,147.52. Transferred to section 38-2883.
71-1,147.53. Transferred to section 38-2884.
71-1,147.54. Transferred to section 38-2885.
71-1,147.55. Transferred to section 38-2886.
71-1,147.56. Transferred to section 38-2887.
71-1,147.57. Transferred to section 38-2888.
71-1,147.58. Repealed. Laws 2001, LB 398, § 97.
71-1,147.59. Transferred to section 38-2889.
71-1,147.60. Repealed. Laws 2001, LB 398, § 97.
71-1,147.61. Repealed. Laws 2001, LB 398, § 97.
71-1,147.62. Transferred to section 38-2872.
71-1,147.63. Transferred to section 38-2873.
71-1,147.64. Transferred to section 38-2874.
71-1,147.65. Transferred to section 38-2890.
71-1,147.66. Transferred to section 38-2891.
71-1,147.67. Transferred to section 38-2892.
71-1,147.68. Transferred to section 38-2893.
71-1,147.69. Transferred to section 38-2894.
71-1,147.70. Transferred to section 38-2895.
71-1,147.71. Transferred to section 38-2896.
71-1,147.72. Transferred to section 38-2897.
71-1,148. Transferred to section 38-2899.
71-1,149. Transferred to section 38-28,100.
71-1,150. Repealed. Laws 2003, LB 242, § 154.
71-1,151. Repealed. Laws 2007, LB 463, § 1319.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

71-1,152. Repealed. Laws 1967, c. 439, § 18.
71-1,152.01. Transferred to section 38-3320.
71-1,153. Transferred to section 38-3301.
71-1,154. Repealed. Laws 2007, LB 463, § 1319.
71-1,155. Transferred to section 38-3321.
71-1,156. Repealed. Laws 1987, LB 473, § 63.
71-1,157. Transferred to section 38-3323.
71-1,158. Transferred to section 38-3322.
71-1,159. Repealed. Laws 1987, LB 473, § 63.
71-1,160. Repealed. Laws 2007, LB 463, § 1319.
71-1,161. Repealed. Laws 2005, LB 301, § 78.
71-1,162. Repealed. Laws 2007, LB 463, § 1319.
71-1,163. Transferred to section 38-3324.
71-1,164. Transferred to section 38-3330.
71-1,165. Transferred to section 38-3325.
71-1,166. Transferred to section 38-3326.
71-1,167. Repealed. Laws 1988, LB 1100, § 185.
71-1,168. Repealed. Laws 2000, LB 833, § 12.
71-1,169. Repealed. Laws 2000, LB 833, § 12.
71-1,170. Repealed. Laws 2000, LB 833, § 12.
71-1,171. Repealed. Laws 2000, LB 833, § 12.
71-1,172. Repealed. Laws 2000, LB 833, § 12.
71-1,173. Repealed. Laws 2000, LB 833, § 12.
71-1,174. Repealed. Laws 2000, LB 833, § 12.
71-1,175. Repealed. Laws 2000, LB 833, § 12.
71-1,176. Repealed. Laws 2000, LB 833, § 12.
71-1,177. Repealed. Laws 1988, LB 1100, § 185.
71-1,178. Repealed. Laws 2000, LB 833, § 12.
71-1,179. Repealed. Laws 1988, LB 1100, § 185.
71-1,180. Repealed. Laws 2000, LB 833, § 12.

Section
71-1,181. Repealed. Laws 2000, LB 833, § 12.
71-1,182. Repealed. Laws 1988, LB 1100, § 185.
71-1,183. Repealed. Laws 2000, LB 833, § 12.
71-1,184. Repealed. Laws 2000, LB 833, § 12.
71-1,185. Repealed. Laws 2000, LB 833, § 12.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

71-1,186. Transferred to section 38-502.
71-1,186.01. Repealed. Laws 2007, LB 247, § 92.
71-1,187. Transferred to section 38-511.
71-1,188. Transferred to section 38-513.
71-1,189. Transferred to section 38-514.
71-1,190. Transferred to section 38-515.
71-1,190.01. Repealed. Laws 2007, LB 247, § 92.
71-1,191. Repealed. Laws 2007, LB 463, § 1319.
71-1,192. Repealed. Laws 2007, LB 247, § 92.
71-1,193. Repealed. Laws 2007, LB 463, § 1319.
71-1,194. Transferred to section 38-518.
71-1,195. Repealed. Laws 1985, LB 129, § 36.
71-1,195.01. Transferred to section 38-519.
71-1,195.02. Transferred to section 38-520.
71-1,195.03. Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,195.04. Transferred to section 38-521.
71-1,195.05. Transferred to section 38-522.
71-1,195.06. Transferred to section 38-523.
71-1,195.07. Transferred to section 38-524.
71-1,195.08. Transferred to section 38-525.
71-1,195.09. Transferred to section 38-526.
71-1,196. Transferred to section 38-512.
71-1,197. Repealed. Laws 1985, LB 129, § 36.
71-1,197.01. Repealed. Laws 1988, LB 1100, § 185.

(v) INSURER REPORT VIOLATIONS

71-1,198. Repealed. Laws 2007, LB 463, § 1319.
71-1,199. Transferred to section 38-1,129.
71-1,200. Transferred to section 38-1,130.
71-1,201. Transferred to section 38-1,133.
71-1,202. Transferred to section 38-1,134.
71-1,203. Repealed. Laws 2007, LB 463, § 1319.
71-1,204. Transferred to section 38-1,135.
71-1,205. Transferred to section 38-1,136.

(w) PRACTICE OF PSYCHOLOGY

71-1,206. Repealed. Laws 1994, LB 1210, § 192.
71-1,206.01. Transferred to section 38-3102.
71-1,206.02. Transferred to section 38-3103.
71-1,206.03. Transferred to section 38-3104.
71-1,206.04. Transferred to section 38-3105.
71-1,206.05. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.06. Transferred to section 38-3106.
71-1,206.07. Transferred to section 38-3107.
71-1,206.08. Transferred to section 38-3108.
71-1,206.09. Transferred to section 38-3109.
71-1,206.10. Transferred to section 38-3110.
71-1,206.11. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.12. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.13. Repealed. Laws 2003, LB 242, § 154.
71-1,206.14. Transferred to section 38-3111.
71-1,206.15. Transferred to section 38-3114.
71-1,206.16. Transferred to section 38-3115.
71-1,206.17. Repealed. Laws 2007, LB 463, § 1319.

Section
71-1,206.18. Transferred to section 38-3116.
71-1,206.19. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.20. Transferred to section 38-3117.
71-1,206.21. Transferred to section 38-3118.
71-1,206.22. Transferred to section 38-3119.
71-1,206.23. Transferred to section 38-3120.
71-1,206.24. Transferred to section 38-3128.
71-1,206.25. Transferred to section 38-3113.
71-1,206.26. Transferred to section 38-3129.
71-1,206.27. Transferred to section 38-3130.
71-1,206.28. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.29. Transferred to section 38-3131.
71-1,206.30. Transferred to section 38-3132.
71-1,206.31. Repealed. Laws 2007, LB 463, § 1319.
71-1,206.32. Transferred to section 38-3122.
71-1,206.33. Transferred to section 38-3123.
71-1,206.34. Transferred to section 38-3124.
71-1,206.35. Transferred to section 38-3125.
71-1,207. Repealed. Laws 1994, LB 1210, § 192.
71-1,208. Transferred to section 71-1,206.11.
71-1,209. Transferred to section 71-1,206.12.
71-1,210. Transferred to section 71-1,206.13.
71-1,211. Repealed. Laws 1994, LB 1210, § 192.
71-1,212. Repealed. Laws 1994, LB 1210, § 192.
71-1,213. Repealed. Laws 1994, LB 1210, § 192.
71-1,214. Repealed. Laws 1994, LB 1210, § 192.
71-1,215. Repealed. Laws 1988, LB 1100, § 185.
71-1,216. Repealed. Laws 1988, LB 1100, § 185.
71-1,217. Repealed. Laws 1988, LB 1100, § 185.
71-1,218. Repealed. Laws 1994, LB 1210, § 192.
71-1,219. Repealed. Laws 1994, LB 1210, § 192.
71-1,220. Transferred to section 71-1,206.28.
71-1,221. Repealed. Laws 1994, LB 1210, § 192.
71-1,222. Repealed. Laws 1994, LB 1210, § 192.
71-1,223. Repealed. Laws 1994, LB 1210, § 192.
71-1,224. Repealed. Laws 1994, LB 1210, § 192.
71-1,225. Repealed. Laws 1994, LB 1210, § 192.
71-1,226. Repealed. Laws 1994, LB 1210, § 192.

(x) PRACTICE OF RESPIRATORY CARE

71-1,227. Transferred to section 38-3206.
71-1,228. Repealed. Laws 2007, LB 463, § 1319.
71-1,229. Transferred to section 38-3214.
71-1,230. Transferred to section 38-3215.
71-1,231. Transferred to section 38-3209.
71-1,232. Repealed. Laws 2003, LB 245, § 19.
71-1,233. Transferred to section 38-3210.
71-1,234. Repealed. Laws 2007, LB 463, § 1319.
71-1,235. Transferred to section 38-3208.
71-1,236. Transferred to section 38-3216.
71-1,237. Repealed. Laws 2003, LB 242, § 154.

(y) PRACTICE OF ATHLETIC TRAINING

71-1,238. Transferred to section 38-402.
71-1,239. Repealed. Laws 1999, LB 178, § 6.
71-1,239.01. Transferred to section 38-410.
71-1,240. Transferred to section 38-409.
71-1,241. Transferred to section 38-411.
71-1,242. Repealed. Laws 2007, LB 463, § 1319.
71-1,243. Repealed. Laws 2003, LB 242, § 154.

Section

(z) PRACTICE OF SOCIAL WORK

71-1,244. Repealed. Laws 1993, LB 669, § 62.
71-1,245. Repealed. Laws 1993, LB 669, § 62.
71-1,246. Repealed. Laws 1993, LB 669, § 62.
71-1,247. Repealed. Laws 1993, LB 669, § 62.
71-1,248. Transferred to section 71-1,311.
71-1,249. Transferred to section 71-1,300.
71-1,250. Transferred to section 71-1,303.
71-1,251. Transferred to section 71-1,301.
71-1,252. Transferred to section 71-1,304.
71-1,253. Repealed. Laws 1993, LB 669, § 62.
71-1,254. Repealed. Laws 1993, LB 669, § 62.
71-1,255. Transferred to section 71-1,297.
71-1,256. Transferred to section 71-1,318.
71-1,257. Repealed. Laws 1993, LB 669, § 62.
71-1,258. Transferred to section 71-1,319.
71-1,259. Repealed. Laws 1993, LB 669, § 62.
71-1,260. Transferred to section 71-1,320.
71-1,261. Transferred to section 71-1,321.
71-1,262. Repealed. Laws 1993, LB 669, § 62.
71-1,263. Transferred to section 71-1,322.
71-1,264. Transferred to section 71-1,323.

(aa) PRACTICE OF PROFESSIONAL COUNSELING

71-1,265. Repealed. Laws 1993, LB 669, § 62.
71-1,266. Transferred to section 71-1,310.
71-1,267. Transferred to section 71-1,324.
71-1,268. Repealed. Laws 1993, LB 669, § 62.
71-1,269. Transferred to section 71-1,325.
71-1,270. Transferred to section 71-1,333.
71-1,271. Repealed. Laws 1993, LB 669, § 62.
71-1,272. Repealed. Laws 1988, LB 1100, § 185.
71-1,273. Transferred to section 71-1,326.
71-1,274. Repealed. Laws 1993, LB 669, § 62.
71-1,275. Transferred to section 71-1,327.
71-1,276. Repealed. Laws 1988, LB 1100, § 185.
71-1,277. Transferred to section 71-1,328.

(bb) PRACTICE OF MASSAGE THERAPY

71-1,278. Transferred to section 38-1702.
71-1,279. Transferred to section 38-1708.
71-1,280. Transferred to section 38-1709.
71-1,281. Transferred to section 38-1710.
71-1,281.01. Transferred to section 38-1711.
71-1,282. Repealed. Laws 2007, LB 463, § 1319.
71-1,283. Repealed. Laws 2003, LB 242, § 154.
71-1,284. Repealed. Laws 1991, LB 10, § 7.

(cc) MEDICAL NUTRITION THERAPY

71-1,285. Transferred to section 38-1802.
71-1,286. Transferred to section 38-1803.
71-1,287. Transferred to section 38-1812.
71-1,288. Repealed. Laws 2003, LB 242, § 154.
71-1,289. Transferred to section 38-1813.
71-1,290. Repealed. Laws 2007, LB 463, § 1319.
71-1,291. Repealed. Laws 2007, LB 463, § 1319.
71-1,291.01. Repealed. Laws 2007, LB 463, § 1319.
71-1,292. Repealed. Laws 2007, LB 463, § 1319.
71-1,293. Transferred to section 38-1816.
71-1,294. Repealed. Laws 2007, LB 463, § 1319.

Section

(dd) MENTAL HEALTH PRACTITIONERS

71-1,295. Transferred to section 38-2102.
71-1,296. Transferred to section 38-2103.
71-1,297. Transferred to section 38-2104.
71-1,298. Transferred to section 38-2105.
71-1,299. Transferred to section 38-2106.
71-1,300. Transferred to section 38-2107.
71-1,301. Transferred to section 38-2108.
71-1,302. Transferred to section 38-2109.
71-1,303. Transferred to section 38-2110.
71-1,304. Transferred to section 38-2111.
71-1,305. Transferred to section 38-2112.
71-1,305.01. Transferred to section 38-2113.
71-1,306. Transferred to section 38-2114.
71-1,307. Transferred to section 38-2115.
71-1,308. Transferred to section 38-2116.
71-1,309. Transferred to section 38-2117.
71-1,310. Transferred to section 38-2118.
71-1,311. Transferred to section 38-2119.
71-1,312. Transferred to section 38-2121.
71-1,313. Repealed. Laws 2007, LB 463, § 1319.
71-1,314. Transferred to section 38-2122.
71-1,314.01. Transferred to section 38-2123.
71-1,314.02. Transferred to section 38-2124.
71-1,315. Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,316. Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,317. Transferred to section 38-2126.
71-1,318. Transferred to section 38-2127.
71-1,319. Transferred to section 38-2128.
71-1,319.01. Transferred to section 38-2129.
71-1,320. Repealed. Laws 2007, LB 463, § 1319.
71-1,321. Repealed. Laws 2007, LB 463, § 1319.
71-1,322. Repealed. Laws 2007, LB 463, § 1319.
71-1,323. Transferred to section 38-2131.
71-1,324. Repealed. Laws 2007, LB 463, § 1319.
71-1,325. Transferred to section 38-2132.
71-1,326. Repealed. Laws 2007, LB 463, § 1319.
71-1,327. Repealed. Laws 2007, LB 463, § 1319.
71-1,328. Repealed. Laws 2007, LB 463, § 1319.
71-1,329. Transferred to section 38-2133.
71-1,330. Repealed. Laws 2007, LB 463, § 1319.
71-1,331. Repealed. Laws 2007, LB 463, § 1319.
71-1,332. Transferred to section 38-2134.
71-1,333. Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.
71-1,334. Repealed. Laws 2003, LB 242, § 154.
71-1,335. Transferred to section 38-2136.
71-1,336. Transferred to section 38-2137.
71-1,337. Transferred to section 38-2138.
71-1,338. Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

(ee) REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

71-1,339. Transferred to section 38-1,137.

(ff) HEALTH CARE CREDENTIALING

71-1,340. Repealed. Laws 2007, LB 463, § 1319.
71-1,341. Repealed. Laws 2007, LB 463, § 1319.
71-1,342. Repealed. Laws 2007, LB 463, § 1319.
71-1,343. Transferred to section 38-128.

Section

(gg) PRACTICE OF ACUPUNCTURE

71-1,344. Transferred to section 38-2006.
71-1,345. Transferred to section 38-2057.
71-1,346. Transferred to section 38-2058.
71-1,347. Transferred to section 38-2059.
71-1,348. Transferred to section 38-2060.
71-1,349. Repealed. Laws 2007, LB 463, § 1319.
71-1,350. Repealed. Laws 2003, LB 242, § 154.

(hh) ALCOHOL AND DRUG COUNSELING

71-1,351. Transferred to section 38-302.
71-1,352. Transferred to section 38-311.
71-1,353. Transferred to section 38-312.
71-1,354. Transferred to section 38-313.
71-1,355. Transferred to section 38-314.
71-1,356. Transferred to section 38-315.
71-1,357. Transferred to section 38-316.
71-1,358. Transferred to section 38-317.
71-1,359. Transferred to section 38-318.
71-1,360. Repealed. Laws 2007, LB 463, § 1319.
71-1,361. Transferred to section 38-321.

(ii) PHYSICAL THERAPY PRACTICE ACT

71-1,362. Transferred to section 38-2901.
71-1,363. Transferred to section 38-2902.
71-1,364. Transferred to section 38-2903.
71-1,365. Transferred to section 38-2904.
71-1,366. Transferred to section 38-2905.
71-1,367. Repealed. Laws 2007, LB 463, § 1319.
71-1,368. Transferred to section 38-2906.
71-1,369. Transferred to section 38-2907.
71-1,370. Transferred to section 38-2908.
71-1,371. Transferred to section 38-2909.
71-1,372. Transferred to section 38-2910.
71-1,373. Transferred to section 38-2911.
71-1,374. Transferred to section 38-2912.
71-1,375. Transferred to section 38-2913.
71-1,376. Transferred to section 38-2914.
71-1,377. Transferred to section 38-2915.
71-1,378. Transferred to section 38-2916.
71-1,379. Transferred to section 38-2917.
71-1,380. Transferred to section 38-2918.
71-1,381. Transferred to section 38-2919.
71-1,382. Transferred to section 38-2920.
71-1,383. Transferred to section 38-2921.
71-1,384. Transferred to section 38-2922.
71-1,385. Transferred to section 38-2927.
71-1,386. Transferred to section 38-2928.
71-1,387. Transferred to section 38-2929.
71-1,388. Transferred to section 38-2926.
71-1,389. Repealed. Laws 2007, LB 463, § 1319.

(jj) PERFUSION PRACTICE ACT

71-1,390. Transferred to section 38-2701.
71-1,391. Transferred to section 38-2702.
71-1,392. Transferred to section 38-2703.
71-1,393. Transferred to section 38-2704.
71-1,394. Transferred to section 38-2705.
71-1,395. Transferred to section 38-2706.
71-1,396. Transferred to section 38-2707.
71-1,397. Repealed. Laws 2007, LB 247, § 91.

Section
71-1,398. Transferred to section 38-2709.
71-1,399. Transferred to section 38-2710.
71-1,400. Transferred to section 38-2711.
71-1,401. Transferred to section 38-2712.

(a) DEFINITIONS

71-101 Transferred to section 38-101.

71-101.01 Repealed. Laws 2007, LB 463, § 1319.

71-101.02 Repealed. Laws 1988, LB 1100, § 185.

(b) LICENSES AND CERTIFICATES

71-102 Transferred to section 38-121.

71-103 Transferred to section 38-129.

71-104 Repealed. Laws 2007, LB 463, § 1319.

71-104.01 Transferred to section 38-131.

71-105 Transferred to section 38-122.

71-106 Repealed. Laws 2007, LB 463, § 1319.

71-107 Transferred to section 38-124.

71-108 Transferred to section 38-130.

71-109 Repealed. Laws 2003, LB 242, § 154.

71-110 Transferred to section 38-142.

71-110.01 Transferred to section 38-143.

(c) PROFESSIONAL BOARDS

71-111 Transferred to section 38-158.

71-112 Transferred to section 38-167.

71-112.01 Repealed. Laws 2007, LB 463, § 1319.

71-112.02 Repealed. Laws 1990, LB 818, § 1.

71-112.03 Transferred to section 38-161.

71-112.04 Repealed. Laws 1987, LB 473, § 63.

71-112.05 Repealed. Laws 1987, LB 473, § 63.

71-112.06 Repealed. Laws 1987, LB 473, § 63.

71-113 Transferred to section 38-162.

71-114 Transferred to section 38-164.

71-115 Repealed. Laws 1987, LB 473, § 63.

71-115.01 Transferred to section 38-168.

71-115.02 Repealed. Laws 1987, LB 473, § 63.

71-115.03 Repealed. Laws 1987, LB 473, § 63.

71-115.04 Repealed. Laws 1987, LB 473, § 63.

71-116 Transferred to section 38-163.

71-117 Transferred to section 38-159.

71-118 Transferred to section 38-160.

71-119 Repealed. Laws 2007, LB 463, § 1319.

71-120 Transferred to section 38-169.

71-121 Transferred to section 38-170.

71-121.01 Transferred to section 38-174.

71-122 Transferred to section 38-171.

71-122.01 Repealed. Laws 1986, LB 926, § 65.

71-123 Repealed. Laws 2007, LB 463, § 1319.

71-124 Transferred to section 38-172.

71-124.01 Transferred to section 38-141.

(d) EXAMINATIONS

71-125 Transferred to section 38-132.

71-126 Repealed. Laws 1991, LB 703, § 83.

71-127 Repealed. Laws 1986, LB 926, § 65.

71-128 Transferred to section 38-133.

71-129 Transferred to section 38-135.

71-130 Repealed. Laws 1990, LB 1064, § 33.

71-131 Transferred to section 38-136.

71-132 Repealed. Laws 2007, LB 463, § 1319.

71-133 Transferred to section 38-134.

71-134 Repealed. Laws 1988, LB 1100, § 185.

71-134.01 Repealed. Laws 1988, LB 1100, § 185.

71-134.02 Repealed. Laws 1988, LB 1100, § 185.

71-134.03 Repealed. Laws 1988, LB 1100, § 185.

71-135 Repealed. Laws 1990, LB 1064, § 33.

71-136 Repealed. Laws 1990, LB 1064, § 33.

71-137 Repealed. Laws 1990, LB 1064, § 33.

71-138 Transferred to section 38-137.

(e) RECIPROCAL LICENSES AND CERTIFICATES

71-139 Repealed. Laws 2007, LB 463, § 1319.

71-139.01 Repealed. Laws 2007, LB 463, § 1319.

71-139.02 Repealed. Laws 2007, LB 463, § 1319.

71-140 Repealed. Laws 2007, LB 463, § 1319.

71-141 Repealed. Laws 2007, LB 463, § 1319.

71-142 Repealed. Laws 2007, LB 463, § 1319.

71-143 Repealed. Laws 2007, LB 463, § 1319.

71-144 Repealed. Laws 2007, LB 463, § 1319.

71-145 Transferred to section 38-125.

71-146 Repealed. Laws 1980, LB 94, § 19.

(f) REVOCATION OF LICENSES AND CERTIFICATES

71-147 Transferred to section 38-178.

71-147.01 Transferred to section 38-1,128.

71-147.02 Transferred to section 38-183.

71-148 Transferred to section 38-179.

71-149 Transferred to section 38-144.

71-150 Transferred to section 38-185.

71-151 Repealed. Laws 2007, LB 463, § 1319.

71-152 Transferred to section 38-187.

71-153 Transferred to section 38-188.

71-154 Transferred to section 38-189.

71-155 Transferred to section 38-196.

71-155.01 Transferred to section 38-1,101.

71-155.02 Repealed. Laws 1988, LB 1100, § 185.

71-155.03 Transferred to section 38-198.

71-156 Transferred to section 38-191.

71-157 Transferred to section 38-194.

71-158 Transferred to section 38-195.

71-159 Transferred to section 38-1,102.

71-160 Repealed. Laws 2007, LB 463, § 1319.

71-161 Repealed. Laws 1988, LB 352, § 190.

71-161.01 Transferred to section 38-177.

71-161.02 Transferred to section 38-197.

71-161.03 Transferred to section 38-190.

71-161.04 Transferred to section 38-148.

71-161.05 Repealed. Laws 2007, LB 463, § 1319.

71-161.06 Transferred to section 38-149.

71-161.07 Repealed. Laws 2007, LB 463, § 1319.

71-161.08 Repealed. Laws 1988, LB 1100, § 185.

71-161.09 Transferred to section 38-145.

71-161.10 Transferred to section 38-146.

71-161.11 Transferred to section 38-1,109.

71-161.12 Repealed. Laws 2007, LB 463, § 1319.

71-161.13 Transferred to section 38-1,110.

71-161.14 Transferred to section 38-1,111.

71-161.15 Transferred to section 38-1,112.

71-161.16 Transferred to section 38-1,113.

71-161.17 Repealed. Laws 2007, LB 463, § 1319.

71-161.18 Repealed. Laws 2007, LB 463, § 1319.

71-161.19 Transferred to section 38-173.

71-161.20 Repealed. Laws 2007, LB 463, § 1319.

(g) FEES

71-162 Transferred to section 38-151.

71-162.01 Transferred to section 38-152.

71-162.02 Transferred to section 38-153.

71-162.03 Transferred to section 38-154.

71-162.04 Transferred to section 38-155.

71-162.05 Transferred to section 38-156.

71-163 Transferred to section 38-157.

(h) VIOLATIONS, CRIMES, PUNISHMENT

71-164 Transferred to section 38-1,114.

71-164.01 Transferred to section 38-1,116.

71-165 Repealed. Laws 2007, LB 463, § 1319.

71-166 Transferred to section 38-1,117.

71-167 Transferred to section 38-1,118.

(i) ENFORCEMENT PROVISIONS

71-168 Transferred to section 38-1,124.

71-168.01 Transferred to section 38-1,138.

71-168.02 Transferred to section 38-1,127.

71-169 Transferred to section 38-126.

71-170 Transferred to section 38-127.

71-171 Transferred to section 38-1,139.

71-171.01 Transferred to section 38-1,107.

71-171.02 Transferred to section 38-1,108.

71-172 Repealed. Laws 2007, LB 463, § 1319.

(j) LICENSEE ASSISTANCE PROGRAM

71-172.01 Transferred to section 38-175.

71-172.02 Repealed. Laws 2007, LB 463, § 1319.

(k) PRACTICE OF PODIATRY

71-173 Transferred to section 38-3006.

71-174 Transferred to section 38-3007.

71-174.01 Repealed. Laws 2007, LB 463, § 1319.

71-174.02 Transferred to section 38-3011.

71-175 Transferred to section 38-3008.

71-175.01 Repealed. Laws 2007, LB 463, § 1319.

71-176 Transferred to section 38-3010.

71-176.01 Transferred to section 38-3012.

71-176.02 Repealed. Laws 1972, LB 1044, § 1.

71-176.03 Repealed. Laws 2007, LB 463, § 1319.

(l) PRACTICE OF CHIROPRACTIC

71-177 Transferred to section 38-805.

71-178 Transferred to section 38-806.

71-179 Transferred to section 38-807.

71-179.01 Repealed. Laws 2007, LB 463, § 1319.

71-180 Transferred to section 38-803.

71-180.01 Repealed. Laws 1988, LB 1100, § 185.

71-180.02 Repealed. Laws 1988, LB 1100, § 185.

71-180.03 Repealed. Laws 1988, LB 1100, § 185.

71-180.04 Repealed. Laws 1988, LB 1100, § 185.

71-180.05 Repealed. Laws 1988, LB 1100, § 185.

71-181 Transferred to section 38-809.

71-182 Transferred to section 38-811.

(m) PRACTICE OF DENTISTRY

71-183 Transferred to section 38-1115.

71-183.01 Transferred to section 38-1116.

71-183.02 Transferred to section 38-1107.

71-184 Repealed. Laws 2007, LB 463, § 1319.

71-185 Transferred to section 38-1117.

71-185.01 Transferred to section 38-1125.

71-185.02 Transferred to section 38-1123.

71-185.03 Transferred to section 38-1124.

71-186 Repealed. Laws 2007, LB 463, § 1319.

71-187 Repealed. Laws 1986, LB 926, § 65.

71-188 Repealed. Laws 2007, LB 463, § 1319.

71-189 Transferred to section 38-1127.

71-190 Transferred to section 38-1128.

71-191 Transferred to section 38-1129.

71-192 Repealed. Laws 1988, LB 1100, § 185.

71-193 Repealed. Laws 1971, LB 587, § 15.

71-193.01 Transferred to section 38-1149.

71-193.02 Transferred to section 38-1150.

71-193.03 Transferred to section 38-1151.

71-193.04 Transferred to section 38-1118.

71-193.05 Repealed. Laws 2007, LB 463, § 1319.

71-193.06 Repealed. Laws 1971, LB 587, § 15.

71-193.07 Repealed. Laws 1971, LB 587, § 15.

71-193.08 Repealed. Laws 1971, LB 587, § 15.

71-193.09 Repealed. Laws 1986, LB 572, § 8.

71-193.10 Repealed. Laws 1971, LB 587, § 15.

71-193.11 Repealed. Laws 1953, c. 238, § 7.

71-193.12 Repealed. Laws 1971, LB 587, § 15.

71-193.13 Transferred to section 38-1135.

71-193.14 Transferred to section 38-1136.

71-193.15 Transferred to section 38-1130.

71-193.16 Repealed. Laws 2007, LB 463, § 1319.

71-193.17 Transferred to section 38-1131.

71-193.18 Transferred to section 38-1132.

71-193.19 Transferred to section 38-1133.

71-193.20 Transferred to section 38-1134.

71-193.21 Repealed. Laws 2007, LB 463, § 1319.

71-193.22 Repealed. Laws 2007, LB 463, § 1319.

71-193.23 Transferred to section 38-1137.

71-193.24 Repealed. Laws 2007, LB 463, § 1319.

71-193.25 Transferred to section 38-1138.

71-193.26 Transferred to section 38-1139.

71-193.27 Transferred to section 38-1140.

71-193.28 Transferred to section 38-1142.

71-193.29 Transferred to section 38-1141.

71-193.30 Transferred to section 38-1144.

71-193.31 Transferred to section 38-1145.

71-193.32 Transferred to section 38-1146.

71-193.33 Transferred to section 38-1143.

71-193.34 Transferred to section 38-1147.

71-193.35 Transferred to section 38-1148.

(n) PRACTICE OF EMBALMING

71-194 Transferred to section 71-1301.

71-195 Transferred to section 71-1302.

71-196 Transferred to section 71-1303.

71-197 Repealed. Laws 1980, LB 94, § 19.

71-198 Transferred to section 71-1304.

71-199 Transferred to section 71-1305.

71-1,100 Transferred to section 71-1306.

71-1,101 Repealed. Laws 1993, LB 187, § 39.

(o) PRACTICE OF MEDICINE AND SURGERY

71-1,102 Transferred to section 38-2024.

71-1,103 Transferred to section 38-2025.

71-1,104 Transferred to section 38-2026.

71-1,104.01 Transferred to section 71-551.

71-1,104.02 Repealed. Laws 1991, LB 456, § 40.

71-1,104.03 Repealed. Laws 1991, LB 456, § 40.

71-1,104.04 Repealed. Laws 1991, LB 456, § 40.

71-1,104.05 Repealed. Laws 1991, LB 456, § 40.

71-1,104.06 Repealed. Laws 2007, LB 463, § 1319.

71-1,105 Transferred to section 38-2004.

71-1,106 Repealed. Laws 2007, LB 463, § 1319.

71-1,106.01 Repealed. Laws 2009, LB 195, § 111.

71-1,107 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.01 Transferred to section 38-2002.

71-1,107.02 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.03 Transferred to section 38-2038.

71-1,107.04 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.05 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.06 Transferred to section 38-2042.

71-1,107.07 Transferred to section 38-2039.

71-1,107.08 Transferred to section 38-2040.

71-1,107.09 Transferred to section 38-2041.

71-1,107.10 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.11 Transferred to section 38-2043.

71-1,107.12 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.13 Transferred to section 38-2044.

71-1,107.14 Transferred to section 38-2045.

71-1,107.15 Transferred to section 38-2046.

71-1,107.16 Transferred to section 38-2014.

71-1,107.17 Transferred to section 38-2047.

71-1,107.18 Transferred to section 38-2048.

71-1,107.19 Transferred to section 38-2049.

71-1,107.20 Transferred to section 38-2050.

71-1,107.21 Transferred to section 38-2052.

71-1,107.22 Repealed. Laws 1981, LB 545, § 52.

71-1,107.23 Transferred to section 38-2051.

71-1,107.24 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.25 Transferred to section 38-2056.

71-1,107.26 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.27 Repealed. Laws 2007, LB 463, § 1319.

71-1,107.28 Transferred to section 38-2053.

71-1,107.29 Transferred to section 38-2054.

71-1,107.30 Transferred to section 38-2055.

(p) PRACTICE OF NURSING

71-1,108 Repealed. Laws 1953, c. 245, § 21.

71-1,109 Repealed. Laws 1953, c. 245, § 21.

71-1,110 Repealed. Laws 1953, c. 245, § 21.

71-1,111 Repealed. Laws 1953, c. 245, § 21.

71-1,112 Repealed. Laws 1953, c. 245, § 21.

71-1,113 Repealed. Laws 1953, c. 245, § 21.

71-1,114 Repealed. Laws 1953, c. 245, § 21.

71-1,115 Repealed. Laws 1953, c. 245, § 21.

71-1,115.01 Repealed. Laws 1953, c. 245, § 21.

71-1,115.02 Repealed. Laws 1953, c. 245, § 21.

71-1,115.03 Repealed. Laws 1953, c. 245, § 21.

71-1,116 Repealed. Laws 1953, c. 245, § 21.

71-1,117 Repealed. Laws 1953, c. 245, § 21.

71-1,118 Repealed. Laws 1953, c. 245, § 21.

71-1,119 Repealed. Laws 1953, c. 245, § 21.

71-1,120 Repealed. Laws 1953, c. 245, § 21.

71-1,121 Repealed. Laws 1953, c. 245, § 21.

71-1,122 Repealed. Laws 1953, c. 245, § 21.

71-1,123 Repealed. Laws 1953, c. 245, § 21.

71-1,124 Repealed. Laws 1953, c. 245, § 21.

71-1,125 Repealed. Laws 1953, c. 245, § 21.

71-1,126 Repealed. Laws 1953, c. 245, § 21.

71-1,127 Repealed. Laws 1953, c. 245, § 21.

71-1,128 Repealed. Laws 1953, c. 245, § 21.

71-1,129 Repealed. Laws 1953, c. 245, § 21.

71-1,130 Repealed. Laws 1953, c. 245, § 21.

71-1,131 Repealed. Laws 1953, c. 245, § 21.

71-1,132 Repealed. Laws 1953, c. 245, § 21.

71-1,132.01 Transferred to section 38-2201.

71-1,132.02 Act, expired.

71-1,132.03 Act, expired.

71-1,132.04 Transferred to section 38-2217.

71-1,132.05 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.06 Transferred to section 38-2218.

71-1,132.07 Transferred to section 38-2213.

71-1,132.08 Transferred to section 38-2214.

71-1,132.09 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.10 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.11 Transferred to section 38-2216.

71-1,132.12 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.13 Transferred to section 38-2220.

71-1,132.14 Transferred to section 38-2222.

71-1,132.15 Transferred to section 38-2223.

71-1,132.16 Transferred to section 38-2225.

71-1,132.17 Transferred to section 38-2228.

71-1,132.18 Transferred to section 38-2229.

71-1,132.19 Transferred to section 38-2224.

71-1,132.20 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.21 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.22 Repealed. Laws 2003, LB 242, § 154.

71-1,132.23 Repealed. Laws 1976, LB 692, § 6.

71-1,132.24 Transferred to section 38-2232.

71-1,132.25 Transferred to section 38-2233.

71-1,132.26 Transferred to section 38-2234.

71-1,132.27 Transferred to section 38-2235.

71-1,132.28 Transferred to section 38-2236.

71-1,132.29 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.30 Transferred to section 38-2219.

71-1,132.31 Transferred to section 38-2215.

71-1,132.32 Repealed. Laws 1983, LB 472, § 8.

71-1,132.33 Repealed. Laws 1983, LB 472, § 8.

71-1,132.34 Repealed. Laws 1983, LB 472, § 8.

71-1,132.35 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.36 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.37 Transferred to section 38-2221.

71-1,132.38 Transferred to section 38-2231.

71-1,132.39 Repealed. Laws 1975, LB 422, § 21.

71-1,132.40 Repealed. Laws 1975, LB 422, § 21.

71-1,132.41 Transferred to section 38-2230.

71-1,132.42 Repealed. Laws 1975, LB 422, § 21.

71-1,132.43 Repealed. Laws 1978, LB 756, § 59.

71-1,132.44 Repealed. Laws 1983, LB 472, § 8.

71-1,132.45 Repealed. Laws 1983, LB 472, § 8.

71-1,132.46 Repealed. Laws 1983, LB 472, § 8.

71-1,132.47 Repealed. Laws 2003, LB 242, § 154.

71-1,132.48 Repealed. Laws 2007, LB 463, § 1319.

71-1,132.49 Repealed. Laws 2003, LB 242, § 154.

71-1,132.50 Repealed. Laws 2003, LB 242, § 154.

71-1,132.51 Repealed. Laws 1981, LB 379, § 38.

71-1,132.52 Repealed. Laws 1995, LB 563, § 50.

71-1,132.53 Repealed. Laws 2007, LB 463, § 1319.

(q) PRACTICE OF OPTOMETRY

71-1,133 Transferred to section 38-2605.

71-1,134 Transferred to section 38-2607.

71-1,135 Transferred to section 38-2608.

71-1,135.01 Transferred to section 38-2604.

71-1,135.02 Transferred to section 38-2613.

71-1,135.03 Repealed. Laws 2007, LB 236, § 47.

71-1,135.04 Transferred to section 38-2610.

71-1,135.05 Repealed. Laws 2007, LB 236, § 47.

71-1,135.06 Transferred to section 38-2617.

71-1,135.07 Transferred to section 38-2618.

71-1,136 Transferred to section 38-2616.

71-1,136.01 Transferred to section 38-2611.

71-1,136.02 Repealed. Laws 2003, LB 242, § 154.

71-1,136.03 Repealed. Laws 2007, LB 463, § 1319.

71-1,136.04 Transferred to section 38-2619.

71-1,136.05 Transferred to section 38-2620.

71-1,136.06 Transferred to section 38-2621.

71-1,136.07 Transferred to section 38-2622.

71-1,136.08 Transferred to section 38-2623.

71-1,136.09 Repealed. Laws 2007, LB 463, § 1319.

(r) PRACTICE OF OSTEOPATHY

71-1,137 Transferred to section 38-2029.

71-1,138 Transferred to section 38-2030.

71-1,139 Transferred to section 38-2031.

71-1,139.01 Transferred to section 38-2032.

71-1,140 Transferred to section 38-2005.

71-1,140.01 Repealed. Laws 1969, c. 565, § 6.

71-1,140.02 Repealed. Laws 1969, c. 565, § 6.

71-1,140.03 Repealed. Laws 1969, c. 565, § 6.

71-1,141 Transferred to section 38-2033.

(s) PRACTICE OF PHARMACY

71-1,142 Repealed. Laws 2007, LB 463, § 1319.

71-1,143 Transferred to section 38-2850.

71-1,143.01 Transferred to section 38-2851.

71-1,143.02 Transferred to section 38-2853.

71-1,143.03 Transferred to section 38-2866.

71-1,144 Transferred to section 38-2854.

71-1,144.01 Repealed. Laws 2007, LB 463, § 1319.

71-1,144.02 Repealed. Laws 2000, LB 1135, § 34.

71-1,144.03 Repealed. Laws 2002, LB 1021, § 111.

71-1,144.04 Repealed. Laws 2002, LB 1021, § 111.

71-1,144.05 Repealed. Laws 2002, LB 1021, § 111.

71-1,145 Transferred to section 71-1,143.01.

71-1,145.01 Transferred to section 71-1,143.02.

71-1,146 Transferred to section 38-2804.

71-1,146.01 Transferred to section 38-2870.

71-1,146.02 Transferred to section 38-2871.

71-1,147 Transferred to section 38-2867.

71-1,147.01 Repealed. Laws 2000, LB 819, § 163.

71-1,147.02 Repealed. Laws 2000, LB 819, § 163.

71-1,147.03 Repealed. Laws 2000, LB 819, § 163.

71-1,147.04 Repealed. Laws 2000, LB 819, § 163.

71-1,147.05 Repealed. Laws 2000, LB 819, § 163.

71-1,147.06 Repealed. Laws 2000, LB 819, § 163.

71-1,147.07 Repealed. Laws 2000, LB 819, § 163.

71-1,147.08 Repealed. Laws 2000, LB 819, § 163.

71-1,147.09 Repealed. Laws 2000, LB 819, § 163.

71-1,147.10 Repealed. Laws 2000, LB 819, § 163.

71-1,147.11 Repealed. Laws 2000, LB 819, § 163.

71-1,147.12 Repealed. Laws 2000, LB 819, § 163.

71-1,147.13 Transferred to section 38-28,103.

71-1,147.14 Repealed. Laws 2001, LB 398, § 96.

71-1,147.15 Repealed. Laws 2008, LB 308, § 18.

71-1,147.16 Repealed. Laws 2007, LB 463, § 1319.

71-1,147.17 Repealed. Laws 2007, LB 463, § 1319.

71-1,147.18 Transferred to section 38-2846.

71-1,147.19 Transferred to section 38-2824.

71-1,147.20 Transferred to section 38-2803.

71-1,147.21 Transferred to section 38-2805.

71-1,147.22 Transferred to section 38-2855.

71-1,147.23 Transferred to section 38-2856.

71-1,147.24 Transferred to section 38-2857.

71-1,147.25 Transferred to section 38-2858.

71-1,147.26 Transferred to section 38-2859.

71-1,147.27 Transferred to section 38-2860.

71-1,147.28 Transferred to section 38-2861.

71-1,147.29 Transferred to section 38-2862.

71-1,147.30 Transferred to section 38-2863.

71-1,147.31 Transferred to section 38-2864.

71-1,147.32 Transferred to section 38-2865.

71-1,147.33 Repealed. Laws 2007, LB 236, § 47.

71-1,147.34 Repealed. Laws 2007, LB 236, § 47.

71-1,147.35 Transferred to section 38-2869.

71-1,147.36 Transferred to section 38-2868.

71-1,147.37 Repealed. Laws 1999, LB 594, § 75.

71-1,147.38 Repealed. Laws 1999, LB 594, § 75.

71-1,147.39 Repealed. Laws 2001, LB 398, § 97.

71-1,147.40 Repealed. Laws 2001, LB 398, § 97.

71-1,147.41 Repealed. Laws 2001, LB 398, § 97.

71-1,147.42 Transferred to section 38-2875.

71-1,147.43 Transferred to section 38-2876.

71-1,147.44 Transferred to section 38-2877.

71-1,147.45 Transferred to section 38-2878.

71-1,147.46 Transferred to section 38-2879.

71-1,147.47 Transferred to section 38-2880.

71-1,147.48 Transferred to section 38-2881.

71-1,147.49 Repealed. Laws 2001, LB 398, § 97.

71-1,147.50 Transferred to section 38-2882.

71-1,147.51 Repealed. Laws 2001, LB 398, § 97.

71-1,147.52 Transferred to section 38-2883.

71-1,147.53 Transferred to section 38-2884.

71-1,147.54 Transferred to section 38-2885.

71-1,147.55 Transferred to section 38-2886.

71-1,147.56 Transferred to section 38-2887.

71-1,147.57 Transferred to section 38-2888.

71-1,147.58 Repealed. Laws 2001, LB 398, § 97.

71-1,147.59 Transferred to section 38-2889.

71-1,147.60 Repealed. Laws 2001, LB 398, § 97.

71-1,147.61 Repealed. Laws 2001, LB 398, § 97.

71-1,147.62 Transferred to section 38-2872.

71-1,147.63 Transferred to section 38-2873.

71-1,147.64 Transferred to section 38-2874.

71-1,147.65 Transferred to section 38-2890.

71-1,147.66 Transferred to section 38-2891.

71-1,147.67 Transferred to section 38-2892.

71-1,147.68 Transferred to section 38-2893.

71-1,147.69 Transferred to section 38-2894.

71-1,147.70 Transferred to section 38-2895.

71-1,147.71 Transferred to section 38-2896.

71-1,147.72 Transferred to section 38-2897.

71-1,148 Transferred to section 38-2899.

71-1,149 Transferred to section 38-28,100.

71-1,150 Repealed. Laws 2003, LB 242, § 154.

71-1,151 Repealed. Laws 2007, LB 463, § 1319.

(t) PRACTICE OF VETERINARY MEDICINE AND SURGERY

71-1,152 Repealed. Laws 1967, c. 439, § 18.

71-1,152.01 Transferred to section 38-3320.

71-1,153 Transferred to section 38-3301.

71-1,154 Repealed. Laws 2007, LB 463, § 1319.

71-1,155 Transferred to section 38-3321.

71-1,156 Repealed. Laws 1987, LB 473, § 63.

71-1,157 Transferred to section 38-3323.

71-1,158 Transferred to section 38-3322.

71-1,159 Repealed. Laws 1987, LB 473, § 63.

71-1,160 Repealed. Laws 2007, LB 463, § 1319.

71-1,161 Repealed. Laws 2005, LB 301, § 78.

71-1,162 Repealed. Laws 2007, LB 463, § 1319.

71-1,163 Transferred to section 38-3324.

71-1,164 Transferred to section 38-3330.

71-1,165 Transferred to section 38-3325.

71-1,166 Transferred to section 38-3326.

71-1,167 Repealed. Laws 1988, LB 1100, § 185.

71-1,168 Repealed. Laws 2000, LB 833, § 12.

71-1,169 Repealed. Laws 2000, LB 833, § 12.

71-1,170 Repealed. Laws 2000, LB 833, § 12.

71-1,171 Repealed. Laws 2000, LB 833, § 12.

71-1,172 Repealed. Laws 2000, LB 833, § 12.

71-1,173 Repealed. Laws 2000, LB 833, § 12.

71-1,174 Repealed. Laws 2000, LB 833, § 12.

71-1,175 Repealed. Laws 2000, LB 833, § 12.

71-1,176 Repealed. Laws 2000, LB 833, § 12.

71-1,177 Repealed. Laws 1988, LB 1100, § 185.

71-1,178 Repealed. Laws 2000, LB 833, § 12.

71-1,179 Repealed. Laws 1988, LB 1100, § 185.

71-1,180 Repealed. Laws 2000, LB 833, § 12.

71-1,181 Repealed. Laws 2000, LB 833, § 12.

71-1,182 Repealed. Laws 1988, LB 1100, § 185.

71-1,183 Repealed. Laws 2000, LB 833, § 12.

71-1,184 Repealed. Laws 2000, LB 833, § 12.

71-1,185 Repealed. Laws 2000, LB 833, § 12.

(u) PRACTICE OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

71-1,186 Transferred to section 38-502.

71-1,186.01 Repealed. Laws 2007, LB 247, § 92.

71-1,187 Transferred to section 38-511.

71-1,188 Transferred to section 38-513.

71-1,189 Transferred to section 38-514.

71-1,190 Transferred to section 38-515.

71-1,190.01 Repealed. Laws 2007, LB 247, § 92.

71-1,191 Repealed. Laws 2007, LB 463, § 1319.

71-1,192 Repealed. Laws 2007, LB 247, § 92.

71-1,193 Repealed. Laws 2007, LB 463, § 1319.

71-1,194 Transferred to section 38-518.

71-1,195 Repealed. Laws 1985, LB 129, § 36.

71-1,195.01 Transferred to section 38-519.

71-1,195.02 Transferred to section 38-520.

71-1,195.03 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

71-1,195.04 Transferred to section 38-521.

71-1,195.05 Transferred to section 38-522.

71-1,195.06 Transferred to section 38-523.

71-1,195.07 Transferred to section 38-524.

71-1,195.08 Transferred to section 38-525.

71-1,195.09 Transferred to section 38-526.

71-1,196 Transferred to section 38-512.

71-1,197 Repealed. Laws 1985, LB 129, § 36.

71-1,197.01 Repealed. Laws 1988, LB 1100, § 185.

(v) INSURER REPORT VIOLATIONS

71-1,198 Repealed. Laws 2007, LB 463, § 1319.

71-1,199 Transferred to section 38-1,129.

71-1,200 Transferred to section 38-1,130.

71-1,201 Transferred to section 38-1,133.

71-1,202 Transferred to section 38-1,134.

71-1,203 Repealed. Laws 2007, LB 463, § 1319.

71-1,204 Transferred to section 38-1,135.

71-1,205 Transferred to section 38-1,136.

(w) PRACTICE OF PSYCHOLOGY

71-1,206 Repealed. Laws 1994, LB 1210, § 192.

71-1,206.01 Transferred to section 38-3102.

71-1,206.02 Transferred to section 38-3103.

71-1,206.03 Transferred to section 38-3104.

71-1,206.04 Transferred to section 38-3105.

71-1,206.05 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.06 Transferred to section 38-3106.

71-1,206.07 Transferred to section 38-3107.

71-1,206.08 Transferred to section 38-3108.

71-1,206.09 Transferred to section 38-3109.

71-1,206.10 Transferred to section 38-3110.

71-1,206.11 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.12 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.13 Repealed. Laws 2003, LB 242, § 154.

71-1,206.14 Transferred to section 38-3111.

71-1,206.15 Transferred to section 38-3114.

71-1,206.16 Transferred to section 38-3115.

71-1,206.17 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.18 Transferred to section 38-3116.

71-1,206.19 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.20 Transferred to section 38-3117.

71-1,206.21 Transferred to section 38-3118.

71-1,206.22 Transferred to section 38-3119.

71-1,206.23 Transferred to section 38-3120.

71-1,206.24 Transferred to section 38-3128.

71-1,206.25 Transferred to section 38-3113.

71-1,206.26 Transferred to section 38-3129.

71-1,206.27 Transferred to section 38-3130.

71-1,206.28 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.29 Transferred to section 38-3131.

71-1,206.30 Transferred to section 38-3132.

71-1,206.31 Repealed. Laws 2007, LB 463, § 1319.

71-1,206.32 Transferred to section 38-3122.

71-1,206.33 Transferred to section 38-3123.

71-1,206.34 Transferred to section 38-3124.

71-1,206.35 Transferred to section 38-3125.

71-1,207 Repealed. Laws 1994, LB 1210, § 192.

71-1,208 Transferred to section 71-1,206.11.

71-1,209 Transferred to section 71-1,206.12.

71-1,210 Transferred to section 71-1,206.13.

71-1,211 Repealed. Laws 1994, LB 1210, § 192.

71-1,212 Repealed. Laws 1994, LB 1210, § 192.

71-1,213 Repealed. Laws 1994, LB 1210, § 192.

71-1,214 Repealed. Laws 1994, LB 1210, § 192.

71-1,215 Repealed. Laws 1988, LB 1100, § 185.

71-1,216 Repealed. Laws 1988, LB 1100, § 185.

71-1,217 Repealed. Laws 1988, LB 1100, § 185.

71-1,218 Repealed. Laws 1994, LB 1210, § 192.

71-1,219 Repealed. Laws 1994, LB 1210, § 192.

71-1,220 Transferred to section 71-1,206.28.

71-1,221 Repealed. Laws 1994, LB 1210, § 192.

71-1,222 Repealed. Laws 1994, LB 1210, § 192.

71-1,223 Repealed. Laws 1994, LB 1210, § 192.

71-1,224 Repealed. Laws 1994, LB 1210, § 192.

71-1,225 Repealed. Laws 1994, LB 1210, § 192.

71-1,226 Repealed. Laws 1994, LB 1210, § 192.

(x) PRACTICE OF RESPIRATORY CARE

71-1,227 Transferred to section 38-3206.

71-1,228 Repealed. Laws 2007, LB 463, § 1319.

71-1,229 Transferred to section 38-3214.

71-1,230 Transferred to section 38-3215.

71-1,231 Transferred to section 38-3209.

71-1,232 Repealed. Laws 2003, LB 245, § 19.

71-1,233 Transferred to section 38-3210.

71-1,234 Repealed. Laws 2007, LB 463, § 1319.

71-1,235 Transferred to section 38-3208.

71-1,236 Transferred to section 38-3216.

71-1,237 Repealed. Laws 2003, LB 242, § 154.

(y) PRACTICE OF ATHLETIC TRAINING

71-1,238 Transferred to section 38-402.

71-1,239 Repealed. Laws 1999, LB 178, § 6.

71-1,239.01 Transferred to section 38-410.

71-1,240 Transferred to section 38-409.

71-1,241 Transferred to section 38-411.

71-1,242 Repealed. Laws 2007, LB 463, § 1319.

71-1,243 Repealed. Laws 2003, LB 242, § 154.

(z) PRACTICE OF SOCIAL WORK

71-1,244 Repealed. Laws 1993, LB 669, § 62.

71-1,245 Repealed. Laws 1993, LB 669, § 62.

71-1,246 Repealed. Laws 1993, LB 669, § 62.

71-1,247 Repealed. Laws 1993, LB 669, § 62.

71-1,248 Transferred to section 71-1,311.

71-1,249 Transferred to section 71-1,300.

71-1,250 Transferred to section 71-1,303.

71-1,251 Transferred to section 71-1,301.

71-1,252 Transferred to section 71-1,304.

71-1,253 Repealed. Laws 1993, LB 669, § 62.

71-1,254 Repealed. Laws 1993, LB 669, § 62.

71-1,255 Transferred to section 71-1,297.

71-1,256 Transferred to section 71-1,318.

71-1,257 Repealed. Laws 1993, LB 669, § 62.

71-1,258 Transferred to section 71-1,319.

71-1,259 Repealed. Laws 1993, LB 669, § 62.

71-1,260 Transferred to section 71-1,320.

71-1,261 Transferred to section 71-1,321.

71-1,262 Repealed. Laws 1993, LB 669, § 62.

71-1,263 Transferred to section 71-1,322.

71-1,264 Transferred to section 71-1,323.

(aa) PRACTICE OF PROFESSIONAL COUNSELING

71-1,265 Repealed. Laws 1993, LB 669, § 62.

71-1,266 Transferred to section 71-1,310.

71-1,267 Transferred to section 71-1,324.

71-1,268 Repealed. Laws 1993, LB 669, § 62.

71-1,269 Transferred to section 71-1,325.

71-1,270 Transferred to section 71-1,333.

71-1,271 Repealed. Laws 1993, LB 669, § 62.

71-1,272 Repealed. Laws 1988, LB 1100, § 185.

71-1,273 Transferred to section 71-1,326.

71-1,274 Repealed. Laws 1993, LB 669, § 62.

71-1,275 Transferred to section 71-1,327.

71-1,276 Repealed. Laws 1988, LB 1100, § 185.

71-1,277 Transferred to section 71-1,328.

(bb) PRACTICE OF MASSAGE THERAPY

71-1,278 Transferred to section 38-1702.

71-1,279 Transferred to section 38-1708.

71-1,280 Transferred to section 38-1709.

71-1,281 Transferred to section 38-1710.

71-1,281.01 Transferred to section 38-1711.

71-1,282 Repealed. Laws 2007, LB 463, § 1319.

71-1,283 Repealed. Laws 2003, LB 242, § 154.

71-1,284 Repealed. Laws 1991, LB 10, § 7.

(cc) MEDICAL NUTRITION THERAPY

71-1,285 Transferred to section 38-1802.

71-1,286 Transferred to section 38-1803.

71-1,287 Transferred to section 38-1812.

71-1,288 Repealed. Laws 2003, LB 242, § 154.

71-1,289 Transferred to section 38-1813.

71-1,290 Repealed. Laws 2007, LB 463, § 1319.

71-1,291 Repealed. Laws 2007, LB 463, § 1319.

71-1,291.01 Repealed. Laws 2007, LB 463, § 1319.

71-1,292 Repealed. Laws 2007, LB 463, § 1319.

71-1,293 Transferred to section 38-1816.

71-1,294 Repealed. Laws 2007, LB 463, § 1319.

(dd) MENTAL HEALTH PRACTITIONERS

71-1,295 Transferred to section 38-2102.

71-1,296 Transferred to section 38-2103.

71-1,297 Transferred to section 38-2104.

71-1,298 Transferred to section 38-2105.

71-1,299 Transferred to section 38-2106.

71-1,300 Transferred to section 38-2107.

71-1,301 Transferred to section 38-2108.

71-1,302 Transferred to section 38-2109.

71-1,303 Transferred to section 38-2110.

71-1,304 Transferred to section 38-2111.

71-1,305 Transferred to section 38-2112.

71-1,305.01 Transferred to section 38-2113.

71-1,306 Transferred to section 38-2114.

71-1,307 Transferred to section 38-2115.

71-1,308 Transferred to section 38-2116.

71-1,309 Transferred to section 38-2117.

71-1,310 Transferred to section 38-2118.

71-1,311 Transferred to section 38-2119.

71-1,312 Transferred to section 38-2121.

71-1,313 Repealed. Laws 2007, LB 463, § 1319.

71-1,314 Transferred to section 38-2122.

71-1,314.01 Transferred to section 38-2123.

71-1,314.02 Transferred to section 38-2124.

71-1,315 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

71-1,316 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

71-1,317 Transferred to section 38-2126.

71-1,318 Transferred to section 38-2127.

71-1,319 Transferred to section 38-2128.

71-1,319.01 Transferred to section 38-2129.

71-1,320 Repealed. Laws 2007, LB 463, § 1319.

71-1,321 Repealed. Laws 2007, LB 463, § 1319.

71-1,322 Repealed. Laws 2007, LB 463, § 1319.

71-1,323 Transferred to section 38-2131.

71-1,324 Repealed. Laws 2007, LB 463, § 1319.

71-1,325 Transferred to section 38-2132.

71-1,326 Repealed. Laws 2007, LB 463, § 1319.

71-1,327 Repealed. Laws 2007, LB 463, § 1319.

71-1,328 Repealed. Laws 2007, LB 463, § 1319.

71-1,329 Transferred to section 38-2133.

71-1,330 Repealed. Laws 2007, LB 463, § 1319.

71-1,331 Repealed. Laws 2007, LB 463, § 1319.

71-1,332 Transferred to section 38-2134.

71-1,333 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

71-1,334 Repealed. Laws 2003, LB 242, § 154.

71-1,335 Transferred to section 38-2136.

71-1,336 Transferred to section 38-2137.

71-1,337 Transferred to section 38-2138.

71-1,338 Repealed. Laws 2007, LB 247, § 91; Laws 2007, LB 463, § 1319.

(ee) REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

71-1,339 Transferred to section 38-1,137.

(ff) HEALTH CARE CREDENTIALING

71-1,340 Repealed. Laws 2007, LB 463, § 1319.

71-1,341 Repealed. Laws 2007, LB 463, § 1319.

71-1,342 Repealed. Laws 2007, LB 463, § 1319.

71-1,343 Transferred to section 38-128.

(gg) PRACTICE OF ACUPUNCTURE

71-1,344 Transferred to section 38-2006.

71-1,345 Transferred to section 38-2057.

71-1,346 Transferred to section 38-2058.

71-1,347 Transferred to section 38-2059.

71-1,348 Transferred to section 38-2060.

71-1,349 Repealed. Laws 2007, LB 463, § 1319.

71-1,350 Repealed. Laws 2003, LB 242, § 154.

(hh) ALCOHOL AND DRUG COUNSELING

71-1,351 Transferred to section 38-302.

71-1,352 Transferred to section 38-311.

71-1,353 Transferred to section 38-312.

71-1,354 Transferred to section 38-313.

71-1,355 Transferred to section 38-314.

71-1,356 Transferred to section 38-315.

71-1,357 Transferred to section 38-316.

71-1,358 Transferred to section 38-317.

71-1,359 Transferred to section 38-318.

71-1,360 Repealed. Laws 2007, LB 463, § 1319.

71-1,361 Transferred to section 38-321.

(ii) PHYSICAL THERAPY PRACTICE ACT

71-1,362 Transferred to section 38-2901.

71-1,363 Transferred to section 38-2902.

71-1,364 Transferred to section 38-2903.

71-1,365 Transferred to section 38-2904.

71-1,366 Transferred to section 38-2905.

71-1,367 Repealed. Laws 2007, LB 463, § 1319.

71-1,368 Transferred to section 38-2906.

71-1,369 Transferred to section 38-2907.

71-1,370 Transferred to section 38-2908.

71-1,371 Transferred to section 38-2909.

71-1,372 Transferred to section 38-2910.

71-1,373 Transferred to section 38-2911.

71-1,374 Transferred to section 38-2912.

71-1,375 Transferred to section 38-2913.

71-1,376 Transferred to section 38-2914.

71-1,377 Transferred to section 38-2915.

71-1,378 Transferred to section 38-2916.

71-1,379 Transferred to section 38-2917.

71-1,380 Transferred to section 38-2918.

71-1,381 Transferred to section 38-2919.

71-1,382 Transferred to section 38-2920.

71-1,383 Transferred to section 38-2921.

71-1,384 Transferred to section 38-2922.

71-1,385 Transferred to section 38-2927.

71-1,386 Transferred to section 38-2928.

71-1,387 Transferred to section 38-2929.

71-1,388 Transferred to section 38-2926.

71-1,389 Repealed. Laws 2007, LB 463, § 1319.

(jj) PERFUSION PRACTICE ACT

71-1,390 Transferred to section 38-2701.

71-1,391 Transferred to section 38-2702.

71-1,392 Transferred to section 38-2703.

71-1,393 Transferred to section 38-2704.

71-1,394 Transferred to section 38-2705.

71-1,395 Transferred to section 38-2706.

71-1,396 Transferred to section 38-2707.

71-1,397 Repealed. Laws 2007, LB 247, § 91.

71-1,398 Transferred to section 38-2709.

71-1,399 Transferred to section 38-2710.

71-1,400 Transferred to section 38-2711.

71-1,401 Transferred to section 38-2712.

ARTICLE 2
PRACTICE OF BARBERING

Cross References

Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Fees of professional boards, disposition, see sections 33-151 and 33-152.
Uniform Credentialing Act, see section 38-101.

Section

PRACTICE OF BARBERING

Section

Section
71-239.01. Foreign licenses; recognition; licensure without examination; application; form; contents; issuance; appeal.
71-240. Board of Barber Examiners; review foreign licensing requirements.
71-241. Board of Barber Examiners; reciprocal agreement; conditions.
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71-247. Board of Barber Examiners; establish rules.
71-248. Licensee; change of residence; certified statement.
71-249. Repealed. Laws 1993, LB 226, § 15.

71-201 Practice of barbering; barber shop; barber school; license required; renewal; disciplinary actions; prohibited acts.

No person shall practice or attempt to practice barbering without a license issued pursuant to the Barber Act by the board. It shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a licensed barber.

No person, partnership, limited liability company, or corporation shall operate a barber shop or barber school until a license has been obtained for that purpose from the board. If the applicant is an individual, the application shall include the applicant's social security number. No person shall lease space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person without obtaining a booth rental permit as provided in section 71-219.05. All barber shop licenses and booth rental permits shall be issued on or before June 30 of each even-numbered year, shall be effective as of July 1 of each even-numbered year, shall be valid for two years, and shall expire on June 30 of the next succeeding even-numbered year.

Any barber shop which fails to renew its license or any person who fails to renew his or her booth rental permit on or before the expiration date may renew such license or booth rental permit by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber shop or barber school license and any booth rental permit may be suspended, revoked, or denied renewal by the board for violation of any provision of the statutes or any rule or regulation of the board pertaining to the operation or sanitation of barber shops, barber schools, or booths under a booth rental permit after due notice and hearing before the board.

No person, partnership, limited liability company, or corporation shall use the title of barber or barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity is licensed pursuant to the act. No person, partnership, limited liability company, or corporation shall hold itself out as a barber shop or indicate in any way that such person or entity offers barbering services unless such person or entity and the personnel who purport to offer barbering services in association with such person or entity are licensed pursuant to the act.

No person, partnership, limited liability company, or corporation shall display a barber pole or use a barber pole or the image of a barber pole in its

advertising unless such person or entity is licensed to provide barbering services pursuant to the act and the display or use of such barber pole or barber pole image is to indicate that the person or entity is offering barbering services.

Source: Laws 1927, c. 163, § 1, p. 427; Laws 1929, c. 154, § 1, p. 533; C.S.1929, § 71-2001; R.S.1943, § 71-201; Laws 1957, c. 294, § 1, p. 1053; Laws 1963, c. 409, § 2, p. 1315; Laws 1965, c. 417, § 1, p. 1329; Laws 1971, LB 1020, § 1; Laws 1978, LB 722, § 1; Laws 1983, LB 87, § 14; Laws 1993, LB 121, § 421; Laws 1993, LB 226, § 1; Laws 1996, LB 1044, § 481; Laws 1997, LB 622, § 85; Laws 1997, LB 752, § 164; Laws 2009, LB195, § 53.

71-201.01 Repealed. Laws 1978, LB 722, § 24.

71-201.02 Repealed. Laws 1983, LB 87, § 25.

71-202 Barbering, defined.

Any one or any combination of the following practices, when done upon the human body by the use of chemical products for cosmetic or grooming purposes and not for the treatment of disease or physical or mental ailments, on any person, other than a member of the immediate family, shall constitute the practice of barbering: (1) Shaving or trimming the beard or cutting the hair; (2) dressing, arranging, styling, curling, waving, straightening, and relaxing of the hair by chemical or mechanical means; (3) giving face and scalp massages or treatment with oils, creams, lotions, or other preparations either by hand, mechanical appliances, or electrical appliances, including the applying of chemical and toiletry preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, neck, or upper part of the body; (4) patterning, fitting, cleaning, styling, coloring, waving, or other similar work upon hair pieces or wigs; and (5) shampooing, bleaching, coloring, rinsing, hair weaving, or similar work upon the hair.

Source: Laws 1927, c. 163, § 2, p. 427; C.S.1929, § 71-2002; R.S.1943, § 71-202; Laws 1965, c. 417, § 2, p. 1329; Laws 1971, LB 1020, § 4; Laws 1973, LB 5, § 1; Laws 1978, LB 722, § 2; Laws 1993, LB 226, § 2.

Licensed cosmetologist cutting hair of a lady customer of beauty parlor is not a barber within the definition of this section. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

71-202.01 Terms, defined.

For purposes of the Barber Act, unless the context otherwise requires:

(1) Barber shall mean any person who engages in the practice of any act of barbering;

(2) Barber shop shall mean an establishment or place of business properly licensed as required by the act where one or more persons properly licensed are engaged in the practice of barbering but shall not include barber schools or colleges;

(3) Barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students;

(4) Board shall mean the Board of Barber Examiners;

(5) Manager shall mean a licensed barber having control of the barber shop and of the persons working or employed therein;

(6) License shall mean a certificate of registration issued by the board;

(7) Barber instructor shall mean a teacher of the barber trade as provided in the act;

(8) Assistant barber instructor shall mean a teacher of the barbering trade registered as an assistant barber instructor as required by the act;

(9) Registered or licensed barber shall mean a person who has completed the requirements to receive a certificate as a barber and to whom a certificate has been issued;

(10) Secretary of the board shall mean the director appointed by the board who shall keep a record of the proceedings of the board; and

(11) Student shall mean a person attending an approved, licensed barber school or college, duly registered with the board as a student engaged in learning and acquiring any and all of the practices of barbering, and who, while learning, performs and assists any of the practices of barbering in a barber school or college.

Source: Laws 1971, LB 1020, § 5; Laws 1978, LB 722, § 3; Laws 1983, LB 87, § 15; Laws 1993, LB 226, § 3.

71-203 Barbering; exemptions.

The following persons are exempt from the Barber Act while in the proper discharge of their professional or occupational duties: (1) Persons authorized by the laws of this state to practice medicine and surgery; (2) commissioned medical or surgical officers of the United States military services; (3) registered or licensed practical nurses; and (4) persons engaged in operating or employed in cosmetology salons, except that nothing contained in this section shall authorize a cosmetologist to perform barbering as defined in section 71-202 in any licensed barber shop.

Source: Laws 1927, c. 163, § 3, p. 428; Laws 1929, c. 154, § 2, p. 534; C.S.1929, § 71-2003; R.S.1943, § 71-203; Laws 1963, c. 409, § 3, p. 1316; Laws 1971, LB 1020, § 6; Laws 1978, LB 722, § 4; Laws 1997, LB 622, § 86.

Provisions of this section regulating haircutting and providing for a certificate of registration are exclusive in nature. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

71-204 Barber; certificate; qualifications required.

A person is qualified to receive a certificate of registration to practice barbering (1) who has a diploma showing graduation from high school or an equivalent education as determined by passing a general education development test; (2) who is at least seventeen years of age; (3) who has completed two thousand one hundred hours of training in a barber school or college; (4) who has graduated from a barber school or college approved by the Board of Barber Examiners; and (5) who has passed an examination conducted by the Board of Barber Examiners to determine his or her fitness to practice barbering, which

examination shall be taken within two years after the date of entry into barbering school.

Source: Laws 1927, c. 163, § 4, p. 428; Laws 1929, c. 154, § 3, p. 535; C.S.1929, § 71-2004; R.S.1943, § 71-204; Laws 1963, c. 409, § 4, p. 1317; Laws 1965, c. 417, § 3, p. 1330; Laws 1983, LB 87, § 16; Laws 1984, LB 900, § 1; Laws 1986, LB 318, § 143.

71-205 Repealed. Laws 1983, LB 87, § 25.

71-205.01 Repealed. Laws 1983, LB 87, § 25.

71-206 Repealed. Laws 1983, LB 87, § 25.

71-207 Repealed. Laws 1971, LB 1020, § 33.

71-207.01 School of barbering; application to open; fee.

Application for authority to open a new barber school shall be made to the Board of Barber Examiners, on forms to be prescribed by the board, and shall be accompanied by the fee prescribed in section 71-219.

Source: Laws 1963, c. 409, § 8, p. 1318.

71-207.02 School of barbering; application for certificate of registration; proof required; factors to be considered in passing on application.

Every applicant for a certificate of registration to operate a new barber school shall offer proof sufficient to the board that the establishment of such new barber school will not be detrimental to the public welfare. In considering whether the establishment of a new barber school will be detrimental to the public welfare the board shall consider the need for barber school facilities or additional barber school facilities, as the case may be, in the community where the proposed barber school is to be located, giving particular consideration to:

(1) The economic character of the community;

(2) The adequacy of existing barber shops and barber schools in that community;

(3) The ability of the community to support the proposed barber school;

(4) The character of adjacent communities and the extent to which the establishment of the proposed barber school would draw patrons from such adjacent communities; and

(5) The social and economic effect of the establishment of a barber school on the community where it is proposed to be located, and on the adjacent communities.

Source: Laws 1963, c. 409, § 9, p. 1318.

71-208 School or college of barbering; requirements for approval; course of instruction; standards set by rules and regulations.

No school or college of barbering shall be approved by the board unless (1) as a prerequisite to graduation it requires graduation from high school or its equivalent as determined by successfully passing a general educational development test, (2) as a prerequisite to graduation it requires a course of instruction of not less than two thousand one hundred hours, to be completed in a period of not less than one year, of not more than ten hours in any one working day,

and (3) the school meets the standards of the Barber Act and any rules and regulations of the board. Such course of instruction shall include scientific fundamentals for barbering, hygiene, massaging, sterilization, haircutting, and shaving, except that when a school or college of barbering is a part of a high school accredited by the State Board of Education or the University of Nebraska, the Board of Barber Examiners shall provide in its rules and regulations that credit in the school of barbering shall be given for hours spent and courses pursued in the high school and that credit shall be given for courses in barbering taken in high school prior to formal enrollment in such school of barbering.

Source: Laws 1927, c. 163, § 6, p. 429; Laws 1929, c. 154, § 5, p. 536; C.S.1929, § 71-2008; R.S.1943, § 71-208; Laws 1945, c. 166, § 1(1), p. 532; Laws 1957, c. 294, § 3, p. 1054; Laws 1963, c. 409, § 10, p. 1319; Laws 1971, LB 1020, § 9; Laws 1978, LB 722, § 6; Laws 1997, LB 622, § 87; Laws 1999, LB 272, § 21.

71-208.01 School or college of barbering; payment of wages, commissions, or gratuities forbidden; operation of barber shop in connection with school or college, prohibited.

No school or college of barbering shall be approved by the Board of Barber Examiners which shall pay any wages, commissions, or gratuities of any kind to barber students for barber work while in training or while enrolled as students in such school or college. No barber shop as defined in subdivision (2) of section 71-202.01 shall be operated by or in connection with any barber school or college.

Source: Laws 1945, c. 166, § 1(2), p. 533; Laws 1957, c. 294, § 4, p. 1054; Laws 1971, LB 1020, § 10.

71-208.02 School of barbering; registered instructors and assistants; qualifications.

(1) All instruction in barber schools shall be conducted by registered barber instructors or registered assistant barber instructors.

(2) A person shall be eligible for registration as a barber instructor if:

(a) He or she has completed at least eighteen hours of college credit at or above the postsecondary level, including at least three credit hours each in (i) methods of teaching, (ii) curriculum development, (iii) special vocational needs, (iv) educational psychology, (v) speech communications, and (vi) introduction to business;

(b) He or she has been a licensed and actively practicing barber for the one year immediately preceding application, except that for good cause the board may waive the requirement that the applicant be an actively practicing barber for one year or that such year immediately precede application;

(c) He or she has served as a registered assistant barber instructor under the supervision of an active, full-time, registered barber instructor, as provided in subsection (5) of this section, for one year immediately preceding application for registration, except that for good cause the board may waive the requirement that such year immediately precede application;

(d) He or she has passed an examination prescribed by the board; and

(e) He or she has paid the fees prescribed by section 71-219.

(3) One registered barber instructor or assistant barber instructor shall be employed for each fifteen students, or fraction thereof, enrolled in a barber school, except that each barber school shall have not less than two instructors, one of whom shall be a registered barber instructor, regardless of the number of students. Additional assistant barber instructors shall be permitted on a working ratio of two assistant barber instructors for every registered barber instructor. A barber school operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon whom work is performed shall not be required to have more than one instructor, regardless of the number of students, which instructor shall be a registered barber instructor.

(4) No student at a barber school shall be permitted to do any practical work upon any person unless a registered barber instructor or registered assistant barber instructor is on the premises and supervising the practical work being performed.

(5)(a) A person shall be eligible for registration as an assistant barber instructor if he or she has paid the fee prescribed by section 71-219, has been a licensed and actively practicing barber for one year, and is currently enrolled or will enroll at the first regular college enrollment date after registration under this section in an educational program leading to completion of the hours required under subsection (2) of this section.

(b) A person registered pursuant to subdivision (a) of this subsection shall serve as an assistant barber instructor under direct supervision, except that he or she may serve as an assistant barber instructor under indirect supervision if:

(i) He or she has completed nine college credit hours, including three credit hours each in methods of teaching, curriculum development, and special vocational needs; and

(ii) He or she has completed one year of instructor training under the direct inhouse supervision of an active, full-time, registered barber instructor or in lieu thereof has completed the requirements of a barber instructor course developed or approved by the board. The board may develop such courses or approve courses developed by educational institutions or other entities which meet requirements established by the board in rules and regulations.

(c) A report of college credits earned pursuant to subsection (2) of this section shall be submitted to the board at the end of each academic year. Registration as an assistant barber instructor shall be renewed in each even-numbered year and shall be valid for three years from the date of registration if the registrant pursues without interruption the educational program described in subsection (2) of this section. A registrant who fails to so maintain such program shall have his or her registration revoked. Any such registration that has been revoked shall be reinstated if all renewal fees have been paid and other registration requirements of this subsection are met.

(6) A person who is a registered barber instructor before September 9, 1993, may continue to practice as a registered barber instructor on and after such date without meeting the changes in the registration requirements of this section imposed by Laws 1993, LB 226. A person who is a registered assistant barber instructor before September 9, 1993, and who seeks to register as a barber instructor on or after September 9, 1993, may meet the requirements for

registration as a barber instructor either as such requirements existed before such date or as such requirements exist on or after such date.

Source: Laws 1963, c. 409, § 11, p. 1320; Laws 1965, c. 417, § 4, p. 1330; Laws 1971, LB 22, § 1; Laws 1971, LB 1020, § 11; Laws 1983, LB 87, § 17; Laws 1993, LB 226, § 4; Laws 2009, LB195, § 54.

71-208.03 School of barbering; services; performed by regularly enrolled students.

All barbering services performed in a barber school shall be entirely performed by regularly enrolled students.

Source: Laws 1963, c. 409, § 12, p. 1320.

71-208.04 School or college of barbering; bond; conditions; exceptions.

Each barber school or college shall at all times keep and maintain in full force and effect a surety bond with a reputable bonding company licensed to do business in the State of Nebraska for the benefit of all of its students, sufficient in amount to insure to such students a refund of any portion of their tuition paid but not used, in the event that the school or college discontinues operations for any reason prior to the time that the student has completed his or her education at the school or college, except that such requirement shall not apply to (1) a barber school or college operated by a nonprofit organization which neither charges any tuition to its students nor makes any charge to the persons upon whom such work is performed or (2) a barber school or college which participates in the assessment program established under sections 85-1654 to 85-1658 relating to the Tuition Recovery Cash Fund.

Source: Laws 1963, c. 409, § 13, p. 1320; Laws 1971, LB 1020, § 12; Laws 1999, LB 121, § 1.

71-208.05 Repealed. Laws 1982, LB 592, § 2.

71-208.06 Registered barber instructor; license; expiration.

The license as a registered barber instructor shall be issued on or before June 30 of each even-numbered year effective as of July 1 of each even-numbered year and shall expire as provided in section 71-216. The license application shall include the applicant's social security number.

Source: Laws 1971, LB 1020, § 14; Laws 1997, LB 752, § 165; Laws 2009, LB195, § 55.

71-208.07 Barber instructor; inactive status; renewal of registration; failure to renew for five years; effect.

Any barber instructor on inactive status or who withdraws from the active practice of barber instructing may renew his or her registration within five years of its expiration date upon the payment of the required restoration fee. Any barber instructor who fails to renew his or her registration for five consecutive years shall be required to successfully complete the examination for issuance of a new registration.

Source: Laws 1975, LB 66, § 4; Laws 1978, LB 722, § 8; Laws 1993, LB 226, § 5.

71-208.08 School or college of barbering; cosmetologists; course hours; credit.

Cosmetologists licensed in the State of Nebraska attending a school or college of barbering shall be given one thousand hours credit toward the course hours required for graduation.

Source: Laws 1978, LB 722, § 7.

71-209 Examinations; application; fee.

Each applicant for an examination shall (1) make application to the Board of Barber Examiners on blank forms prepared and furnished by the board, such application to contain the applicant's social security number and proof under the applicant's oath of the particular qualifications of the applicant; (2) furnish to the board two portrait-type photographs of the applicant at least passport size but not to exceed three by five inches showing a sufficient portion of the applicant's face with sufficient clarity so as to permit the Board of Barber Examiners to identify the applicant, each of which photographs shall be signed by the applicant, one such photograph to accompany the application and to be attached thereto, and one to be returned to the applicant, to be presented to the board when the applicant appears for examination; and (3) pay to the board the required fee. The applicant shall not be entitled to the return of the required fee by reason of his or her failure to report for the examination.

Source: Laws 1927, c. 163, § 7, p. 429; C.S.1929, § 71-2009; R.S.1943, § 71-209; Laws 1963, c. 409, § 14, p. 1320; Laws 1971, LB 1020, § 15; Laws 1978, LB 722, § 9; Laws 1997, LB 752, § 166.

71-210 Examinations; scope; when and where held; reexamination.

The Board of Barber Examiners shall conduct examinations of applicants for certificates of registration to practice as registered barber instructors and registered barbers, not less than four times each year at such time and places as the board may determine. The examination of applicants for certificates of registration as registered barbers shall include both a practical demonstration and a written test, and shall embrace the subjects usually taught in schools of barbering approved by the board. If the applicant fails either the practical demonstration or the written test, reexamination shall be necessary for only the test that was failed. Every student entering a recognized school must have the date of his or her entrance registered with the board.

Source: Laws 1927, c. 163, § 8, p. 429; C.S.1929, § 71-2010; R.S.1943, § 71-210; Laws 1963, c. 409, § 15, p. 1321; Laws 1978, LB 722, § 10; Laws 1983, LB 87, § 18.

71-211 Certificates of registration; kinds; issuance; when authorized.

Whenever the provisions of sections 71-201 to 71-224 have been complied with, the Board of Barber Examiners shall issue a certificate of registration as a registered barber instructor or registered barber, or a certificate of approval of a barber school.

Source: Laws 1927, c. 163, § 9, p. 430; C.S.1929, § 71-2011; R.S.1943, § 71-211; Laws 1963, c. 409, § 16, p. 1321; Laws 1983, LB 87, § 19.

71-211.01 Licensee; license expired while serving in armed forces; reinstatement; requirements.

All licensees provided for in the Barber Act whose valid licenses have expired while serving in the armed forces of the United States may have such licenses reinstated without further examination upon their return from the armed forces and payment of the necessary fees, if the request for reinstatement was made to the board within ninety days after discharge from the armed forces. Any licensee requesting reinstatement must accompany such request with a copy of his or her discharge from the armed forces.

Source: Laws 1971, LB 1020, § 16; Laws 1997, LB 622, § 88.

71-212 Practice of barbering in another state or country; eligibility to take examination; successive examinations; failure to appear; notice of next regular examination.

A person who (1) is of good moral character and temperate habits, (2) has a diploma showing graduation from high school or its equivalent as determined by successfully passing a general educational development test, and (3) has a license and certificate of registration as a practicing barber from another state or country which has substantially the same requirements for licensing or registering barbers as required by the Barber Act, shall upon payment of the required fee be given an examination by the board at the next regular examination to determine his or her fitness to receive a certificate of registration to practice barbering. If any person fails to pass a required examination, he or she shall be entitled to submit himself or herself for examination by the board at the next examination given by the board. If he or she fails at the third examination, no further examination shall be granted. If an applicant fails to appear when requested for an examination, he or she shall be notified by the board as to the time of the next regular examination, at which he or she shall appear.

Source: Laws 1927, c. 163, § 10, p. 430; Laws 1929, c. 154, § 6, p. 536; C.S.1929, § 71-2012; R.S.1943, § 71-212; Laws 1957, c. 294, § 5, p. 1055; Laws 1963, c. 409, § 17, p. 1321; Laws 1971, LB 1020, § 17; Laws 1972, LB 1183, § 3; Laws 1978, LB 722, § 11; Laws 1997, LB 622, § 89; Laws 1999, LB 272, § 22.

71-213 Repealed. Laws 1983, LB 87, § 25.

71-214 Repealed. Laws 1983, LB 87, § 25.

71-215 Certificate of registration; certificate of approval of schools; how and where displayed.

Every holder of a certificate of registration shall display it in a conspicuous place within the work area of the barber shop. The certificate of approval of a barber school and certificate of registration as a registered barber instructor employed by the school shall be conspicuously displayed on the premises of the school.

Source: Laws 1927, c. 163, § 12, p. 432; C.S.1929, § 71-2016; R.S.1943, § 71-215; Laws 1963, c. 409, § 19, p. 1322; Laws 1971, LB 1020, § 19.

71-216 Registered barber instructor, assistant barber instructor, or barber; barber school; renewal of registration or license; barber on inactive status; renewal of license; failure to renew for five years; effect.

Every registered barber instructor and licensed barber who continues in active practice or service shall on or before June 30 of each even-numbered year renew his or her license or registration and pay the required fee. Such license or registration shall be effective as of July 1 of each even-numbered year and shall terminate on June 30 of the next succeeding even-numbered year.

Every registered assistant barber instructor shall, subject to the requirements of section 71-208.02, renew his or her registration on or before its expiration date during the period of its validity established by such section and pay the required fee.

Every barber school shall on or before June 30 of each even-numbered year obtain renewal of its license and pay the required fee. Such renewal shall be effective as of July 1 of each even-numbered year and shall expire on June 30 of the next succeeding even-numbered year.

Any licensed barber, registered barber instructor, registered assistant barber instructor, or barber school which fails to renew his, her, or its license or registration on or before the expiration date may renew such license or registration by payment of the renewal fee and a late renewal fee established by the board within sixty days after such date or such other time period as the board establishes.

Any barber on inactive status or who withdraws from the active practice of barbering may renew his or her license within five years of its expiration date upon the payment of the required restoration fee. Any barber who fails to renew his or her license for five consecutive years shall be required to successfully complete the examination for issuance of a new license.

Source: Laws 1927, c. 163, § 13, p. 432; C.S.1929, § 71-2017; R.S.1943, § 71-216; Laws 1963, c. 409, § 20, p. 1323; Laws 1965, c. 417, § 5, p. 1331; Laws 1971, LB 1020, § 20; Laws 1975, LB 66, § 2; Laws 1978, LB 722, § 12; Laws 1983, LB 87, § 20; Laws 1993, LB 226, § 6; Laws 2009, LB195, § 56.

71-216.01 Applicant; certificate; examination; failure to pass; effect.

A graduate from a school of barbering who fails to pass a satisfactory examination may take the examination next time that the examination is given by the Board of Barber Examiners without being required to take any further course of study. Should the applicant fail the examination a second time, the applicant shall be required to complete a further course of study of not less than five hundred hours to be completed within three months of not more than ten hours in any one working day in a school of barbering approved by the Board of Barber Examiners before the applicant may be permitted to take the examination a third time.

Source: Laws 1927, c. 163, § 5A, p. 429; C.S.1929, § 71-2007; R.S.1943, § 71-207; Laws 1963, c. 409, § 7, p. 1318; R.R.S.1943, § 71-207; Laws 1971, LB 1020, § 30; Laws 1983, LB 87, § 21.

71-217 Barbering; certificate; denial, suspension, or revocation; grounds.

The board may either refuse to issue or renew or may suspend or revoke any certificate of registration or approval for any one or a combination of the following causes: (1) Conviction of a felony shown by a certified copy of the record of the court of conviction; (2) gross malpractice or gross incompetency; (3) continued practice by a person knowingly having an infectious or contagious disease; (4) advertising by means of knowingly false or deceptive statements or in violation of section 71-223.02; (5) advertising, practicing, or attempting to practice under a trade name or any name other than one's own; (6) habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs; (7) immoral or unprofessional conduct; (8) violation of any of the provisions of sections 71-201 to 71-237 or of any valid regulation promulgated by the board pertaining to service charges, sanitation, and the elimination of unfair practices; and (9) any check presented to the board as a fee for either an original license or renewal license or for examination for license or any other fee authorized in sections 71-201 to 71-237 which is returned to the State Treasurer unpaid.

Source: Laws 1927, c. 163, § 14, p. 432; C.S.1929, § 71-2018; R.S.1943, § 71-217; Laws 1945, c. 166, § 2, p. 533; Laws 1961, c. 388, § 3, p. 1060; Laws 1963, c. 409, § 21, p. 1323; Laws 1983, LB 87, § 22; Laws 1996, LB 1044, § 482; Laws 1997, LB 622, § 90.

71-218 Certificate; refusal, suspension, or revocation; notice; hearing; powers of board; powers of district court.

The Board of Barber Examiners may not refuse to renew, suspend, or revoke any certificate of registration or approval under the provisions of section 71-217 unless the person accused has been given at least twenty days' notice in writing of the charge against him and a public hearing by the board. Upon the hearing of any such proceeding, the board may administer oaths and may procure, by its subpoena, the attendance of witnesses and the production of relevant books and papers. Any district court, or any judge of the district court, either in term time or in vacation, upon application either of the accused or of the board may, by order duly entered, require the attendance of witnesses and the production of relevant books and papers before the board in any hearing relating to the refusal, suspension or revocation of certificates of registration or approval.

Source: Laws 1927, c. 163, § 15, p. 433; C.S.1929, § 71-2019; R.S.1943, § 71-218; Laws 1963, c. 409, § 22, p. 1324; Laws 1978, LB 722, § 13.

71-219 Barbering fees; set by board; enumerated.

The board shall set the fees to be paid:

(1) By an applicant for an examination to determine his or her fitness to receive a license to practice barbering or a registration as a barber instructor and for the issuance of the license or registration;

(2) By an applicant for registration as an assistant barber instructor;

(3) For the renewal of a license to practice barbering and for restoration of an inactive license;

(4) For the renewal of a registration to practice as a barber instructor and for the restoration of an inactive registration;

(5) For renewal of a registration to practice as an assistant barber instructor;

(6) For late renewal of a license issued under the Barber Act;

(7) For an application for a license to establish a barber shop or barber school and for the issuance of a license;

(8) For the transfer of license or change of ownership of a barber shop or barber school;

(9) For renewal of a barber license, barber instructor registration, barber shop license, or barber school license;

(10) For an application for a temporary license to conduct classes of instruction in barbering;

(11) For an affidavit for purposes of reciprocity or for issuance of a certification of licensure for purposes of reciprocity;

(12) For an application for licensure without examination pursuant to section 71-239.01 and for the issuance of a license pursuant to such section;

(13) For issuance of a booth rental permit under section 71-219.05;

(14) For the sale of listings or labels; and

(15) For a returned check because of insufficient funds or no funds.

Source: Laws 1927, c. 163, § 16, p. 433; Laws 1929, c. 154, § 8, p. 537; C.S.1929, § 71-2020; Laws 1933, c. 121, § 1, p. 490; C.S.Supp.,1941, § 71-2020; R.S.1943, § 71-219; Laws 1953, c. 238, § 6, p. 827; Laws 1957, c. 294, § 7, p. 1056; Laws 1963, c. 409, § 23, p. 1324; Laws 1965, c. 417, § 6, p. 1332; Laws 1971, LB 1020, § 21; Laws 1972, LB 1183, § 4; Laws 1975, LB 66, § 3; Laws 1978, LB 722, § 14; Laws 1983, LB 87, § 23; Laws 1993, LB 226, § 7; Laws 2009, LB195, § 57.

Repeal of former act was valid. Day v. Walker, 124 Neb. 500, 247 N.W. 350 (1933).

71-219.01 Application for license to operate barber school or college; form; contents; transfer; fees.

Application for a license to operate a barber school or college shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, instructors, number of students, and other data concerning such business as may be required by the board. The board shall collect, in addition to the approval fee, a fee in an amount set by the board for every barber school opened after August 27, 1971. The fee for approval of a barber school or college, the fee for reinstatement of a delinquent license, and the fee for the transfer of license or change of ownership of a barber school or college shall be set by the board. No fee shall be collected if the change in ownership is caused by a present license owner incorporating.

Source: Laws 1971, LB 1020, § 22; Laws 1975, LB 66, § 6; Laws 1997, LB 622, § 91; Laws 2009, LB195, § 58.

71-219.02 Application for license to establish a barber shop; form; contents; transfer; fees; inspection.

Application for a license to establish a barber shop shall be made on a form furnished by the board. It shall contain such information relative to ownership, management, sanitation, and other data concerning such business as may be

required by the board. The board shall collect with such application, in addition to the license fee, a fee to be set by the board. A fee shall be collected for the transfer of license or change of ownership of a barber shop, but no fee shall be collected if the ownership results merely from a present license holder incorporating his or her business. Every barber shop shall be called upon by the state barber inspector at least once each licensing period for the purpose of inspection in order to be eligible for a permit to conduct a barber shop, and no license shall be issued unless all deficiencies found by inspection of such shop have been corrected.

Source: Laws 1975, LB 66, § 5; Laws 1978, LB 722, § 15; Laws 1997, LB 622, § 92; Laws 2009, LB195, § 59.

71-219.03 Board of Barber Examiners; set fees; manner; annual report.

The Board of Barber Examiners shall set the fees at a level sufficient to provide for all actual and necessary expenses and salaries of the board and in such a manner that unnecessary surpluses are avoided. The board shall annually file a report with the Attorney General and the Legislative Fiscal Analyst stating the amount of the fees set by the board. Such report shall be submitted on or before July 1 of each year.

Source: Laws 1975, LB 66, § 7.

71-219.04 Barber shop or school; reinspection; fees.

When it is necessary for an inspector to reinspect a barber shop or barber school to determine if a violation has been corrected, there shall be a fee assessed to the barber, barber shop owner, instructor, or barber school owner for the first, second, and third callback inspection. The fees shall be an amount set by the board.

Source: Laws 1983, LB 87, § 13; Laws 1997, LB 622, § 93.

71-219.05 Barber shop; booth rental permit; application; form; contents; issuance; notice of change of work address.

(1) Any barber who leases space on the premises of a barber shop to engage in the practice of barbering as an independent contractor or a self-employed person shall obtain a booth rental permit.

(2) An application for a booth rental permit shall be made on a form furnished by the board and shall include the applicant's name, barber license number, telephone number, and work address, whether the applicant is an independent contractor or a self-employed person, and such other information as the board deems necessary. The applicant's mailing address shall be the work address shown on the permit application.

(3) The board shall issue a booth rental permit upon receipt of an application containing the information required under subsection (2) of this section and the fee established pursuant to section 71-219.

(4) The holder of a booth rental permit shall provide the board with ten days' written notice before changing his or her work address.

Source: Laws 2009, LB195, § 60.

71-220 Violation; penalty.

Any person, firm, or corporation, their agents or servants, who shall violate any of the provisions of sections 71-201 to 71-237 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1927, c. 163, § 17, p. 434; Laws 1929, c. 154, § 9, p. 538; C.S.1929, § 71-2021; R.S.1943, § 71-220; Laws 1957, c. 294, § 8, p. 1057; Laws 1971, LB 1020, § 23; Laws 1977, LB 39, § 147.

Under former law section prescribed no penalty for cutting hair without a haircutters' certificate of registration as required by former section 71-203. Lane v. State, 120 Neb. 302, 232 N.W. 96 (1930).

71-220.01 Violation; nuisance; abatement or other relief.

A violation of the Barber Act by any person shall constitute a nuisance and the board, acting in the name of the state, shall be authorized to file suit in the district court of the district in which the alleged violation occurred for the purpose of seeking an abatement of such nuisance and for such other relief as the court may deem appropriate to grant. The procedure in the district court shall be the same as the procedure for matters in equity in the district court of Nebraska.

Source: Laws 1971, LB 1020, § 24; Laws 1997, LB 622, § 94.

71-221 Board of Barber Examiners; established; members; qualifications; terms; appointment; removal.

A board, to be known as the Board of Barber Examiners, is hereby established, to consist of three members appointed by the Governor. Each member shall be a practicing barber who has followed the occupation of barbering in this state for at least five years prior to his appointment, and who is actually engaged in the practice of barbering during the term of his appointment. The members of the first board appointed shall serve for three years, two years, and one year, respectively, as appointed, and members appointed thereafter shall serve for three years. The Governor may remove a member for cause. Members appointed to fill vacancies caused by death, resignation or removal, shall serve during the unexpired term of their predecessors.

Source: Laws 1927, c. 163, § 18, p. 434; C.S.1929, § 71-2022; R.S.1943, § 71-221; Laws 1963, c. 409, § 24, p. 1325; Laws 1971, LB 1020, § 25.

71-222 Board; officers; compensation; records; reports; employees.

The board shall annually elect a president and vice president, and the board shall appoint a director who shall serve as secretary of the board. The board shall be furnished with suitable quarters in the State Capitol or elsewhere. It shall adopt and use a common seal for the authentication of its orders and records. The secretary of the board shall keep a record of all proceedings of the board. A majority of the board, in a meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board. Each member of the board shall receive a compensation of seventy-five dollars per diem and shall be reimbursed for his or her actual and necessary expenses incurred in the discharge of his or her duties as provided in sections 81-1174 to 81-1177, not to exceed two thousand dollars per annum. Salaries and expenses shall be paid only from the fund created by fees collected in the administration of the Barber Act, and no other funds or state money except as collected in the administration of the act shall be drawn upon to pay the expense of administra-

tion. The board shall report each year to the Governor a full statement of its receipts and expenditures and also a full statement of its work during the year, together with such recommendations as it may deem expedient. The board may employ one field inspector and such other inspectors, clerks, and other assistants as it may deem necessary to carry out the act and prescribe their qualifications. No owner, agent, or employee of any barber school shall be eligible to membership on the board.

Source: Laws 1927, c. 163, § 19, p. 435; C.S.1929, § 71-2023; Laws 1933, c. 121, § 2, p. 491; C.S.Supp.,1941, § 71-2023; R.S.1943, § 71-222; Laws 1957, c. 294, § 9, p. 1057; Laws 1963, c. 409, § 25, p. 1326; Laws 1971, LB 1020, § 26; Laws 1972, LB 1183, § 5; Laws 1978, LB 722, § 16; Laws 1981, LB 204, § 113; Laws 1993, LB 226, § 8.

71-222.01 Director; serve at pleasure of board; salary; qualifications; bond or insurance; premium.

The director, under the supervision of the Board of Barber Examiners, shall administer the provisions of sections 71-201 to 71-237, and shall serve at the pleasure of the board. His or her salary shall be fixed by the board. The director shall devote full time to the duties of his office. No person shall be eligible to the office of director who has not been engaged in the active practice of barbering as a registered barber in the state for at least five years immediately preceding his appointment. No member of the Board of Barber Examiners shall be eligible to the office of director during his or her term. The director shall be bonded or insured as required by section 11-201. The premium shall be paid as an expense of the board.

Source: Laws 1963, c. 409, § 26, p. 1326; Laws 1965, c. 417, § 7, p. 1333; Laws 1971, LB 1020, § 27; Laws 1978, LB 722, § 18; Laws 1978, LB 653, § 25; Laws 2004, LB 884, § 34.

71-222.02 Board of Barber Examiners Fund; created; use; investment.

All funds collected in the administration of the Barber Act shall be remitted to the State Treasurer for credit to the Board of Barber Examiners Fund which is hereby created and which shall be expended only for the administration of the 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.

Source: Laws 1963, c. 409, § 27, p. 1327; Laws 1969, c. 584, § 68, p. 2387; Laws 1995, LB 7, § 73.

Cross References

Fees, percentage to General Fund, see sections 33-151 and 33-152.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-223 Board; rules and regulations; inspections; record of proceedings.

The board shall have authority to adopt and promulgate reasonable rules and regulations for the administration of the provisions of sections 71-201 to 71-224. Any member of the board, its agents, or its assistants shall have authority to enter upon and to inspect any barber shop or barber school at any time during business hours. A copy of the rules and regulations adopted by the

board shall be furnished to the owner or manager of each barber shop and barber school, and it shall be posted in a conspicuous place in such barber shop or barber school. The board shall keep a record of proceedings relating to the issuance, refusal, renewal, suspension, and revocation of registrations and licenses and inspections. Such record shall also contain the name, place of business, and residence of each registered barber instructor and licensed barber and the date and number of his or her registration or license.

Source: Laws 1927, c. 163, § 20, p. 435; C.S.1929, § 71-2024; R.S.1943, § 71-223; Laws 1963, c. 409, § 28, p. 1327; Laws 1993, LB 226, § 9.

71-223.01 Barber shops and barber schools; sanitary requirements; inspections.

The board shall by rules and regulations duly adopted prescribe sanitary requirements for barber shops and barber schools. The board or its employees shall regularly inspect all barber shops and barber schools in this state to insure compliance with such regulations. Such sanitary requirements and inspections shall include all activities, in addition to barbering as defined in section 71-202, taking place on the licensed premises. A written report of each such inspection made shall be submitted to the board. Each school or barber shop shall be called upon at least once each licensing period for the purpose of inspection prior to the issuance of its license to be eligible for renewal of certification or registration.

Source: Laws 1963, c. 409, § 29, p. 1328; Laws 1971, LB 1020, § 28; Laws 1978, LB 722, § 18; Laws 1996, LB 1044, § 483; Laws 1997, LB 622, § 95; Laws 1999, LB 121, § 2; Laws 2009, LB195, § 61.

71-223.02 Barber schools; sign required; advertising requirements.

A barber school shall display a sign indicating that it is a barber school. The sign shall be clearly visible at the main entrance. A sign shall be displayed in the clinical area indicating that all services are performed by students. A barber school which advertises the performance of any barber service shall advertise, in as conspicuous a manner as such advertisement of services, that all services are performed by students.

Source: Laws 1963, c. 409, § 30, p. 1328; Laws 1993, LB 226, § 10.

71-223.03 Repealed. Laws 1982, LB 592, § 2.

71-223.04 Class of instruction; temporary permit; issuance; requirements; fee; period valid; bond.

Any person who desires to conduct any class or classes of instruction, other than a free demonstration, shall, before engaging in such instruction, make application to the Board of Barber Examiners for a temporary permit authorizing the applicant to conduct such class or classes. In order to be qualified for such temporary license, the applicant must (1) hold a valid license as a registered barber in some state in the United States; (2) have filed with the Board of Barber Examiners an application setting forth the type of classes to be conducted, the period of time the classes will be conducted, the place in which such classes are to be conducted, and the amount of tuition, if any, to be

charged; and (3) pay the fee set by the board for issuance of a temporary permit. Upon being satisfied that the applicant does hold a valid license as a barber in some state in the United States, is qualified to conduct such classes, and has made arrangements to conduct such classes in facilities which otherwise meet the requirements as to health and sanitation required of a barber school in the State of Nebraska, the board shall issue a temporary license to such applicant to permit the conducting of such classes. The license shall be valid only for the classes and times set forth in the application. Before such application is delivered to an applicant other than a barber or barber school or college currently licensed in Nebraska, the applicant must post with the Board of Barber Examiners a good and sufficient surety bond, issued by a reputable bonding company licensed to do business in the State of Nebraska, for the benefit of the persons taking such class or classes in a sufficient amount to assure to such students a refund of any portion of their tuition paid but not used, in the event that such class or classes shall discontinue operation for any reason prior to the time that all of such classes have been conducted.

Source: Laws 1971, LB 1020, § 29; Laws 1978, LB 722, § 19.

71-224 Act, how cited.

Sections 71-201 to 71-248 shall be known and may be cited as the Barber Act.

Source: Laws 1927, c. 163, § 23, p. 436; C.S.1929, § 71-2027; R.S.1943, § 71-224; Laws 1971, LB 1020, § 31; Laws 1993, LB 226, § 11; Laws 2009, LB195, § 62.

71-225 Legislative declarations.

The Legislature declares that: (1) The provisions and regulations of the Barber Act are enacted in the interest of public health, public safety, and the general welfare; and (2) the skilled trade of barbering and the operation of barber shops is affected with a public interest.

Source: Laws 1945, c. 174, § 1, p. 554; Laws 1957, c. 294, § 10, p. 1058; Laws 1978, LB 722, § 20; Laws 1997, LB 622, § 96.

71-226 Repealed. Laws 1978, LB 722, § 24.

71-227 Board of Barber Examiners; investigate conditions and practices; notice and hearing; order.

Whenever it appears to the board that practices prevail among barbers which tend to impair the health or efficiency of barbers or to endanger the health or safety of their patrons, the board shall investigate and determine whether such conditions or practices prevail. If such conditions or practices exist or are at risk of occurring, the board may, by official order and after due notice and hearing, adopt and promulgate rules and regulations to promote the purposes of the Barber Act.

Source: Laws 1945, c. 174, § 3, p. 555; Laws 1978, LB 722, § 21; Laws 1997, LB 622, § 97.

71-228 Board of Barber Examiners; practice and procedure in accordance with rules and regulations.

The practice and procedure of the board, with respect to any investigation authorized by sections 71-225 to 71-237, shall be in accordance with rules and regulations to be promulgated by the board, which shall provide for reasonable notice to all persons affected by the orders to be made by the board and an opportunity for any such persons to be heard, either in person or by counsel, and introduce testimony in their behalf at any hearing to be held for that purpose.

Source: Laws 1945, c. 174, § 4(1), p. 555.

71-229 Repealed. Laws 1978, LB 722, § 24.

71-230 Board of Barber Examiners; oaths; witnesses; fees; compel testimony to be given; subpoena; serving of papers by sheriff.

For the purpose of any investigation or hearing which the board is authorized to conduct, the board, or any member thereof, shall have power to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence. In case of the disobedience of any person in complying with any order of the board, or a subpoena issued by the board or any of its members, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of any district court of the county in which the person resides, on application by any member of the board, shall compel obedience by attachment proceedings as for contempt, as in the case of the disobedience of a subpoena issued from such court or a refusal to testify therein. The sheriff of the county in which such person resides shall serve all orders and subpoenas herein referred to. Each witness who shall appear in obedience to a subpoena before the board or a member thereof, shall receive for his or her attendance the fees provided for witnesses in civil cases in the district court of this state and mileage at the rate provided in section 81-1176 for state employees, which shall be paid upon the presentation of proper vouchers, approved by any two members of the board. No witnesses subpoenaed at the instance of a party other than the board or one of its members, shall be entitled to compensation unless the board shall certify that his or her testimony was material to the matter investigated.

Source: Laws 1945, c. 174, § 4(3), p. 556; Laws 1981, LB 204, § 114.

71-231 Board of Barber Examiners; investigations; matters to be considered.

In making any investigation as to conditions existing in the barber trade, the board shall give due consideration to (1) the costs incurred in the particular county under investigation with regard to the adequacy of the income of barber shop operators to assure full compliance with all sanitary regulations imposed by any law of this state and (2) healthful working conditions in barber shops.

Source: Laws 1945, c. 174, § 4(4), p. 556; Laws 1957, c. 294, § 12, p. 1059.

71-232 Board of Barber Examiners; adopt rules and regulations.

The board shall adopt and promulgate and enforce all rules, regulations, and orders necessary to carry out the Barber Act.

Source: Laws 1945, c. 174, § 5, p. 557; Laws 1978, LB 722, § 22; Laws 1997, LB 622, § 98.

71-233 Repealed. Laws 1978, LB 722, § 24.

71-234 Certificate of registration; Board of Barber Examiners; suspend or revoke; notice; hearing.

The Board of Barber Examiners may suspend or revoke the certificate of registration of any barber who has violated any order of the board promulgated hereunder; *Provided,* no certificate of registration shall be suspended or revoked by the board until (1) the person accused has been given at least twenty days' notice in writing of the charge against him and (2) a public hearing is had by the board.

Source: Laws 1945, c. 174, § 7, p. 557.

71-235 Appeal; procedure.

Any licensee, considering himself or herself aggrieved by any action of the board taken pursuant to the Barber Act may appeal the action of the board, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1945, c. 174, § 8, p. 557; Laws 1963, c. 409, § 32, p. 1328; Laws 1988, LB 352, § 120.

Cross References

Administrative Procedure Act, see section 84-920.

71-236 Repealed. Laws 1953, c. 238, § 7.

71-237 Expenses of administration; how paid.

All expenses incidental to the administration of sections 71-225 to 71-237 shall be paid from the funds of the Board of Barber Examiners in the manner and form governing other expenditures of that board.

Source: Laws 1945, c. 174, § 11, p. 558.

71-238 Reciprocal licensure agreements; Board of Barber Examiners; powers.

The board may negotiate reciprocal agreements for licensure with any other state or country for licensed barbers and registered barber instructors.

Source: Laws 1983, LB 87, § 1; Laws 1993, LB 226, § 12.

71-239 Foreign licenses; recognition; board; powers.

For purposes of recognizing licenses which have been issued in other states or countries to practice barbering as a licensed barber or registered barber instructor, the board may:

(1) Enter into a reciprocal agreement with any state which is certified to it by the proper examining board under the provisions of section 71-240; and

(2) Provide for licensure without examination as provided in section 71-239.01.

Source: Laws 1983, LB 87, § 2; Laws 1993, LB 226, § 13; Laws 2009, LB195, § 63.

71-239.01 Foreign licenses; recognition; licensure without examination; application; form; contents; issuance; appeal.

(1) The board may issue a license without examination to a person licensed in a state, territory, or country with which the board has not entered into a reciprocal agreement under section 71-239 as provided in this section.

(2) An applicant for licensure without examination under subsection (1) of this section shall file with the board (a) an application on a form provided by the board, (b) a copy of the license issued by the state, territory, or country in which the applicant is licensed, (c) the applicant's social security number, (d) documents demonstrating that the requirements for licensure in such state, territory, or country are substantially equivalent to the requirements for licensure under the Barber Act, and (e) the fee required pursuant to section 71-219.

(3) The board shall review each application and the documents submitted under this section and determine within sixty days after receiving such application and documentation whether to issue a license without examination to the applicant. The board shall notify the applicant of its decision within ten days after the date of making the decision. If the board determines not to issue a license without examination to the applicant, he or she may appeal the decision of the board and the appeal shall be in accordance with the Administrative Procedure Act.

(4) The board may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2009, LB195, § 64.

Cross References

Administrative Procedure Act, see section 84-920.

71-240 Board of Barber Examiners; review foreign licensing requirements.

The Board of Barber Examiners shall at least once each year review the licensing requirements of other states or countries which issue licenses to practice barbering in the various classifications in which the board conducts examinations for licenses in this state. The board shall examine such requirements and, after making such other inquiries as it deems necessary, shall certify the states and countries having substantially equivalent requirements to those existing in this state for the practice of barbering and with which such board desires to enter into a reciprocal licensure agreement.

Source: Laws 1983, LB 87, § 3.

71-241 Board of Barber Examiners; reciprocal agreement; conditions.

In negotiating any reciprocal agreement, the Board of Barber Examiners shall be governed by the following:

(1) When the laws of any state or country or the rules of the authorities of such state or country place any requirement or disability upon any person licensed in this state to practice barbering which affects the right of such person to be licensed or to practice his or her profession in such other state, then the same requirement or disability shall be placed upon any person licensed in such state or country when applying for a license to practice in this state; and

(2) When any examining board has established by rule any special conditions upon which reciprocal agreements shall be entered into, as provided in section 71-242, such condition shall be incorporated into the reciprocal agreements

negotiated with reference to licenses to practice barbering in any classification in which such examining board conducts examinations.

Source: Laws 1983, LB 87, § 4.

71-242 Reciprocal agreement; applicant for licensure or registration; requirements; failure to qualify; effect.

The board shall not enter into any reciprocal agreement with any state or country with reference to the practice of barbering as a licensed barber or registered barber instructor for which the board conducts examinations unless every person licensed or registered in such state or country when applying for a license to practice in this state shall show:

(1) That the requirements for licensure or registration were substantially equal to those in force in this state at the time such license was issued; or

(2) Upon due proof that such applicant has continuously practiced the practices or occupation for which application for a license is made at least three years immediately prior to such application.

The applicant shall also pay the fee set pursuant to section 71-219 and provide his or her social security number.

Except as provided in section 71-239.01, any applicant who fails to qualify for such exemption because his or her study or training outside this state does not fulfill the requirements of this section shall receive credit for the number of hours of study and training successfully completed in the particular state where he or she is registered or licensed, and he or she shall be qualified for the examination upon completion of such supplementary study and training in an accredited school of barbering in this state as the board finds necessary to substantially equal the study and training of a qualified person who has studied and trained in an accredited school in this state only. For the purposes of this section, each six months of practice outside of this state of the practices or occupation for which application for a license is made shall be deemed the equivalent of one hundred hours of study and training required in this state in order to qualify for the practice of barbering.

Source: Laws 1983, LB 87, § 5; Laws 1993, LB 226, § 14; Laws 1997, LB 752, § 167; Laws 2009, LB195, § 65.

71-243 Reciprocal agreement; terminated; when.

When the requirements for a license in any state or country with which this state has a reciprocal agreement as authorized by section 71-239 are changed by any law or rule of the authorities of such state so that such requirements are no longer substantially as high as those existing in this state, then such agreement shall be deemed terminated and licenses issued in such state or country shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated.

Source: Laws 1983, LB 87, § 6.

71-244 License granted under reciprocal agreement; when.

The Board of Barber Examiners shall, upon presentation of a certification of licensure to practice barbering as a registered barber or instructor by the duly constituted authority of another state or country, with which this state has established reciprocal relations as authorized by section 71-239, and subject to

the rules of the board, license such applicant to practice in this state unless an examination is required under section 71-242.

Source: Laws 1983, LB 87, § 7.

71-245 Reciprocal license; provisions applicable.

The provisions of the Barber Act, relating to applications, transmittal of the names of eligible candidates, certification of successful applicants, and issuance of licenses thereto, in the case of regular examinations, apply as far as applicable to applicants for a reciprocal license or for a license issued without examination pursuant to section 71-239.01.

Source: Laws 1983, LB 87, § 8; Laws 1997, LB 622, § 99; Laws 2009, LB195, § 66.

71-246 Reciprocal requirements and disabilities; applicable; when.

When the laws or the rules of the authorities of a state or country place any requirement or disability upon any person holding a diploma or certificate from any school or college of barbering in this state in which barbering is taught, which affects the right of such person to be licensed in such state, the same requirement or disability shall be placed upon any person holding a diploma or certificate from a similar school or college situated in that state when applying for a license to practice in this state.

Source: Laws 1983, LB 87, § 9.

71-247 Board of Barber Examiners; establish rules.

The Board of Barber Examiners shall have the power to establish the necessary rules for carrying out the reciprocal relations with other states or countries which are authorized by sections 71-238 to 71-246.

Source: Laws 1983, LB 87, § 10.

71-248 Licensee; change of residence; certified statement.

Any licensee who desires to change his or her residence to that of another state or country shall, upon application to the Board of Barber Examiners and payment of the legal fee, receive a certified statement that he or she is a duly licensed practitioner in this state.

Source: Laws 1983, LB 87, § 11.

71-249 Repealed. Laws 1993, LB 226, § 15.

ARTICLE 3

NEBRASKA COSMETOLOGY ACT

Cross References

Barber Act, see section 71-224.
Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art Practice Act, see section 38-1001.
Uniform Credentialing Act, see section 38-101.

Section
71-301. Repealed. Laws 1961, c. 340, § 29.
71-302. Repealed. Laws 1961, c. 340, § 29.
71-303. Repealed. Laws 1961, c. 340, § 29.
71-304. Repealed. Laws 1961, c. 340, § 29.

Section	
71-305.	Repealed. Laws 1961, c. 340, § 29.
71-306.	Repealed. Laws 1961, c. 340, § 29.
71-307.	Repealed. Laws 1961, c. 340, § 29.
71-308.	Repealed. Laws 1961, c. 340, § 29.
71-309.	Repealed. Laws 1961, c. 340, § 29.
71-310.	Repealed. Laws 1961, c. 340, § 29.
71-311.	Repealed. Laws 1961, c. 340, § 29.
71-312.	Repealed. Laws 1961, c. 340, § 29.
71-312.01.	Repealed. Laws 1986, LB 318, § 145.
71-313.	Repealed. Laws 1986, LB 318, § 145.
71-313.01.	Repealed. Laws 1986, LB 318, § 145.
71-314.	Repealed. Laws 1986, LB 318, § 145.
71-315.	Repealed. Laws 1986, LB 318, § 145.
71-316.	Repealed. Laws 1986, LB 318, § 145.
71-317.	Repealed. Laws 1986, LB 318, § 145.
71-318.	Repealed. Laws 1986, LB 318, § 145.
71-318.01.	Repealed. Laws 1986, LB 318, § 145.
71-319.	Repealed. Laws 1986, LB 318, § 145.
71-320.	Repealed. Laws 1986, LB 318, § 145.
71-320.01.	Repealed. Laws 1986, LB 318, § 145.
71-321.	Repealed. Laws 1986, LB 318, § 145.
71-322.	Repealed. Laws 1986, LB 318, § 145.
71-322.01.	Repealed. Laws 1978, LB 569, § 14.
71-322.02.	Repealed. Laws 1986, LB 318, § 145.
71-322.03.	Repealed. Laws 1986, LB 318, § 145.
71-322.04.	Repealed. Laws 1986, LB 318, § 145.
71-322.05.	Repealed. Laws 1986, LB 318, § 145.
71-323.	Repealed. Laws 1986, LB 318, § 145.
71-324.	Repealed. Laws 1986, LB 318, § 145.
71-325.	Repealed. Laws 1986, LB 318, § 145.
71-326.	Repealed. Laws 1986, LB 318, § 145.
71-327.	Repealed. Laws 1986, LB 318, § 145.
71-328.	Repealed. Laws 1986, LB 318, § 145.
71-329.	Repealed. Laws 1986, LB 318, § 145.
71-330.	Repealed. Laws 1986, LB 318, § 145.
71-331.	Repealed. Laws 1986, LB 318, § 145.
71-332.	Repealed. Laws 1986, LB 318, § 145.
71-333.	Repealed. Laws 1986, LB 318, § 145.
71-334.	Repealed. Laws 1986, LB 318, § 145.
71-335.	Repealed. Laws 1986, LB 318, § 145.
71-336.	Repealed. Laws 1986, LB 318, § 145.
71-337.	Repealed. Laws 1986, LB 318, § 145.
71-338.	Repealed. Laws 1986, LB 318, § 145.
71-339.	Repealed. Laws 1986, LB 318, § 145.
71-340.	Transferred to section 38-1001.
71-341.	Transferred to section 38-1002.
71-342.	Transferred to section 38-1003.
71-343.	Transferred to section 38-1004.
71-344.	Transferred to section 38-1005.
71-345.	Transferred to section 38-1006.
71-346.	Transferred to section 38-1007.
71-346.01.	Transferred to section 38-1008.
71-346.02.	Transferred to section 38-1009.
71-346.03.	Transferred to section 38-1010.
71-346.04.	Transferred to section 38-1011.
71-347.	Transferred to section 38-1012.
71-348.	Transferred to section 38-1013.
71-349.	Transferred to section 38-1014.
71-350.	Transferred to section 38-1015.
71-351.	Transferred to section 38-1016.
71-352.	Transferred to section 38-1017.

Section	
71-353.	Transferred to section 38-1018.
71-354.	Repealed. Laws 2007, LB 463, § 1319.
71-355.	Repealed. Laws 2007, LB 296, § 815.
71-356.	Transferred to section 38-1019.
71-356.01.	Transferred to section 38-1020.
71-356.02.	Transferred to section 38-1021.
71-356.03.	Transferred to section 38-1022.
71-356.04.	Transferred to section 38-1023.
71-356.05.	Transferred to section 38-1024.
71-357.	Transferred to section 38-1025.
71-357.01.	Transferred to section 38-1026.
71-357.02.	Transferred to section 38-1027.
71-357.03.	Transferred to section 38-1028.
71-358.	Transferred to section 38-1029.
71-358.01.	Transferred to section 38-1030.
71-359.	Transferred to section 38-1031.
71-360.	Transferred to section 38-1032.
71-360.01.	Transferred to section 38-1033.
71-361.	Repealed. Laws 1999, LB 68, § 91.
71-361.01.	Transferred to section 38-1034.
71-361.02.	Transferred to section 38-1035.
71-361.03.	Transferred to section 38-1036.
71-361.04.	Transferred to section 38-1037.
71-361.05.	Transferred to section 38-1038.
71-361.06.	Transferred to section 38-1039.
71-361.07.	Transferred to section 38-1040.
71-361.08.	Transferred to section 38-1041.
71-361.09.	Transferred to section 38-1042.
71-362.	Transferred to section 38-1043.
71-362.01.	Transferred to section 38-1044.
71-363.	Repealed. Laws 2007, LB 463, § 1319.
71-363.01.	Transferred to section 38-1045.
71-364.	Transferred to section 38-1046.
71-365.	Transferred to section 38-1047.
71-365.01.	Transferred to section 38-1048.
71-365.02.	Transferred to section 38-1049.
71-366.	Transferred to section 71-357.01.
71-367.	Transferred to section 71-357.03.
71-368.	Transferred to section 38-1050.
71-369.	Transferred to section 38-1051.
71-370.	Transferred to section 38-1052.
71-370.01.	Transferred to section 38-1053.
71-370.02.	Transferred to section 38-1054.
71-371.	Transferred to section 38-1055.
71-372.	Transferred to section 38-1056.
71-373.	Repealed. Laws 2007, LB 463, § 1319.
71-374.	Transferred to section 38-1057.
71-375.	Repealed. Laws 2007, LB 463, § 1319.
71-376.	Repealed. Laws 2007, LB 463, § 1319.
71-377.	Repealed. Laws 2007, LB 463, § 1319.
71-378.	Repealed. Laws 2007, LB 463, § 1319.
71-379.	Repealed. Laws 2007, LB 463, § 1319.
71-380.	Repealed. Laws 2007, LB 463, § 1319.
71-381.	Repealed. Laws 2003, LB 242, § 154.
71-382.	Repealed. Laws 2003, LB 242, § 154.
71-383.	Repealed. Laws 2003, LB 242, § 154.
71-384.	Repealed. Laws 2003, LB 242, § 154.
71-385.	Transferred to section 38-1058.
71-385.01.	Transferred to section 38-1059.
71-385.02.	Transferred to section 38-1060.
71-386.	Transferred to section 38-1061.

Section	
71-387.	Transferred to section 38-1062.
71-388.	Transferred to section 38-1063.
71-389.	Transferred to section 38-1064.
71-390.	Transferred to section 38-1065.
71-391.	Repealed. Laws 2007, LB 463, § 1319.
71-392.	Repealed. Laws 2007, LB 463, § 1319.
71-393.	Repealed. Laws 2007, LB 463, § 1319.
71-394.	Transferred to section 38-1066.
71-394.01.	Repealed. Laws 2007, LB 463, § 1319.
71-395.	Transferred to section 38-1067.
71-396.	Transferred to section 38-1068.
71-397.	Repealed. Laws 2007, LB 463, § 1319.
71-398.	Transferred to section 38-1069.
71-399.	Transferred to section 38-1070.
71-3,100.	Transferred to section 38-1071.
71-3,101.	Transferred to section 38-1072.
71-3,102.	Transferred to section 38-10,103.
71-3,103.	Repealed. Laws 2007, LB 463, § 1319.
71-3,104.	Transferred to section 38-1073.
71-3,105.	Transferred to section 38-1074.
71-3,106.	Transferred to section 38-1075.
71-3,106.01.	Transferred to section 38-1076.
71-3,107.	Repealed. Laws 2007, LB 463, § 1319.
71-3,108.	Repealed. Laws 2007, LB 463, § 1319.
71-3,109.	Repealed. Laws 2002, LB 1021, § 111.
71-3,110.	Repealed. Laws 2002, LB 1021, § 111.
71-3,111.	Repealed. Laws 2002, LB 1021, § 111.
71-3,112.	Repealed. Laws 2007, LB 463, § 1319.
71-3,113.	Repealed. Laws 2002, LB 1021, § 111.
71-3,114.	Repealed. Laws 2002, LB 1021, § 111.
71-3,115.	Repealed. Laws 2007, LB 463, § 1319.
71-3,116.	Repealed. Laws 2002, LB 1021, § 111.
71-3,117.	Transferred to section 38-1077.
71-3,118.	Repealed. Laws 2002, LB 1021, § 111.
71-3,119.	Transferred to section 38-1078.
71-3,119.01.	Transferred to section 38-1079.
71-3,119.02.	Transferred to section 38-1080.
71-3,119.03.	Transferred to section 38-1081.
71-3,120.	Transferred to section 38-1082.
71-3,121.	Transferred to section 38-1083.
71-3,122.	Transferred to section 38-1084.
71-3,123.	Transferred to section 38-1085.
71-3,124.	Transferred to section 38-1086.
71-3,125.	Transferred to section 38-1087.
71-3,126.	Transferred to section 38-1088.
71-3,127.	Transferred to section 38-1089.
71-3,128.	Transferred to section 38-1090.
71-3,129.	Transferred to section 38-1091.
71-3,130.	Transferred to section 38-1092.
71-3,131.	Transferred to section 38-1093.
71-3,132.	Repealed. Laws 2007, LB 463, § 1319.
71-3,133.	Transferred to section 38-1094.
71-3,134.	Transferred to section 38-1095.
71-3,135.	Transferred to section 38-1096.
71-3,136.	Transferred to section 38-1097.
71-3,137.	Transferred to section 38-1098.
71-3,138.	Transferred to section 38-1099.
71-3,138.01.	Repealed. Laws 2004, LB 1005, § 143.
71-3,138.02.	Transferred to section 38-10,100.
71-3,139.	Transferred to section 38-10,101.
71-3,140.	Transferred to section 38-10,102.

Section
71-3,141. Transferred to section 38-10,104.
71-3,142. Transferred to section 38-10,105.
71-3,143. Transferred to section 38-10,106.
71-3,144. Transferred to section 38-10,107.
71-3,145. Repealed. Laws 2007, LB 463, § 1319.
71-3,146. Transferred to section 38-10,108.
71-3,147. Transferred to section 38-10,109.
71-3,148. Transferred to section 38-10,110.
71-3,149. Transferred to section 38-10,111.
71-3,150. Transferred to section 38-10,112.
71-3,151. Transferred to section 38-10,113.
71-3,152. Transferred to section 38-10,114.
71-3,153. Transferred to section 38-10,115.
71-3,154. Transferred to section 38-10,116.
71-3,155. Repealed. Laws 2007, LB 463, § 1319.
71-3,156. Transferred to section 38-10,117.
71-3,157. Transferred to section 38-10,118.
71-3,158. Transferred to section 38-10,119.
71-3,159. Transferred to section 38-10,120.
71-3,160. Transferred to section 38-10,121.
71-3,161. Transferred to section 38-10,122.
71-3,162. Transferred to section 38-10,123.
71-3,163. Transferred to section 38-10,124.
71-3,164. Transferred to section 38-10,125.
71-3,165. Repealed. Laws 2007, LB 463, § 1319.
71-3,166. Repealed. Laws 2007, LB 463, § 1319.
71-3,167. Repealed. Laws 2007, LB 463, § 1319.
71-3,168. Repealed. Laws 2007, LB 463, § 1319.
71-3,169. Transferred to section 38-10,169.
71-3,170. Transferred to section 38-10,170.
71-3,171. Repealed. Laws 2007, LB 463, § 1319.
71-3,172. Repealed. Laws 2007, LB 463, § 1319.
71-3,173. Repealed. Laws 2007, LB 463, § 1319.
71-3,174. Repealed. Laws 2007, LB 463, § 1319.
71-3,175. Repealed. Laws 2007, LB 463, § 1319.
71-3,176. Repealed. Laws 2007, LB 463, § 1319.
71-3,177. Transferred to section 38-10,171.
71-3,178. Repealed. Laws 2007, LB 463, § 1319.
71-3,179. Repealed. Laws 2007, LB 463, § 1319.
71-3,180. Transferred to section 38-10,126.
71-3,181. Transferred to section 38-10,127.
71-3,182. Repealed. Laws 2007, LB 463, § 1319.
71-3,183. Transferred to section 38-10,128.
71-3,184. Transferred to section 38-10,129.
71-3,185. Repealed. Laws 2007, LB 463, § 1319.
71-3,186. Transferred to section 38-10,130.
71-3,187. Transferred to section 38-10,131.
71-3,188. Repealed. Laws 2007, LB 463, § 1319.
71-3,189. Repealed. Laws 2007, LB 463, § 1319.
71-3,190. Repealed. Laws 2007, LB 463, § 1319.
71-3,191. Transferred to section 38-10,132.
71-3,192. Transferred to section 38-10,133.
71-3,193. Transferred to section 38-10,134.
71-3,194. Transferred to section 38-10,135.
71-3,195. Transferred to section 38-10,136.
71-3,196. Repealed. Laws 2007, LB 463, § 1319.
71-3,197. Repealed. Laws 2007, LB 463, § 1319.
71-3,198. Repealed. Laws 2007, LB 463, § 1319.
71-3,199. Repealed. Laws 2002, LB 1021, § 111.
71-3,200. Repealed. Laws 2002, LB 1021, § 111.
71-3,201. Repealed. Laws 2002, LB 1021, § 111.

Section
71-3,202. Repealed. Laws 2007, LB 463, § 1319.
71-3,203. Repealed. Laws 2002, LB 1021, § 111.
71-3,204. Repealed. Laws 2002, LB 1021, § 111.
71-3,205. Repealed. Laws 2007, LB 463, § 1319.
71-3,206. Transferred to section 38-10,137.
71-3,207. Repealed. Laws 2002, LB 1021, § 111.
71-3,208. Transferred to section 38-10,138.
71-3,209. Repealed. Laws 2007, LB 463, § 1319.
71-3,210. Transferred to section 38-10,139.
71-3,211. Transferred to section 38-10,140.
71-3,212. Transferred to section 38-10,141.
71-3,213. Transferred to section 38-10,142.
71-3,214. Transferred to section 38-10,143.
71-3,215. Transferred to section 38-10,144.
71-3,216. Transferred to section 38-10,145.
71-3,217. Transferred to section 38-10,146.
71-3,218. Transferred to section 38-10,147.
71-3,219. Transferred to section 38-10,148.
71-3,220. Transferred to section 38-10,149.
71-3,221. Transferred to section 38-10,150.
71-3,222. Transferred to section 38-10,151.
71-3,223. Transferred to section 38-10,152.
71-3,224. Transferred to section 38-10,153.
71-3,225. Transferred to section 38-10,154.
71-3,226. Transferred to section 38-10,155.
71-3,227. Transferred to section 38-10,156.
71-3,228. Transferred to section 38-10,157.
71-3,229. Transferred to section 38-10,158.
71-3,230. Transferred to section 38-10,159.
71-3,231. Transferred to section 38-10,160.
71-3,232. Transferred to section 38-10,161.
71-3,233. Transferred to section 38-10,162.
71-3,234. Transferred to section 38-10,163.
71-3,235. Transferred to section 38-10,164.
71-3,236. Transferred to section 38-10,165.
71-3,237. Transferred to section 38-10,166.
71-3,238. Transferred to section 38-10,167.

71-301 Repealed. Laws 1961, c. 340, § 29.

71-302 Repealed. Laws 1961, c. 340, § 29.

71-303 Repealed. Laws 1961, c. 340, § 29.

71-304 Repealed. Laws 1961, c. 340, § 29.

71-305 Repealed. Laws 1961, c. 340, § 29.

71-306 Repealed. Laws 1961, c. 340, § 29.

71-307 Repealed. Laws 1961, c. 340, § 29.

71-308 Repealed. Laws 1961, c. 340, § 29.

71-309 Repealed. Laws 1961, c. 340, § 29.

71-310 Repealed. Laws 1961, c. 340, § 29.

71-311 Repealed. Laws 1961, c. 340, § 29.

71-312 Repealed. Laws 1961, c. 340, § 29.

71-312.01 Repealed. Laws 1986, LB 318, § 145.

71-313 Repealed. Laws 1986, LB 318, § 145.

71-313.01 Repealed. Laws 1986, LB 318, § 145.

71-314 Repealed. Laws 1986, LB 318, § 145.

71-315 Repealed. Laws 1986, LB 318, § 145.

71-316 Repealed. Laws 1986, LB 318, § 145.

71-317 Repealed. Laws 1986, LB 318, § 145.

71-318 Repealed. Laws 1986, LB 318, § 145.

71-318.01 Repealed. Laws 1986, LB 318, § 145.

71-319 Repealed. Laws 1986, LB 318, § 145.

71-320 Repealed. Laws 1986, LB 318, § 145.

71-320.01 Repealed. Laws 1986, LB 318, § 145.

71-321 Repealed. Laws 1986, LB 318, § 145.

71-322 Repealed. Laws 1986, LB 318, § 145.

71-322.01 Repealed. Laws 1978, LB 569, § 14.

71-322.02 Repealed. Laws 1986, LB 318, § 145.

71-322.03 Repealed. Laws 1986, LB 318, § 145.

71-322.04 Repealed. Laws 1986, LB 318, § 145.

71-322.05 Repealed. Laws 1986, LB 318, § 145.

71-323 Repealed. Laws 1986, LB 318, § 145.

71-324 Repealed. Laws 1986, LB 318, § 145.

71-325 Repealed. Laws 1986, LB 318, § 145.

71-326 Repealed. Laws 1986, LB 318, § 145.

71-327 Repealed. Laws 1986, LB 318, § 145.

71-328 Repealed. Laws 1986, LB 318, § 145.

71-329 Repealed. Laws 1986, LB 318, § 145.

71-330 Repealed. Laws 1986, LB 318, § 145.

71-331 Repealed. Laws 1986, LB 318, § 145.

71-332 Repealed. Laws 1986, LB 318, § 145.

71-333 Repealed. Laws 1986, LB 318, § 145.

71-334 Repealed. Laws 1986, LB 318, § 145.

71-335 Repealed. Laws 1986, LB 318, § 145.

71-336 Repealed. Laws 1986, LB 318, § 145.

71-337 Repealed. Laws 1986, LB 318, § 145.

71-338 Repealed. Laws 1986, LB 318, § 145.

71-339 Repealed. Laws 1986, LB 318, § 145.

71-340 Transferred to section 38-1001.

71-341 Transferred to section 38-1002.

71-342 Transferred to section 38-1003.

71-343 Transferred to section 38-1004.

71-344 Transferred to section 38-1005.

71-345 Transferred to section 38-1006.

71-346 Transferred to section 38-1007.

71-346.01 Transferred to section 38-1008.

71-346.02 Transferred to section 38-1009.

71-346.03 Transferred to section 38-1010.

71-346.04 Transferred to section 38-1011.

71-347 Transferred to section 38-1012.

71-348 Transferred to section 38-1013.

71-349 Transferred to section 38-1014.

71-350 Transferred to section 38-1015.

71-351 Transferred to section 38-1016.

71-352 Transferred to section 38-1017.

71-353 Transferred to section 38-1018.

71-354 Repealed. Laws 2007, LB 463, § 1319.

71-355 Repealed. Laws 2007, LB 296, § 815.

71-356 Transferred to section 38-1019.

71-356.01 Transferred to section 38-1020.

71-356.02 Transferred to section 38-1021.

71-356.03 Transferred to section 38-1022.

71-356.04 Transferred to section 38-1023.

71-356.05 Transferred to section 38-1024.

71-357 Transferred to section 38-1025.

71-357.01 Transferred to section 38-1026.

71-357.02 Transferred to section 38-1027.

71-357.03 Transferred to section 38-1028.

71-358 Transferred to section 38-1029.

71-358.01 Transferred to section 38-1030.

71-359 Transferred to section 38-1031.

71-360 Transferred to section 38-1032.

71-360.01 Transferred to section 38-1033.

71-361 Repealed. Laws 1999, LB 68, § 91.

71-361.01 Transferred to section 38-1034.

71-361.02 Transferred to section 38-1035.

71-361.03 Transferred to section 38-1036.

71-361.04 Transferred to section 38-1037.

71-361.05 Transferred to section 38-1038.

71-361.06 Transferred to section 38-1039.

71-361.07 Transferred to section 38-1040.

71-361.08 Transferred to section 38-1041.

71-361.09 Transferred to section 38-1042.

71-362 Transferred to section 38-1043.

71-362.01 Transferred to section 38-1044.

71-363 Repealed. Laws 2007, LB 463, § 1319.

71-363.01 Transferred to section 38-1045.

71-364 Transferred to section 38-1046.

71-365 Transferred to section 38-1047.

71-365.01 Transferred to section 38-1048.

71-365.02 Transferred to section 38-1049.

71-366 Transferred to section 71-357.01.

71-367 Transferred to section 71-357.03.

71-368 Transferred to section 38-1050.

71-369 Transferred to section 38-1051.

71-370 Transferred to section 38-1052.

71-370.01 Transferred to section 38-1053.

71-370.02 Transferred to section 38-1054.

71-371 Transferred to section 38-1055.

71-372 Transferred to section 38-1056.

71-373 Repealed. Laws 2007, LB 463, § 1319.

71-374 Transferred to section 38-1057.

71-375 Repealed. Laws 2007, LB 463, § 1319.

71-376 Repealed. Laws 2007, LB 463, § 1319.

71-377 Repealed. Laws 2007, LB 463, § 1319.

71-378 Repealed. Laws 2007, LB 463, § 1319.

71-379 Repealed. Laws 2007, LB 463, § 1319.

71-380 Repealed. Laws 2007, LB 463, § 1319.

71-381 Repealed. Laws 2003, LB 242, § 154.

71-382 Repealed. Laws 2003, LB 242, § 154.

71-383 Repealed. Laws 2003, LB 242, § 154.

71-384 Repealed. Laws 2003, LB 242, § 154.

71-385 Transferred to section 38-1058.

71-385.01 Transferred to section 38-1059.

71-385.02 Transferred to section 38-1060.

71-386 Transferred to section 38-1061.

71-387 Transferred to section 38-1062.

71-388 Transferred to section 38-1063.

71-389 Transferred to section 38-1064.

71-390 Transferred to section 38-1065.

71-391 Repealed. Laws 2007, LB 463, § 1319.

71-392 Repealed. Laws 2007, LB 463, § 1319.

71-393 Repealed. Laws 2007, LB 463, § 1319.

71-394 Transferred to section 38-1066.

71-394.01 Repealed. Laws 2007, LB 463, § 1319.

71-395 Transferred to section 38-1067.

71-396 Transferred to section 38-1068.

71-397 Repealed. Laws 2007, LB 463, § 1319.

71-398 Transferred to section 38-1069.

71-399 Transferred to section 38-1070.

71-3,100 Transferred to section 38-1071.

71-3,101 Transferred to section 38-1072.

71-3,102 Transferred to section 38-10,103.

71-3,103 Repealed. Laws 2007, LB 463, § 1319.

71-3,104 Transferred to section 38-1073.

71-3,105 Transferred to section 38-1074.

71-3,106 Transferred to section 38-1075.

71-3,106.01 Transferred to section 38-1076.

71-3,107 Repealed. Laws 2007, LB 463, § 1319.

71-3,108 Repealed. Laws 2007, LB 463, § 1319.

71-3,109 Repealed. Laws 2002, LB 1021, § 111.

71-3,110 Repealed. Laws 2002, LB 1021, § 111.

71-3,111 Repealed. Laws 2002, LB 1021, § 111.

71-3,112 Repealed. Laws 2007, LB 463, § 1319.

71-3,113 Repealed. Laws 2002, LB 1021, § 111.

71-3,114 Repealed. Laws 2002, LB 1021, § 111.

71-3,115 Repealed. Laws 2007, LB 463, § 1319.

71-3,116 Repealed. Laws 2002, LB 1021, § 111.

71-3,117 Transferred to section 38-1077.

71-3,118 Repealed. Laws 2002, LB 1021, § 111.

71-3,119 Transferred to section 38-1078.

71-3,119.01 Transferred to section 38-1079.

71-3,119.02 Transferred to section 38-1080.

71-3,119.03 Transferred to section 38-1081.

71-3,120 Transferred to section 38-1082.

71-3,121 Transferred to section 38-1083.

71-3,122 Transferred to section 38-1084.

71-3,123 Transferred to section 38-1085.

71-3,124 Transferred to section 38-1086.

71-3,125 Transferred to section 38-1087.

71-3,126 Transferred to section 38-1088.

71-3,127 Transferred to section 38-1089.

71-3,128 Transferred to section 38-1090.

71-3,129 Transferred to section 38-1091.

71-3,130 Transferred to section 38-1092.

71-3,131 Transferred to section 38-1093.

71-3,132 Repealed. Laws 2007, LB 463, § 1319.

71-3,133 Transferred to section 38-1094.

71-3,134 Transferred to section 38-1095.

71-3,135 Transferred to section 38-1096.

71-3,136 Transferred to section 38-1097.

71-3,137 Transferred to section 38-1098.

71-3,138 Transferred to section 38-1099.

71-3,138.01 Repealed. Laws 2004, LB 1005, § 143.

71-3,138.02 Transferred to section 38-10,100.

71-3,139 Transferred to section 38-10,101.

71-3,140 Transferred to section 38-10,102.

71-3,141 Transferred to section 38-10,104.

71-3,142 Transferred to section 38-10,105.

71-3,143 Transferred to section 38-10,106.

71-3,144 Transferred to section 38-10,107.

71-3,145 Repealed. Laws 2007, LB 463, § 1319.

71-3,146 Transferred to section 38-10,108.

71-3,147 Transferred to section 38-10,109.

71-3,148 Transferred to section 38-10,110.

71-3,149 Transferred to section 38-10,111.

71-3,150 Transferred to section 38-10,112.

71-3,151 Transferred to section 38-10,113.

71-3,152 Transferred to section 38-10,114.

71-3,153 Transferred to section 38-10,115.

71-3,154 Transferred to section 38-10,116.

71-3,155 Repealed. Laws 2007, LB 463, § 1319.

71-3,156 Transferred to section 38-10,117.

71-3,157 Transferred to section 38-10,118.

71-3,158 Transferred to section 38-10,119.

71-3,159 Transferred to section 38-10,120.

71-3,160 Transferred to section 38-10,121.

71-3,161 Transferred to section 38-10,122.

71-3,162 Transferred to section 38-10,123.

71-3,163 Transferred to section 38-10,124.

71-3,164 Transferred to section 38-10,125.

71-3,165 Repealed. Laws 2007, LB 463, § 1319.

71-3,166 Repealed. Laws 2007, LB 463, § 1319.

71-3,167 Repealed. Laws 2007, LB 463, § 1319.

71-3,168 Repealed. Laws 2007, LB 463, § 1319.

71-3,169 Transferred to section 38-10,169.

71-3,170 Transferred to section 38-10,170.

71-3,171 Repealed. Laws 2007, LB 463, § 1319.

71-3,172 Repealed. Laws 2007, LB 463, § 1319.

71-3,173 Repealed. Laws 2007, LB 463, § 1319.

71-3,174 Repealed. Laws 2007, LB 463, § 1319.

71-3,175 Repealed. Laws 2007, LB 463, § 1319.

71-3,176 Repealed. Laws 2007, LB 463, § 1319.

71-3,177 Transferred to section 38-10,171.

71-3,178 Repealed. Laws 2007, LB 463, § 1319.

71-3,179 Repealed. Laws 2007, LB 463, § 1319.

71-3,180 Transferred to section 38-10,126.

71-3,181 Transferred to section 38-10,127.

71-3,182 Repealed. Laws 2007, LB 463, § 1319.

71-3,183 Transferred to section 38-10,128.

71-3,184 Transferred to section 38-10,129.

71-3,185 Repealed. Laws 2007, LB 463, § 1319.

71-3,186 Transferred to section 38-10,130.

71-3,187 Transferred to section 38-10,131.

71-3,188 Repealed. Laws 2007, LB 463, § 1319.

71-3,189 Repealed. Laws 2007, LB 463, § 1319.

71-3,190 Repealed. Laws 2007, LB 463, § 1319.

71-3,191 Transferred to section 38-10,132.

71-3,192 Transferred to section 38-10,133.

71-3,193 Transferred to section 38-10,134.

71-3,194 Transferred to section 38-10,135.

71-3,195 Transferred to section 38-10,136.

71-3,196 Repealed. Laws 2007, LB 463, § 1319.

71-3,197 Repealed. Laws 2007, LB 463, § 1319.

71-3,198 Repealed. Laws 2007, LB 463, § 1319.

71-3,199 Repealed. Laws 2002, LB 1021, § 111.

71-3,200 Repealed. Laws 2002, LB 1021, § 111.

71-3,201 Repealed. Laws 2002, LB 1021, § 111.

71-3,202 Repealed. Laws 2007, LB 463, § 1319.

71-3,203 Repealed. Laws 2002, LB 1021, § 111.

71-3,204 Repealed. Laws 2002, LB 1021, § 111.

71-3,205 Repealed. Laws 2007, LB 463, § 1319.

71-3,206 Transferred to section 38-10,137.

71-3,207 Repealed. Laws 2002, LB 1021, § 111.

71-3,208 Transferred to section 38-10,138.

71-3,209 Repealed. Laws 2007, LB 463, § 1319.

71-3,210 Transferred to section 38-10,139.

71-3,211 Transferred to section 38-10,140.

71-3,212 Transferred to section 38-10,141.

71-3,213 Transferred to section 38-10,142.

71-3,214 Transferred to section 38-10,143.

71-3,215 Transferred to section 38-10,144.

71-3,216 Transferred to section 38-10,145.

71-3,217 Transferred to section 38-10,146.

71-3,218 Transferred to section 38-10,147.

71-3,219 Transferred to section 38-10,148.

71-3,220 Transferred to section 38-10,149.

71-3,221 Transferred to section 38-10,150.

71-3,222 Transferred to section 38-10,151.

71-3,223 Transferred to section 38-10,152.

71-3,224 Transferred to section 38-10,153.

71-3,225 Transferred to section 38-10,154.

71-3,226 Transferred to section 38-10,155.

71-3,227 Transferred to section 38-10,156.

71-3,228 Transferred to section 38-10,157.

71-3,229 Transferred to section 38-10,158.

71-3,230 Transferred to section 38-10,159.

71-3,231 Transferred to section 38-10,160.

71-3,232 Transferred to section 38-10,161.

71-3,233 Transferred to section 38-10,162.

71-3,234 Transferred to section 38-10,163.

71-3,235 Transferred to section 38-10,164.

71-3,236 Transferred to section 38-10,165.

71-3,237 Transferred to section 38-10,166.

71-3,238 Transferred to section 38-10,167.

ARTICLE 4
HEALTH CARE FACILITIES

Cross References

Criteria for credentialing health care facilities, see section 71-8301 et seq.
Medical records, access, see section 71-8401 et seq.
Nursing services, waiver of requirements at certain facilities, see sections 71-6018.01 and 71-6018.02.
Uniform Credentialing Act, see section 38-101.

71-401 Act, how cited.

Sections 71-401 to 71-464 shall be known and may be cited as the Health Care Facility Licensure Act.

Source: Laws 2000, LB 819, § 1; Laws 2001, LB 398, § 65; Laws 2004, LB 1005, § 41; Laws 2007, LB203, § 1; Laws 2009, LB288, § 31.

71-402 Purpose of act.

The purpose of the Health Care Facility Licensure Act and the Nebraska Nursing Home Act is to protect the public health, safety, and welfare by providing for the licensure of health care facilities and health care services in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such facilities and services.

Source: Laws 2000, LB 819, § 2.

Cross References

Nebraska Nursing Home Act, see section 71-6037.

71-403 Definitions, where found.

For purposes of the Health Care Facility Licensure Act, unless the context otherwise requires, the definitions found in sections 71-404 to 71-431 shall apply.

Source: Laws 2000, LB 819, § 3; Laws 2007, LB203, § 2.

71-404 Adult day service, defined.

(1) Adult day service means a person or any legal entity which provides care and an array of social, medical, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to four or more persons who require or request such services due to age or functional impairment.

(2) Adult day service does not include services provided under the Developmental Disabilities Services Act.

Source: Laws 2000, LB 819, § 4; Laws 2002, LB 1062, § 39.

Cross References

Developmental Disabilities Services Act, see section 83-1201.

71-405 Ambulatory surgical center, defined.

(1) Ambulatory surgical center means a facility (a) where surgical services are provided to persons not requiring hospitalization who are admitted to and discharged from such facility within the same working day and are not permitted to stay overnight at such facility, (b) which meets all applicable requirements for licensure as a health clinic under the Health Care Facility Licensure Act, and (c) which has qualified for a written agreement with the

Health Care Financing Administration of the United States Department of Health and Human Services or its successor to participate in medicare as an ambulatory surgical center as defined in 42 C.F.R. 416 et seq. or which receives other third-party reimbursement for such services.

(2) Ambulatory surgical center does not include an office or clinic used solely by a practitioner or group of practitioners in the practice of medicine, dentistry, or podiatry.

Source: Laws 2000, LB 819, § 5.

71-406 Assisted-living facility, defined.

(1) Assisted-living facility means a facility where shelter, food, and care are provided for remuneration for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who require or request such services due to age, illness, or physical disability.

(2) Assisted-living facility does not include a home, apartment, or facility where (a) casual care is provided at irregular intervals or (b) a competent person residing in such home, apartment, or facility provides for or contracts for his or her own personal or professional services if no more than twenty-five percent of persons residing in such home, apartment, or facility receive such services.

Source: Laws 2000, LB 819, § 6.

71-407 Care, defined.

(1) Care means the exercise of concern or responsibility for the comfort, welfare, and habilitation of persons, including a minimum amount of supervision and assistance with or the provision of personal care, activities of daily living, health maintenance activities, or other supportive services.

(2) For purposes of this section:

(a) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administered medication, and similar activities;

(b) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable; and

(c) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities.

Source: Laws 2000, LB 819, § 7.

71-408 Center or group home for the developmentally disabled, defined.

Center or group home for the developmentally disabled means a facility where shelter, food, and care, advice, counseling, diagnosis, treatment, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have developmental disabilities.

Source: Laws 2000, LB 819, § 8.

71-409 Critical access hospital, defined.

Critical access hospital means a facility (1) with acute care inpatient beds where care or treatment is provided on an outpatient basis or on an inpatient basis to persons for an average period of not more than ninety-six hours and emergency services are provided on a twenty-four-hour basis, (2) which has formal agreements with at least one hospital and other appropriate providers for services such as patient referral and transfer, communications systems, provision of emergency and nonemergency transportation, and backup medical and emergency services, and (3) which is located in a rural area. For purposes of this section, rural area means a county with a population of less than one hundred thousand residents. A facility licensed as a critical access hospital shall have no more than twenty-five acute care inpatient beds.

Source: Laws 2000, LB 819, § 9; Laws 2004, LB 1005, § 42; Laws 2005, LB 664, § 1; Laws 2008, LB797, § 5.

71-410 Department, defined.

Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2000, LB 819, § 10; Laws 2007, LB296, § 369.

71-411 Director, defined.

Director means the Director of Public Health of the Division of Public Health.

Source: Laws 2000, LB 819, § 11; Laws 2007, LB296, § 370.

71-412 General acute hospital, defined.

General acute hospital means a hospital with a duly constituted governing body where medical, nursing, surgical, anesthesia, laboratory, diagnostic radiology, pharmacy, and dietary services are provided on an inpatient or outpatient basis by the organized medical staff of such hospital.

Source: Laws 2000, LB 819, § 12.

71-413 Health care facility, defined.

Health care facility means an ambulatory surgical center, an assisted-living facility, a center or group home for the developmentally disabled, a critical access hospital, a general acute hospital, a health clinic, a hospital, an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, a pharmacy, a psychiatric or mental hospital, a public health clinic, a rehabilitation hospital, a skilled nursing facility, or a substance abuse treatment center.

Source: Laws 2000, LB 819, § 13.

71-414 Health care practitioner facility, defined.

Health care practitioner facility means the residence, office, or clinic of a practitioner or group of practitioners credentialed under the Uniform Credentialing Act or any distinct part of such residence, office, or clinic.

Source: Laws 2000, LB 819, § 14; Laws 2007, LB463, § 1179.

Cross References

Uniform Credentialing Act, see section 38-101.

71-415 Health care service, defined.

Health care service means an adult day service, a home health agency, a hospice or hospice service, or a respite care service. Health care service does not include an in-home personal services agency as defined in section 71-6501.

Source: Laws 2000, LB 819, § 15; Laws 2007, LB236, § 43.

71-416 Health clinic, defined.

(1) Health clinic means a facility where advice, counseling, diagnosis, treatment, surgery, care, or services relating to the preservation or maintenance of health are provided on an outpatient basis for a period of less than twenty-four consecutive hours to persons not residing or confined at such facility. Health clinic includes, but is not limited to, an ambulatory surgical center or a public health clinic.

(2) Health clinic does not include (a) a health care practitioner facility (i) unless such facility is an ambulatory surgical center, (ii) unless ten or more abortions, as defined in subdivision (1) of section 28-326, are performed during any one calendar week at such facility, or (iii) unless hemodialysis or labor and delivery services are provided at such facility, or (b) a facility which provides only routine health screenings, health education, or immunizations.

(3) For purposes of this section:

(a) Public health clinic means the department, any county, city-county, or multicounty health department, or any private not-for-profit family planning clinic licensed as a health clinic;

(b) Routine health screenings means the collection of health data through the administration of a screening tool designed for a specific health problem, evaluation and comparison of results to referral criteria, and referral to appropriate sources of care, if indicated; and

(c) Screening tool means a simple interview or testing procedure to collect basic information on health status.

Source: Laws 2000, LB 819, § 16.

71-417 Home health agency, defined.

Home health agency means a person or any legal entity which provides skilled nursing care or a minimum of one other therapeutic service as defined by the department on a full-time, part-time, or intermittent basis to persons in a place of temporary or permanent residence used as the person's home.

Source: Laws 2000, LB 819, § 17.

71-418 Hospice or hospice service, defined.

Hospice or hospice service means a person or any legal entity which provides home care, palliative care, or other supportive services to terminally ill persons and their families.

Source: Laws 2000, LB 819, § 18.

71-419 Hospital, defined.

(1) Hospital means a facility where diagnosis, treatment, medical care, obstetrical care, nursing care, or related services are provided on an outpatient basis or on an inpatient basis for a period of more than twenty-four consecutive

hours to persons who have an illness, injury, or deformity or to aged or infirm persons requiring or receiving convalescent care.

(2) Hospital includes a facility or part of a facility which provides space for a general acute hospital, a rehabilitation hospital, a long-term care hospital, a critical access hospital, or a psychiatric or mental hospital.

(3) Hospital does not include a health care practitioner facility in which persons do not receive care or treatment for a period of more than twenty-four consecutive hours.

Source: Laws 2000, LB 819, § 19.

71-420 Intermediate care facility, defined.

Intermediate care facility means a facility where shelter, food, and nursing care or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled and do not require hospital or skilled nursing facility care.

Source: Laws 2000, LB 819, § 20.

71-421 Intermediate care facility for the mentally retarded, defined.

Intermediate care facility for the mentally retarded means a facility where shelter, food, and training or habilitation services, advice, counseling, diagnosis, treatment, care, nursing care, or related services are provided for a period of more than twenty-four consecutive hours to four or more persons residing at such facility who have mental retardation or related conditions, including epilepsy, cerebral palsy, or other developmental disabilities.

Source: Laws 2000, LB 819, § 21.

71-422 Long-term care hospital, defined.

Long-term care hospital means a hospital or any distinct part of a hospital that provides the care and services of an intermediate care facility, a nursing facility, or a skilled nursing facility.

Source: Laws 2000, LB 819, § 22.

71-423 Mental health center, defined.

Mental health center means a facility where shelter, food, and counseling, diagnosis, treatment, care, or related services are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 23.

71-424 Nursing facility, defined.

Nursing facility means a facility where medical care, nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Source: Laws 2000, LB 819, § 24.

71-425 Pharmacy, defined.

Pharmacy means a facility advertised as a pharmacy, drug store, hospital pharmacy, dispensary, or any combination of such titles where drugs or devices are dispensed as defined in the Pharmacy Practice Act.

Source: Laws 2000, LB 819, § 25; Laws 2001, LB 398, § 66; Laws 2007, LB463, § 1180.

Cross References

Pharmacy Practice Act, see section 38-2801.

71-426 Psychiatric or mental hospital, defined.

Psychiatric or mental hospital means a hospital that provides psychiatric services on an inpatient or outpatient basis to persons who have a mental disease, disorder, or disability.

Source: Laws 2000, LB 819, § 26.

71-427 Rehabilitation hospital, defined.

Rehabilitation hospital means a hospital that provides an integrated program of medical and other services for the rehabilitation of disabled persons.

Source: Laws 2000, LB 819, § 27.

71-427.01 Representative peer review organization, defined.

Representative peer review organization means a utilization and quality control peer review organization as defined in section 1152 of the Social Security Act, 42 U.S.C. 1320c-1, as such section existed on September 1, 2007.

Source: Laws 2007, LB203, § 3.

71-428 Respite care service, defined.

(1) Respite care service means a person or any legal entity that provides short-term temporary care on an intermittent basis to persons with special needs when the person's primary caregiver is unavailable to provide such care.

(2) Respite care service does not include:

(a) A person or any legal entity which is licensed under the Health Care Facility Licensure Act and which provides respite care services at the licensed location;

(b) A person or legal entity which is licensed to provide child care to thirteen or more children under the Child Care Licensing Act or which is licensed as a group home or child-caring agency under sections 71-1901 to 71-1906.01;

(c) An agency that recruits, screens, or trains a person to provide respite care;

(d) An agency that matches a respite care service or other providers of respite care with a person with special needs, or refers a respite care service or other providers of respite care to a person with special needs, unless the agency receives compensation for such matching or referral from the service or provider or from or on behalf of the person with special needs;

(e) A person who provides respite care to fewer than eight unrelated persons in any seven-day period in his or her home or in the home of the recipient of the respite care; or

(f) A nonprofit agency that provides group respite care for no more than eight hours in any seven-day period.

Source: Laws 2000, LB 819, § 28; Laws 2002, LB 1062, § 40; Laws 2004, LB 1005, § 43; Laws 2005, LB 2, § 1.

Cross References

Child Care Licensing Act, see section 71-1908.

71-429 Skilled nursing facility, defined.

Skilled nursing facility means a facility where medical care, skilled nursing care, rehabilitation, or related services and associated treatment are provided for a period of more than twenty-four consecutive hours to persons residing at such facility who are ill, injured, or disabled.

Source: Laws 2000, LB 819, § 29.

71-430 Substance abuse treatment center, defined.

(1) Substance abuse treatment center means a facility, including any private dwelling, where shelter, food, and care, treatment, maintenance, or related services are provided in a group setting to persons who are substance abusers.

(2) Substance abuse treatment center includes programs and services that are provided on an outpatient basis primarily or exclusively to persons who are substance abusers but does not include services that can be rendered only by a physician or within a hospital.

(3) For purposes of this section:

(a) Substance abuse means the abuse of substances which have significant mood-changing or perception-changing capacities, which are likely to be physiologically or psychologically addictive, and the continued use of which may result in negative social consequences; and

(b) Abuse means the use of substances in ways that have or are likely to have significant adverse social consequences.

Source: Laws 2000, LB 819, § 30.

71-431 Treatment, defined.

Treatment means a therapy, modality, product, device, or other intervention used to maintain well being or to diagnose, assess, alleviate, or prevent a disability, injury, illness, disease, or other similar condition.

Source: Laws 2000, LB 819, § 31.

71-432 Health care facility; health care service; licensure required.

A health care facility or health care service shall not be established, operated, or maintained in this state without first obtaining a license issued by the department under the Health Care Facility Licensure Act. No facility or service shall hold itself out as a health care facility or health care service or as providing health care services unless licensed under the act. The department shall issue a license to health care facilities and health care services that satisfy the requirements for licensure under the act.

Source: Laws 2000, LB 819, § 32; Laws 2002, LB 1062, § 41.

71-433 Health care facility; health care service; license; application.

(1) An applicant for an initial or renewal license to operate a health care facility or health care service required to be licensed under the Health Care Facility Licensure Act shall file a written application with the department. The application shall be accompanied by the license fee set pursuant to section 71-434 and shall set forth the full name and address of the facility or service to be licensed, the full name and address of the owner of such facility or service, the names of all persons in control of the facility or service, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) two of its members, if the applicant is a limited liability company, (c) two of its officers, if the applicant is a corporation, or (d) the head of the governmental unit having jurisdiction over the facility or service to be licensed, if the applicant is a governmental unit.

Source: Laws 2000, LB 819, § 33.

71-434 License fees.

(1) Licensure activities under the Health Care Facility Licensure Act shall be funded by license fees. An applicant for an initial or renewal license under section 71-433 shall pay a license fee as provided in this section.

(2) License fees shall include a base fee of fifty dollars and an additional fee based on:

(a) Variable costs to the department of inspections, architectural plan reviews, and receiving and investigating complaints, including staff salaries, travel, and other similar direct and indirect costs;

(b) The number of beds available to persons residing at the health care facility;

(c) The program capacity of the health care facility or health care service; or

(d) Other relevant factors as determined by the department.

Such additional fee shall be no more than two thousand six hundred dollars for a hospital or a health clinic operating as an ambulatory surgical center, no more than two thousand dollars for an assisted-living facility, a health clinic providing hemodialysis or labor and delivery services, an intermediate care facility, an intermediate care facility for the mentally retarded, a nursing facility, or a skilled nursing facility, no more than one thousand dollars for home health agencies, hospice services, and centers for the developmentally disabled, and no more than seven hundred dollars for all other health care facilities and health care services.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect the fee provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall collect a fee from any applicant or licensee requesting an informal conference with a representative peer review organization under section 71-452 to cover all costs and expenses associated with such conference.

(6) The department shall adopt and promulgate rules and regulations for the establishment of license fees under this section.

(7) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of health care facilities and health care services.

Source: Laws 2000, LB 819, § 34; Laws 2002, LB 1062, § 42; Laws 2003, LB 415, § 1; Laws 2005, LB 246, § 1; Laws 2007, LB203, § 4; Laws 2007, LB296, § 371.

71-435 License; duration; issuance.

(1) Except as otherwise provided in the Health Care Facility Licensure Act, licenses issued pursuant to the act shall expire one year after the date of issuance or on uniform annual dates established by the department.

(2) Licenses shall be issued only for the premises and persons named in the application and shall not be transferable or assignable. Licenses, license record information, and inspection reports shall be made available by the licensee for public inspection upon request and may be displayed in a conspicuous place on the licensed premises.

Source: Laws 2000, LB 819, § 35.

71-436 License; multiple services or locations; effect.

(1) An applicant for licensure under the Health Care Facility Licensure Act shall obtain a separate license for each type of health care facility or health care service that the applicant seeks to operate. A single license may be issued for (a) a facility or service operating in separate buildings or structures on the same premises under one management, (b) an inpatient facility that provides services on an outpatient basis at multiple locations, or (c) a health clinic operating satellite clinics on an intermittent basis within a portion of the total geographic area served by such health clinic and sharing administration with such clinics.

(2) The department may issue one license document that indicates the various types of health care facilities or health care services for which the entity is licensed. The department may inspect any of the locations that are covered by the license. If an entity is licensed in multiple types of licensure for one location, the department shall conduct all required inspections simultaneously for all types of licensure when requested by the entity.

Source: Laws 2000, LB 819, § 36; Laws 2002, LB 1062, § 43.

71-437 Provisional license; when issued.

A provisional license may be issued to a health care facility or health care service that substantially complies with requirements for licensure under the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act if the failure to fully comply with such requirements does not pose an imminent danger of death or physical harm to the persons residing in or served by such facility or service. Such provisional license shall

be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the facility or service fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2000, LB 819, § 37.

71-438 Accreditation or certification; when accepted.

(1) The department may accept accreditation or certification by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the health care facility or health care service complies with the rules, regulations, and standards adopted and promulgated under the Health Care Facility Licensure Act.

(2) A facility or service licensed pursuant to an accreditation or certification accepted by the department shall notify the department if such accreditation or certification has been sanctioned, modified, terminated, or withdrawn. After giving such notice, the facility or service may continue to operate unless the department determines that the facility or service no longer meets the qualifications for licensure under the act.

Source: Laws 2000, LB 819, § 38; Laws 2002, LB 1062, § 44.

71-439 Waiver of rule, regulation, or standard; when; procedure.

(1) The department may waive any rule, regulation, or standard adopted and promulgated by the department relating to construction or physical plant requirements of a licensed health care facility or health care service upon proof by the licensee satisfactory to the department (a) that such waiver would not unduly jeopardize the health, safety, or welfare of the persons residing in or served by the facility or service, (b) that such rule, regulation, or standard would create an unreasonable hardship for the facility or service, and (c) that such waiver would not cause the State of Nebraska to fail to comply with any applicable requirements of medicare or medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(2) In evaluating the issue of unreasonable hardship, the department shall consider the following:

(a) The estimated cost of the modification or installation;

(b) The extent and duration of the disruption of the normal use of areas used by persons residing in or served by the facility or service resulting from construction work;

(c) The estimated period over which the cost would be recovered through reduced insurance premiums and increased reimbursement related to cost;

(d) The availability of financing; and

(e) The remaining useful life of the building.

(3) Any such waiver may be granted under such terms and conditions and for such period of time as provided in rules and regulations adopted and promulgated by the department.

Source: Laws 2000, LB 819, § 39.

71-440 Inspection by department; report.

The department may inspect or provide for the inspection of any health care facility or health care service licensed under the Health Care Facility Licensure Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. The department shall issue an inspection report and provide a copy of the report to the facility or service within ten working days after the completion of an inspection.

Source: Laws 2000, LB 819, § 40.

71-441 Inspection by State Fire Marshal; fee.

The department may request the State Fire Marshal to inspect any applicant for licensure or any licensee for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 payable by such applicant or licensee. The State Fire Marshal may delegate such authority to make such inspections to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 2000, LB 819, § 41.

71-442 Alternative methods for assessing compliance.

In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a health care facility or health care service with the Health Care Facility Licensure Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2000, LB 819, § 42.

71-443 Findings of noncompliance; review, notice; statement of compliance; procedure.

If the inspection report issued under section 71-440 contains findings of noncompliance by a health care facility or health care service with any applicable provisions of the Health Care Facility Licensure Act or rules and regulations adopted under the act, the department shall review such findings within twenty working days after such inspection. If the findings are supported by the evidence, the department shall proceed pursuant to sections 71-446 to 71-455, except that if the findings indicate one or more violations that create no imminent danger of death or serious physical harm and no direct or immediate adverse relationship to the health, safety, or security of the persons residing in or served by the facility or service, the department may send a letter to the facility or service requesting a statement of compliance. The letter shall include a description of each such violation, a request that the facility or service submit a statement of compliance within ten working days, and a notice that the department may take further steps if the statement of compliance is not submitted. The statement of compliance shall indicate any steps which have been or will be taken to correct each violation and the period of time estimated to be necessary to correct each violation. If the facility or service fails to submit and implement a statement of compliance which indicates a good faith effort to correct the violations, the department may proceed pursuant to sections 71-446 to 71-455.

Source: Laws 2000, LB 819, § 43.

71-444 Complaints; investigation; immunity.

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Health Care Facility Licensure Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation. In making such determination, the department may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify if action is taken; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

(2) A complaint submitted to the department shall be confidential. A person submitting a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting a complaint or for disclosure of documents, records, or other information to the department.

Source: Laws 2000, LB 819, § 44.

71-445 Discrimination or retaliation prohibited.

A health care facility or health care service shall not discriminate or retaliate against a person residing in, served by, or employed at such facility or service who has initiated or participated in any proceeding authorized by the Health Care Facility Licensure Act or who has presented a complaint or provided information to the administrator of such facility or service or the Department of Health and Human Services. Such person may maintain an action for any type of relief, including injunctive and declaratory relief, permitted by law.

Source: Laws 2000, LB 819, § 45; Laws 2007, LB296, § 372.

71-446 License; temporary suspension or limitation; procedure; appeal.

(1) If the director determines that persons receiving care or treatment at a health care facility or by a health care service are in imminent danger of death or serious physical harm, he or she may temporarily suspend or temporarily limit the license of such facility or service and may order the immediate removal of such persons and the temporary closure of the facility or service pending further action by the department. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license. A hearing shall be held no later than ten days after the date of such temporary suspension or temporary limitation.

(2) A continuance of the hearing shall be granted by the department upon written request from the licensee. Such continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director shall take effect when served upon the facility or service. A copy of the notice shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the

holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(3) A temporary suspension or temporary limitation under this section shall not exceed ninety days. If a decision is not reached within that period, the temporary suspension or temporary limitation shall expire.

(4) Any person aggrieved by a decision of the department after a hearing as provided in this section may appeal under the Administrative Procedure Act.

Source: Laws 2000, LB 819, § 46.

Cross References

Administrative Procedure Act, see section 84-920.

71-447 License; denied or refused renewal; grounds.

The department may deny or refuse to renew a license under the Health Care Facility Licensure Act to any health care facility or health care service that fails to meet the requirements for licensure provided in the act or in rules and regulations adopted and promulgated under the act, including (1) failing an inspection pursuant to section 71-440, (2) failing to meet a compliance assessment standard adopted under section 71-442, (3) having had a license revoked within the two-year period preceding application, or (4) any of the grounds listed in section 71-448.

Source: Laws 2000, LB 819, § 47.

71-448 License; disciplinary action; grounds.

The Division of Public Health of the Department of Health and Human Services may take disciplinary action against a license issued under the Health Care Facility Licensure Act on any of the following grounds:

(1) Violation of any of the provisions of the Assisted-Living Facility Act, the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, or the rules and regulations adopted and promulgated under such acts;

(2) Committing or permitting, aiding, or abetting the commission of any unlawful act;

(3) Conduct or practices detrimental to the health or safety of a person residing in, served by, or employed at the health care facility or health care service;

(4) A report from an accreditation body or public agency sanctioning, modifying, terminating, or withdrawing the accreditation or certification of the health care facility or health care service;

(5) Failure to allow an agent or employee of the Department of Health and Human Services access to the health care facility or health care service for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the Department of Health and Human Services;

(6) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has submitted a complaint or information to the Department of Health and Human Services;

(7) Discrimination or retaliation against a person residing in, served by, or employed at the health care facility or health care service who has presented a grievance or information to the office of the state long-term care ombudsman;

(8) Failure to allow a state long-term care ombudsman or an ombudsman advocate access to the health care facility or health care service for the purposes of investigation necessary to carry out the duties of the office of the state long-term care ombudsman as specified in the rules and regulations adopted and promulgated by the Department of Health and Human Services;

(9) Violation of the Emergency Box Drug Act;

(10) Failure to file a report required by section 38-1,127;

(11) Violation of the Medication Aide Act;

(12) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711; or

(13) Violation of the Automated Medication Systems Act.

Source: Laws 2000, LB 819, § 48; Laws 2004, LB 1005, § 44; Laws 2007, LB296, § 373; Laws 2007, LB463, § 1181; Laws 2008, LB308, § 12.

Cross References

Assisted-Living Facility Act, see section 71-5901.
Automated Medication Systems Act, see section 71-2444.
Emergency Box Drug Act, see section 71-2410.
Medication Aide Act, see section 71-6718.
Nebraska Nursing Home Act, see section 71-6037.

71-449 License; disciplinary actions authorized.

(1) The department may impose any one or a combination of the following types of disciplinary action against the license of a health care facility or health care service:

(a) A fine not to exceed ten thousand dollars per violation;

(b) A prohibition on admissions or readmissions, a limitation on enrollment, or a prohibition or limitation on the provision of care or treatment;

(c) A period of probation not to exceed two years during which the facility or service may continue to operate under terms and conditions fixed by the order of probation;

(d) A period of suspension not to exceed three years during which the facility or service may not operate; and

(e) Revocation which is a permanent termination of the license and the licensee may not apply for a license for a minimum of two years after the effective date of the revocation.

(2) Any fine imposed and unpaid under the Health Care Facility Licensure Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the facility or service is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2000, LB 819, § 49.

71-450 License; disciplinary actions; considerations.

(1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The reasonableness of the diligence exercised by the health care facility or health care service in identifying or correcting the violation;

(c) Any previous violations committed by the facility or service; and

(d) The financial benefit to the facility or service of committing or continuing the violation.

(2) The department may adopt and promulgate rules and regulations which set forth specific violations which will result in a particular disciplinary action, including the use of scope and severity determinations.

(3) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-449.

Source: Laws 2000, LB 819, § 50.

71-451 License; disciplinary actions; notice.

(1) If the department determines to deny, refuse renewal of, or take disciplinary action against a license, the department shall send to the applicant or licensee, by certified mail to the last address shown on the records of the department, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, or regulation violated, and the type of disciplinary action which is pending. The denial, refusal to renew, or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for an informal conference or a hearing pursuant to section 71-452.

(2) A copy of the notice in subsection (1) of this section shall also be mailed to the holder of the license if the holder of such license is not actually involved in the daily operation of the facility or service. If the holder of the license is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

Source: Laws 2000, LB 819, § 51.

71-452 License; disciplinary actions; rights of licensee.

Within fifteen days after service of a notice under section 71-451, an applicant or a licensee shall notify the director in writing that the applicant or licensee (1) desires to contest the notice and request an informal conference with a representative of the department in person or by other means at the request of the applicant or licensee, (2) desires to contest the notice and request an informal conference with a representative peer review organization with which the department has contracted, (3) desires to contest the notice and request a hearing, or (4) does not contest the notice. If the director does not receive such notification within such fifteen-day period, the action of the department shall be final.

Source: Laws 2000, LB 819, § 52; Laws 2007, LB203, § 5.

71-453 License; disciplinary actions; informal conference; procedure.

(1) The director shall assign a representative of the department, other than the individual who did the inspection upon which the notice is based, or a representative peer review organization to hold an informal conference with the applicant or licensee within thirty days after receipt of a request made under subdivision (1) or (2) of section 71-452. Within twenty working days after the conclusion of the conference, the representative or representative peer review organization shall report in writing to the department its conclusion regarding whether to affirm, modify, or dismiss the notice and the specific reasons for the conclusion and shall provide a copy of the report to the director and the applicant or licensee.

(2) Within ten working days after receiving a report under subsection (1) of this section, the department shall consider such report and affirm, modify, or dismiss the notice and shall state the specific reasons for such decision, including, if applicable, the specific reasons for not adopting the conclusion of the representative or representative peer review organization as contained in such report. The department shall provide the applicant or licensee with a copy of such decision by certified mail to the last address shown in the records of the department. If the applicant or licensee desires to contest an affirmed or modified notice, the applicant or licensee shall notify the director in writing within five working days after receiving such decision that the applicant or licensee requests a hearing.

(3) If an applicant or a licensee successfully demonstrates during an informal conference or a hearing that the deficiencies should not have been cited in the notice, (a) the deficiencies shall be removed from the notice and the deficiency statement and (b) any sanction imposed solely as a result of those cited deficiencies shall be rescinded.

Source: Laws 2000, LB 819, § 53; Laws 2007, LB203, § 6.

71-454 License; disciplinary actions; hearings; procedure.

(1) If the applicant or licensee requests a hearing under section 71-452, the department shall hold a hearing and give the applicant or licensee the right to present such evidence as may be proper. On the basis of such evidence, the director shall affirm, modify, or set aside the determination. A copy of such decision setting forth the findings of facts and the particular reasons upon which the decision is based shall be sent by either registered or certified mail to the applicant or licensee. The decision shall become final thirty days after the copy is mailed unless the applicant or licensee, within such thirty-day period, appeals the decision under section 71-455.

(2) The procedure governing hearings authorized by this section shall be in accordance with rules and regulations adopted and promulgated by the department. A full and complete record shall be kept of all proceedings. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by rule and regulation.

Source: Laws 2000, LB 819, § 54.

71-455 Appeals.

Any party to a decision of the department under the Health Care Facility Licensure Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 819, § 55.

Cross References

Administrative Procedure Act, see section 84-920.

71-456 License; reinstatement; when; procedure.

(1) A license issued under the Health Care Facility Licensure Act that has lapsed for nonpayment of fees is eligible for reinstatement at any time by applying to the department and paying the applicable fee as provided in section 71-434.

(2) A license that has been disciplined by being placed on suspension is eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable renewal fee provided in section 71-434.

(3) A license that has been disciplined by being placed on probation is eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(4) A license that has been disciplined by being placed on probation or suspension may be reinstated prior to the completion of the term of such probation or suspension as provided in this subsection. Upon petition from a licensee and after consideration of materials submitted with such petition, the director may order an inspection or other investigation of the licensee. On the basis of material submitted by the licensee and the results of any inspection or investigation by the department, the director shall determine whether to grant full reinstatement of the license, to modify the probation or suspension, or to deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such thirty-day period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases. Any party to the decision shall have a right to judicial review under the Administrative Procedure Act.

(5) A license that has been disciplined by being revoked is not eligible for relicensure until two years after the date of such revocation. A reapplication for an initial license may be made at the end of such two-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2000, LB 819, § 56; Laws 2002, LB 1062, § 45.

Cross References

Administrative Procedure Act, see section 84-920.

71-457 Rules and regulations.

(1) To protect the health, safety, and welfare of the public and to insure to the greatest extent possible the efficient, adequate, and safe practice of health care in any health care facility or health care service licensed under the Health Care Facility Licensure Act, the department shall adopt, promulgate, and enforce rules, regulations, and standards with respect to the different types of health care facilities and health care services, except nursing facilities and skilled nursing facilities, designed to further the accomplishment of the purposes of the act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department.

(2) The department, with the advice of the Nursing Home Advisory Council, shall adopt, promulgate, and enforce rules, regulations, and standards with respect to nursing facilities and skilled nursing facilities. Such rules, regulations, and standards shall be in compliance with the Nebraska Nursing Home Act. Such rules, regulations, and standards shall be modified, amended, or rescinded from time to time in the public interest by the department with the advice of the Nursing Home Advisory Council.

Source: Laws 2000, LB 819, § 57.

Cross References

Nebraska Nursing Home Act, see section 71-6037.

71-458 Violations; penalty.

Any person who establishes, operates, or maintains a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required under the act or who violates any of the provisions of the act shall be guilty of a Class I misdemeanor. Each day such facility or service operates after a first conviction shall be considered a subsequent offense.

Source: Laws 2000, LB 819, § 58.

71-459 Injunction.

The department may maintain an action in the name of the state for an injunction against any person for establishing, operating, or maintaining a health care facility or health care service subject to the Health Care Facility Licensure Act without first obtaining a license as required by the act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a health care facility or health care service without obtaining a license to do so, without alleging any further or more particular facts concerning the same.

Source: Laws 2000, LB 819, § 59.

71-460 Transferred to section 71-5903.

71-461 Transferred to section 71-5904.

71-462 Repealed. Laws 2001, LB 398, § 96.

71-463 Repealed. Laws 2004, LB 1005, § 144.

71-464 Itemized billing statement; duty to provide.

A health care facility or a health care practitioner facility, upon written request of a patient or a patient's representative, shall provide an itemized billing statement, including diagnostic codes, without charge to the patient or patient's representative. Such itemized billing statement shall be provided within fourteen days after the request.

Source: Laws 2009, LB288, § 32.

ARTICLE 5
DISEASES

Cross References

Animals, diseased, reports, destruction, disposition, see sections 54-742 to 54-753.
Discrimination because of AIDS prohibited, see sections 20-167 to 20-169.
Municipalities, regulatory powers of:
Cities of the first class, see sections 16-238, 16-321, and 16-405.
Cities of the metropolitan class, see sections 14-103 and 14-508.
Cities of the primary class, see sections 15-236 and 15-403.
Cities of the second class and villages, see sections 17-121, 17-207, 17-568.01, and 17-613.

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

Section

(c) METABOLIC DISEASES

(d) CERVICAL CANCER

(e) IMMUNIZATION AND VACCINES

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

(g) INFECTED HEALTH CARE WORKERS

(h) EXCHANGE OF IMMUNIZATION INFORMATION

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

(j) GENETIC TESTS

(a) CONTAGIOUS, INFECTIOUS, AND MALIGNANT DISEASES

71-501 Contagious diseases; local public health department; county board of health; powers and duties.

(1) The local public health department as defined in section 71-1626 or the county board of a county that has not established or joined in the establishment of a local public health department shall make and enforce regulations to

prevent the introduction and spread of contagious, infectious, and malignant diseases in the county or counties under its jurisdiction.

(2) The county board of a county that has not established or joined in the establishment of a local public health department shall establish a county board of health consisting of three members: The sheriff, who shall be chairperson and quarantine officer; a physician who resides permanently in the county, but if the county has no resident physician, then one conveniently situated, who shall be medical adviser, and who shall be chosen by the county board; and the county clerk, who shall be secretary. The county board may pay the chairperson of the county board of health a salary for such services not to exceed fifty dollars per month, as fixed by the county board.

(3) The local public health department or the county board of health shall make rules and regulations to safeguard the health of the people and prevent nuisances and insanitary conditions and shall enforce and provide penalties for the violation of such rules and regulations for the county or counties under its jurisdiction except for incorporated cities and villages. If the local public health department or the county board of health fails to enact such rules and regulations, it shall enforce the rules and regulations adopted and promulgated by the Department of Health and Human Services.

Source: Laws 1901, c. 49, § 1, p. 403; Laws 1903, c. 62, § 1, p. 358; Laws 1911, c. 79, § 1, p. 328; Laws 1919, c. 55, § 1, p. 159; Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 1, p. 779; Laws 1921, c. 71, § 1, p. 270; C.S.1922, § 8222; C.S.1929, § 71-2301; R.S.1943, § 71-501; Laws 1951, c. 228, § 1, p. 829; Laws 1971, LB 43, § 1; Laws 1996, LB 1044, § 486; Laws 1997, LB 197, § 2; Laws 1999, LB 272, § 23; Laws 2004, LB 1005, § 53; Laws 2007, LB296, § 374.

A county board of health may be compelled by mandamus to abate a nuisance endangering health where the existence of the nuisance is not in dispute. State ex rel. Glatfelter v. Clark, 106 Neb. 59, 182 N.W. 569 (1921).

Employment of a physician to aid in bringing an epidemic under control is within the express authority given the county board to provide regulations to prevent the spread of contagious diseases. Bartlett v. Dahlsten, 104 Neb. 738, 178 N.W. 636 (1920).

A county is not liable for necessaries furnished to persons, not paupers, while quarantined for the public safety where such liability is not expressly imposed by statute. Dodge County v. Diers, 69 Neb. 361, 95 N.W. 602 (1903).

71-501.01 Acquired immunodeficiency syndrome; legislative findings.

The Legislature recognizes that acquired immunodeficiency syndrome, AIDS, is an incurable life-threatening illness which is epidemic in the United States. Persons who suffer from acquired immunodeficiency syndrome and its related diseases and conditions must receive appropriate and humane care. All members of the general public must have accurate and complete information concerning the characteristics of the disease and the avoidance of infection. The public must be motivated to protect themselves and others against the spread of the disease. The successful containment of the epidemic calls for strong commitment and support from all segments of our society. It is the intent of the Legislature to authorize a program of services to protect the public health.

Source: Laws 1988, LB 1012, § 1.

71-501.02 Acquired immunodeficiency syndrome program; department; powers.

The Department of Health and Human Services may establish and administer a statewide acquired immunodeficiency syndrome program for the purpose of

providing education, prevention, detection, and counseling services to protect the public health. In order to implement the program, the department may:

(1) Apply for, receive, and administer federal and other public and private funds and contract for services, equipment, and property as necessary to use such funds for the purposes specified in section 71-501.01 and this section;

(2) Provide education and training regarding acquired immunodeficiency syndrome and its related diseases and conditions to the general public and to health care providers. The department may charge fees based on administrative costs for such services. Any fees collected shall be deposited in the state treasury and shall be credited to the Health and Human Services Cash Fund;

(3) Provide resource referrals for medical care and social services to persons affected by acquired immunodeficiency syndrome and its related diseases and conditions;

(4) Contract or provide for voluntary, anonymous, or confidential screening, testing, and counseling services. All sites providing such services pursuant to a contract with the department shall provide services on an anonymous basis if so requested by the individual seeking such services. The department may charge and permit its contractors to charge an administrative fee or may request donations to defer the cost of the services but shall not deny the services for failure to pay any administrative fee or for failure to make a donation;

(5) Cooperate with the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor for the purposes of research into and investigation of acquired immunodeficiency syndrome and its related diseases and conditions; and

(6) To the extent funds are available, offer services that are culturally and language specific upon request to persons identified as having tested positive for the human immunodeficiency virus infection. Such services shall include, but not be limited to, posttest counseling, partner notification, and such early intervention services as case management, behavior modification and support services, laboratory quantification of lymphocyte subsets, immunizations, Mantoux testing for tuberculosis, prophylactic treatment, and referral for other medical and social services.

Source: Laws 1988, LB 1012, § 2; Laws 1994, LB 819, § 1; Laws 1996, LB 1044, § 487; Laws 2005, LB 301, § 12; Laws 2007, LB296, § 375.

71-502 Communicable diseases; rules and regulations; control; powers of Department of Health and Human Services.

The Department of Health and Human Services shall have supervision and control of all matters relating to necessary communicable disease control and shall adopt and promulgate such proper and reasonable general rules and regulations as will best serve to promote communicable disease control throughout the state and prevent the introduction or spread of disease. In addition to such general and standing rules and regulations, (1) in cases of emergency in which the health of the people of the entire state or any locality in the state is menaced by or exposed to any contagious, infectious, or epidemic disease, illness, or poisoning, (2) when a local board of health having jurisdic-

tion of a particular locality fails or refuses to act with sufficient promptitude and efficiency in any such emergency, or (3) in localities in which no local board of health has been established, as provided by law, the department shall adopt, promulgate, and enforce special communicable disease control rules and regulations such as the occasion and proper protection of the public health may require. All necessary expenses incurred in the enforcement of such rules and regulations shall be paid by the city, village, or county for and within which the same have been incurred. All officers and other persons shall obey and enforce such communicable disease control rules and regulations as may be adopted and promulgated by the department.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 2, p. 779; C.S.1922, § 8223; C.S.1929, § 71-2302; R.S.1943, § 71-502; Laws 1977, LB 39, § 149; Laws 1986, LB 763, § 1; Laws 1988, LB 1012, § 3; Laws 1996, LB 1044, § 488; Laws 2007, LB296, § 376.

Sanitation and quarantine are placed under the former Department of Health. Petersen Baking Co. v. Bryan, 124 Neb. 464, 247 N.W. 39 (1933).

A physician, acting under orders of the state board of health to quarantine a disease in a county, may recover from the county actual expenses incurred and the value of services rendered. Shidler v. York County, 95 Neb. 652, 146 N.W. 949 (1914).

71-502.01 Sexually transmitted diseases; enumerated.

Sexually transmitted diseases are declared to be contagious, infectious, communicable, and dangerous to the public health. Sexually transmitted diseases shall include, but not be limited to, syphilis, gonorrhea, chancroid, and such other sexually transmitted diseases as the Department of Health and Human Services may from time to time specify.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 1, p. 802; C.S.1922, § 8298; C.S.1929, § 71-2901; R.S.1943, § 71-1101; R.S.1943, (1986), § 71-1101; Laws 1988, LB 1012, § 4; Laws 1996, LB 1044, § 489; Laws 2007, LB296, § 377.

71-502.02 Sexually transmitted diseases; rules and regulations.

The Department of Health and Human Services shall adopt and promulgate such rules and regulations as shall, in its judgment, be necessary to control and suppress sexually transmitted diseases.

Source: Laws 1919, c. 190, tit. VI, art. II, div. XVII, § 2, p. 802; C.S.1922, § 8299; C.S.1929, § 71-2902; R.S.1943, § 71-1102; R.S.1943, (1986), § 71-1102; Laws 1988, LB 1012, § 5; Laws 1996, LB 1044, § 490; Laws 2007, LB296, § 378.

71-502.03 Pregnant women; subject to syphilis test; fee.

Every physician, or other person authorized by law to practice obstetrics, who is attending a pregnant woman in the state for conditions relating to her pregnancy during the period of gestation or at delivery shall take or cause to be taken a sample of the blood of such woman at the time of the first examination and shall submit such sample to an approved laboratory for a standard serological test for syphilis. Every other person permitted by law to attend pregnant women in the state, but not permitted by law to take blood samples, shall cause such a sample of the blood of such pregnant women to be taken by a physician, duly licensed to practice either medicine and surgery or obstetrics, or other person authorized by law to take such sample of blood and have such

sample submitted to an approved laboratory for a standard serological test for syphilis. The results of all such laboratory tests shall be reported to the Department of Health and Human Services on standard forms prescribed and furnished by the department. For the purpose of this section, a standard serological test shall be a test for syphilis approved by the department and shall be made at a laboratory approved to make such tests by the department. Such laboratory tests, as are required by this section, shall be made on request at the Department of Health and Human Services Laboratory. A fee may be established by rule and regulation by the department to defray no more than the actual cost of such tests. Such fee shall be deposited in the state treasury and credited to the Health and Human Services Cash Fund. In reporting every birth and stillbirth, physicians and others required to make such reports shall state on the portion of the certificate entitled For Medical and Health Use Only whether a blood test for syphilis has been made upon a specimen of blood taken from the woman who bore the child for which a birth or stillbirth certificate is filed and the approximate date when the specimen was taken. No birth certificate shall show the result of such test. If no test was made, the reason shall be stated. The department shall provide the necessary clerical, printing, and other expenses in carrying out this section.

Source: Laws 1943, c. 149, § 1, p. 536; R.S.1943, § 71-1116; Laws 1967, c. 447, § 1, p. 1390; Laws 1983, LB 617, § 19; Laws 1986, LB 1047, § 3; R.S.1943, (1986), § 71-1116; Laws 1988, LB 1012, § 6; Laws 1996, LB 1044, § 491; Laws 2007, LB296, § 379.

71-502.04 Laboratory; test results; notification required.

Any person who is in charge of a clinical laboratory in which a laboratory examination of any specimen derived from the human body yields microscopical, cultural, immunological, serological, or other evidence of disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify shall promptly notify the official local health department or the Department of Health and Human Services of such findings.

Each notification shall give the date and result of the test performed, the name and, when available, the age of the person from whom the specimen was obtained, and the name and address of the physician for whom such examination or test was performed. A legible copy of the laboratory report shall be deemed satisfactory notification.

Source: Laws 1967, c. 447, § 2, p. 1391; R.S.1943, (1986), § 71-1117; Laws 1988, LB 1012, § 7; Laws 1992, LB 1019, § 46; Laws 1994, LB 819, § 2; Laws 1996, LB 1044, § 492; Laws 1997, LB 197, § 3; Laws 2007, LB296, § 380.

71-503 Contagious, infectious, or other disease or illness; poisoning; duty of attending physician; violation; penalty.

All attending physicians shall report to the official local health department or the Department of Health and Human Services promptly, upon the discovery thereof, the existence of any contagious or infectious diseases and such other disease, illness, or poisoning as the Department of Health and Human Services may from time to time specify. Any attending physician, knowing of the existence of any such disease, illness, or poisoning, who fails promptly to report

the same in accordance with this section, shall be deemed guilty of a Class V misdemeanor for each offense.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 3, p. 780; C.S.1922, § 8224; C.S.1929, § 71-2303; R.S.1943, § 71-503; Laws 1967, c. 441, § 1, p. 1381; Laws 1977, LB 39, § 150; Laws 1986, LB 763, § 2; Laws 1996, LB 1044, § 493; Laws 2007, LB296, § 381.

71-503.01 Reports required; confidentiality; limitations on use; immunity.

Whenever any statute of the state, any ordinance or resolution of a municipal corporation or political subdivision enacted pursuant to statute, or any rule or regulation of an administrative agency adopted and promulgated pursuant to statute requires medical practitioners or other persons to report cases of communicable diseases, including sexually transmitted diseases and other reportable diseases, illnesses, or poisonings or to give notification of positive laboratory findings to the Department of Health and Human Services or any county or city board of health, local health department established pursuant to sections 71-1626 to 71-1636, city health department, local health agency, or state or local public official exercising the duties and responsibilities of any board of health or health department, such reports or notifications and the resulting investigations shall be confidential except as provided in this section, shall not be subject to subpoena, and shall be privileged and inadmissible in evidence in any legal proceeding of any kind or character and shall not be disclosed to any other department or agency of the State of Nebraska.

In order to further the protection of public health, such reports and notifications may be disclosed by the Department of Health and Human Services, the official local health department, and the person making such reports or notifications to the Centers for Disease Control and Prevention of the Public Health Service of the United States Department of Health and Human Services or its successor in such a manner as to ensure that the identity of any individual cannot be ascertained. To further protect the public health, the Department of Health and Human Services, the official local health department, and the person making the report or notification may disclose to the official state and local health departments of other states, territories, and the District of Columbia such reports and notifications, including sufficient identification and information so as to ensure that such investigations as deemed necessary are made.

The appropriate board, health department, agency, or official may: (1) Publish analyses of such reports and information for scientific and public health purposes in such a manner as to ensure that the identity of any individual concerned cannot be ascertained; (2) discuss the report or notification with the attending physician; and (3) make such investigation as deemed necessary.

Any medical practitioner, any official health department, the Department of Health and Human Services, or any other person making such reports or notifications shall be immune from suit for slander or libel or breach of privileged communication based on any statements contained in such reports and notifications.

Source: Laws 1967, c. 441, § 2, p. 1381; Laws 1986, LB 763, § 3; Laws 1988, LB 1012, § 8; Laws 1991, LB 703, § 25; Laws 1994, LB 819, § 3; Laws 1996, LB 1044, § 494; Laws 1997, LB 197, § 4; Laws 2005, LB 301, § 13; Laws 2007, LB296, § 382.

71-504 Sexually transmitted diseases; minors; treatment without consent of parent; expenses.

The chief medical officer as designated in section 81-3115, or local director of health, if a physician, or his or her agent, or any physician, upon consultation by any person as a patient, shall, with the consent of such person who is hereby granted the right of giving such consent, make or cause to be made a diagnostic examination for sexually transmitted diseases and prescribe for and treat such person for sexually transmitted diseases including prophylactic treatment for exposure to sexually transmitted diseases whenever such person is suspected of having a sexually transmitted disease or contact with anyone having a sexually transmitted disease. All such examinations and treatment may be performed without the consent of or notification to the parent, parents, guardian, or any other person having custody of such person. In any such case, the chief medical officer, or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of having made such diagnostic examination or rendered such treatment, but such immunity shall not apply to any negligent acts or omissions. The chief medical officer or local director of health, if a physician, or his or her agent, or the physician shall incur no civil or criminal liability by reason of any adverse reaction to medication administered if reasonable care is taken to elicit from any such person who is under twenty years of age any history of sensitivity or previous adverse reaction to medication. Parents shall be liable for expenses of such treatment to minors under their custody. In the event such person is affected with a sexually transmitted disease, the chief medical officer or local director of health may cause an interview of the person by a sexually transmitted disease investigator to secure the names of sexual contacts so that appropriate investigation can be made in an effort to locate and eliminate sources of infection.

Source: Laws 1972, LB 1096, § 1; R.S.1943, (1986), § 71-1121; Laws 1988, LB 1012, § 9; Laws 1996, LB 1044, § 495; Laws 1997, LB 197, § 5; Laws 2007, LB296, § 383.

71-505 Department of Health and Human Services; public health; duties; fees.

(1) The Department of Health and Human Services shall secure and maintain in all parts of the state an official record and notification of reportable diseases, illnesses, or poisonings, provide popular literature upon the different branches of public health and distribute the same free throughout the state in a manner best calculated to promote that interest, prepare and exhibit in the different communities of the state public health demonstrations accompanied by lectures and audiovisual aids, provide preventive services to protect the public, and in all other effective ways prevent the origin and spread of disease and promote the public health.

(2) The department may provide technical services to and on behalf of health care providers and may charge fees for such services in an amount sufficient to recover the administrative costs of such services. Such fees shall be paid into the state treasury and credited to the Health and Human Services Cash Fund.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 5, p. 781; C.S.1922, § 8226; C.S.1929, § 71-2305; R.S.1943, § 71-505; Laws 1986, LB 763, § 4; Laws 1988, LB 1012, § 10; Laws 1996, LB 1044, § 496; Laws 2005, LB 301, § 14; Laws 2007, LB296, § 384.

71-506 Violations; penalty; enforcement.

Any person violating any of the provisions of sections 71-501 to 71-505, 71-507 to 71-513, or 71-514.01 to 71-514.05 or section 71-531 shall be guilty of a Class V misdemeanor for each offense, except that any person who willfully or maliciously discloses, except as provided by law, the content of any reports, notifications, or resulting investigations made under section 71-502 and subject to the confidentiality provisions of section 71-503.01 shall be guilty of a Class III misdemeanor. The Attorney General or the county attorney may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person or any private or public entity for violating sections 71-501 to 71-505, 71-507 to 71-513, or 71-514.01 to 71-514.05 or section 71-531 and the rules and regulations adopted and promulgated under such sections.

Source: Laws 1919, c. 190, tit. VI, art. II, div. VIII, § 6, p. 781; C.S.1922, § 8227; C.S.1929, § 71-2306; R.S.1943, § 71-506; Laws 1977, LB 39, § 151; Laws 1988, LB 1012, § 11; Laws 1989, LB 157, § 8; Laws 1994, LB 819, § 4.

71-507 Terms, defined.

For purposes of sections 71-507 to 71-513:

(1) Alternate facility means a facility other than a health care facility that receives a patient transported to the facility by an emergency services provider;

(2) Department means the Department of Health and Human Services;

(3) Designated physician means the physician representing the emergency services provider as identified by name, address, and telephone number on the significant exposure report form. The designated physician shall serve as the contact for notification in the event an emergency services provider believes he or she has had significant exposure to an infectious disease or condition. Each emergency services provider shall designate a physician as provided in subsection (2) of section 71-509;

(4) Emergency services provider means an out-of-hospital emergency care provider licensed pursuant to the Emergency Medical Services Practice Act, a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a funeral director, a paid or volunteer firefighter, a school district employee, and a person rendering emergency care gratuitously as described in section 25-21,186;

(5) Funeral director means a person licensed under section 38-1414 or an employee of such a person with responsibility for transport or handling of a deceased human;

(6) Funeral establishment means a business licensed under section 38-1419;

(7) Health care facility has the meaning found in sections 71-419, 71-420, 71-424, and 71-429 or any facility that receives patients of emergencies who are transported to the facility by emergency services providers;

(8) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, diphtheria, plague, hemorrhagic fevers, rabies, and such other diseases as the department may by rule and regulation specify;

(9) Patient means an individual who is sick, injured, wounded, deceased, or otherwise helpless or incapacitated;

(10) Patient's attending physician means the physician having the primary responsibility for the patient as indicated on the records of a health care facility;

(11) Provider agency means any law enforcement agency, fire department, emergency medical service, funeral establishment, or other entity which employs or directs emergency services providers or public safety officials;

(12) Public safety official means a sheriff, a deputy sheriff, a police officer, a state highway patrol officer, a paid or volunteer firefighter, a school district employee, and any civilian law enforcement employee or volunteer performing his or her duties, other than those as an emergency services provider;

(13) Responsible person means an individual who has been designated by an alternate facility to carry out the facility's responsibilities under sections 71-507 to 71-513. A responsible person may be designated on a case-by-case basis;

(14) Significant exposure means a situation in which the body fluids, including blood, saliva, urine, respiratory secretions, or feces, of a patient or individual have entered the body of an emergency services provider or public safety official through a body opening including the mouth or nose, a mucous membrane, or a break in skin from cuts or abrasions, from a contaminated needlestick or scalpel, from intimate respiratory contact, or through any other situation when the patient's or individual's body fluids may have entered the emergency services provider's or public safety official's body or when an airborne pathogen may have been transmitted from the patient or individual to the emergency services provider or public safety official; and

(15) Significant exposure report form means the form used by the emergency services provider to document information necessary for notification of significant exposure to an infectious disease or condition.

Source: Laws 1989, LB 157, § 1; Laws 1991, LB 244, § 2; Laws 1992, LB 1138, § 20; Laws 1994, LB 1210, § 111; Laws 1996, LB 1044, § 497; Laws 1996, LB 1155, § 27; Laws 1997, LB 138, § 46; Laws 1997, LB 608, § 5; Laws 1999, LB 781, § 1; Laws 2000, LB 819, § 95; Laws 2003, LB 55, § 1; Laws 2006, LB 1115, § 36; Laws 2007, LB296, § 385; Laws 2007, LB463, § 1182.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

71-508 Exposure to infectious disease or condition; form; department; duties.

The department shall prescribe a form for use by the emergency services provider to notify the health care facility or alternate facility and the designated physician that the provider believes he or she has had a significant exposure to an infectious disease or condition. The form shall include identifying information for the emergency services provider, the provider agency, the designated physician, the patient, the patient's attending physician, and the receiving health care facility or alternate facility, a description of the exposure, a description of the protective measures and equipment used by the provider to minimize exposure hazard, and such other information as is necessary to

protect the public health and safety and to implement sections 71-507 to 71-513.

Source: Laws 1989, LB 157, § 2; Laws 1997, LB 138, § 47.

71-509 Health care facility or alternate facility; emergency services provider; significant exposure; completion of form; reports required; tests; notification; costs.

(1) If a health care facility or alternate facility determines that a patient treated or transported by an emergency services provider has been diagnosed or detected with an infectious airborne disease, the health care facility or alternate facility shall notify the department as soon as practical but not later than forty-eight hours after the determination has been made. The department shall investigate all notifications from health care facilities and alternate facilities and notify as soon as practical the physician medical director of each emergency medical service with an affected out-of-hospital emergency medical services provider employed by or associated with the service, the fire chief of each fire department with an affected firefighter employed by or associated with the department, the head of each law enforcement agency with an affected peace officer employed by or associated with the agency, the funeral director of each funeral establishment with an affected individual employed by or associated with the funeral establishment, and any emergency services provider known to the department with a significant exposure who is not employed by or associated with an emergency medical service, a fire department, a law enforcement agency, or a funeral establishment. Notification of affected individuals shall be made as soon as practical.

(2) Whenever an emergency services provider believes he or she has had a significant exposure while acting as an emergency services provider, he or she may complete a significant exposure report form. A copy of the completed form shall be given by the emergency services provider to the health care facility or alternate facility, to the emergency services provider's supervisor, and to the designated physician.

(3) Upon receipt of the significant exposure form, if a patient has been diagnosed during the normal course of treatment as having an infectious disease or condition or information is received from which it may be concluded that a patient has an infectious disease or condition, the health care facility or alternate facility receiving the form shall notify the designated physician pursuant to subsection (5) of this section. If the patient has not been diagnosed as having an infectious disease or condition and upon the request of the designated physician, the health care facility or alternate facility shall request the patient's attending physician or other responsible person to order the necessary diagnostic testing of the patient to determine the presence of an infectious disease or condition. Upon such request, the patient's attending physician or other responsible person shall order the necessary diagnostic testing subject to section 71-510. Each health care facility shall develop a policy or protocol to administer such testing and assure confidentiality of such testing.

(4) Results of tests conducted under this section and section 71-510 shall be reported by the health care facility or alternate facility that conducted the test to the designated physician and to the patient's attending physician, if any.

(5) Notification of the patient's diagnosis of infectious disease or condition, including the results of any tests, shall be made orally to the designated

physician within forty-eight hours of confirmed diagnosis. A written report shall be forwarded to the designated physician within seventy-two hours of confirmed diagnosis.

(6) Upon receipt of notification under subsection (5) of this section, the designated physician shall notify the emergency services provider of the exposure to infectious disease or condition and the results of any tests conducted under this section and section 71-510.

(7) The notification to the emergency services provider shall include the name of the infectious disease or condition diagnosed but shall not contain the patient's name or any other identifying information. Any person receiving such notification shall treat the information received as confidential and shall not disclose the information except as provided in sections 71-507 to 71-513.

(8) The provider agency shall be responsible for the costs of diagnostic testing required under this section and section 71-510, except that if a person renders emergency care gratuitously as described in section 25-21,186, such person shall be responsible for the costs.

(9) The patient's attending physician shall inform the patient of test results for all tests conducted under such sections.

Source: Laws 1989, LB 157, § 3; Laws 1997, LB 138, § 48; Laws 1999, LB 781, § 2.

71-510 Emergency services provider; public safety official; significant exposure; testing; conditions.

(1) The patient or individual shall be informed that he or she has the right to consent to the test for presence of an infectious disease or condition and that if the patient or individual refuses the test, such refusal will be communicated to the emergency services provider or public safety official.

(2) If the patient or individual is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's or individual's next of kin or legal guardian.

(3) If an emergency services provider has a significant exposure which, in the opinion of the designated physician, could involve the transmission of hepatitis B, hepatitis C, or human immunodeficiency virus, the patient's attending physician shall initiate the necessary diagnostic blood tests of the patient. If the patient or patient's representative refuses to grant consent for such test and a sample of the patient's blood is available, the blood shall be tested for hepatitis B, hepatitis C, or human immunodeficiency virus. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood is not available, the patient's refusal shall be communicated to the designated physician who shall inform the emergency services provider. The emergency services provider may petition the district court for an order mandating that the test be performed.

(4) If a public safety official believes he or she has had a significant exposure while performing his or her duties, other than those as an emergency services provider, which, in the opinion of a physician, could involve exposure to an infectious disease or condition, the public safety official or the provider agency which employs or directs him or her may (a) request the individual who may have transmitted the infectious disease or condition to consent to having the necessary diagnostic blood tests performed or (b) if the individual refuses to

consent to such tests, petition the district court for an order mandating that the necessary diagnostic blood tests of such individual be performed.

(5) If a patient or individual is deceased, no consent shall be required to test for the presence of an infectious disease or condition.

(6) If the State of Nebraska serves as guardian for the patient or individual and refuses to grant consent to test for the presence of an infectious disease or condition, the state as guardian (a) shall be subject to the jurisdiction of the district court upon the filing of a petition for an order mandating that the test be performed and (b) shall not have sovereign immunity in such suit or proceeding.

Source: Laws 1989, LB 157, § 4; Laws 1997, LB 138, § 49; Laws 2003, LB 55, § 2; Laws 2006, LB 1115, § 37.

71-511 Information or test; confidentiality.

(1) Information concerning any patient, individual, or test results obtained under sections 71-507 to 71-513 shall be maintained as confidential by the health care facility or alternate facility that received or tested the patient or individual, the designated physician, the patient's attending physician, the emergency services provider, the public safety official, and the provider agency except as provided by the Health Care Facility Licensure Act and sections 71-503.01 and 71-507 to 71-513 and the rules and regulations adopted and promulgated pursuant to such act and sections. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such act and sections.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or individual or, if the patient or individual is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

Source: Laws 1989, LB 157, § 5; Laws 1997, LB 138, § 50; Laws 2000, LB 819, § 96; Laws 2003, LB 55, § 3.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-512 Health care facilities; provider agencies; adopt procedures.

All health care facilities and provider agencies subject to sections 71-507 to 71-513 shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards, notification procedures, and postexposure risk-reduction methods.

Source: Laws 1989, LB 157, § 6; Laws 1997, LB 138, § 51.

71-513 Immunity from liability; when.

Any health care facility, provider agency, or agent, employee, administrator, physician, or other representative of such health care facility or provider agency who in good faith provides or fails to provide notification, testing, or other action as required by sections 71-507 to 71-513 shall have immunity from

any liability, either criminal or civil, that might result by reason of such action or inaction.

Source: Laws 1989, LB 157, § 7.

71-514 Repealed. Laws 1983, LB 44, § 1.

71-514.01 Health care providers; legislative findings.

The Legislature hereby finds that health care providers are at risk of significant exposure to the blood and other body fluids of patients as a result of their work. The testing of such body fluids for the presence of infectious disease is necessary to provide postexposure risk-reduction methods and treatment, if necessary, for health care providers when there is a significant exposure to the body fluid of a patient and there are unresolved issues of consent by the patient to the testing of such fluids.

Source: Laws 1994, LB 819, § 7.

71-514.02 Health care providers; terms, defined.

For purposes of sections 71-514.01 to 71-514.05:

(1) Health care provider means a person who provides care to a patient which is designed to improve the status of his or her health whether this care is rendered in the hospital or community setting and whether the provider is paid or voluntary. Health care provider does not mean an emergency services provider as defined in section 71-507;

(2) Infectious disease or condition means hepatitis B, hepatitis C, meningococcal meningitis, active pulmonary tuberculosis, human immunodeficiency virus, and such other diseases as the Department of Health and Human Services may from time to time specify;

(3) Patient means an individual who is sick, injured, wounded, or otherwise helpless or incapacitated;

(4) Provider agency means any health care facility or agency which is in the business of providing health care services; and

(5) Significant exposure to blood or other body fluid means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other materials known to transmit infectious diseases that results from providing care.

Source: Laws 1994, LB 819, § 8; Laws 1996, LB 1044, § 498; Laws 1997, LB 138, § 52; Laws 2003, LB 667, § 6; Laws 2007, LB296, § 386.

71-514.03 Health care providers; significant exposure to blood or body fluid; procedure; cost; restriction.

(1) If a health care provider has a significant exposure to the blood or body fluid of a patient as determined and documented by a designated representative of the provider agency according to a written protocol:

(a) The patient shall be informed that he or she has the right to consent to the diagnostic testing of his or her body fluid for presence of an infectious disease or condition and that if the patient refuses to grant consent, such refusal shall be communicated to the health care provider;

(b) If the patient is unconscious or incapable of signing an informed consent form, the consent may be obtained from the patient's next of kin or legal guardian;

(c) If the patient or patient's next of kin or legal guardian refuses to grant consent for such testing and a sample of the patient's blood or other body fluid is available, the sample shall be tested for the presence of infectious disease or condition. If an available sample of blood or other body fluid is tested without consent, the patient or patient's next of kin or legal guardian shall be notified that the available sample is being tested and informed of the purpose of the test and test results. If the human immunodeficiency virus test result is positive, the health care provider or provider agency shall refer the patient for posttest counseling. If the patient or patient's guardian refuses to grant consent and a sample of the patient's blood or other body fluid is not available, the health care provider or provider agency may petition the district court for an order mandating that the testing be performed; or

(d) If a patient dies without the opportunity to consent to such testing, testing for the presence of an infectious disease or condition shall be conducted.

(2) The provider agency shall be responsible for the cost of such diagnostic testing.

(3) Routine drawing of a sample of blood or other body fluid for the purpose of testing for infectious disease or conditions without obtaining consent shall be prohibited.

Source: Laws 1994, LB 819, § 9.

71-514.04 Health care providers; patient information or test results; confidentiality; release of information.

(1) Information concerning any patient or test results obtained under section 71-514.03 shall be maintained as confidential by the health care facility that received or tested the patient, the patient's attending physician, the health care provider, and the provider agency except as provided by section 71-503.01 and the rules and regulations adopted and promulgated pursuant to such section. Such information shall not be made public upon subpoena, search warrant, discovery proceedings, or otherwise except as provided by such section.

(2) The information described in subsection (1) of this section may be released with the written consent of the patient or, if the patient is deceased or incapable of giving informed consent, with the written consent of his or her next of kin, legal guardian, or personal representative of his or her estate.

Source: Laws 1994, LB 819, § 10.

71-514.05 Health care providers; provider agencies; adopt procedures.

Provider agencies shall adopt written procedures regarding infectious diseases or conditions which address preexposure safeguards and postexposure risk-reduction methods. All records regarding any tests made as a result of a significant exposure of a health care provider to blood or other body fluid shall be kept only for the purpose of medical surveillance of an occupational risk of the health care provider.

Source: Laws 1994, LB 819, § 11.

71-515 Repealed. Laws 1983, LB 44, § 1.

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

71-516 Repealed. Laws 1991, LB 10, § 7.

71-516.01 Act, how cited.

Sections 71-516.01 to 71-516.04 shall be known and may be cited as the Alzheimer's Special Care Disclosure Act.

Source: Laws 1994, LB 1210, § 162.

71-516.02 Legislative findings and declarations.

The Legislature finds and declares that:

(1) Certain nursing homes and related facilities and assisted-living facilities claim special care for persons who have Alzheimer's disease, dementia, or a related disorder;

(2) It is in the public interest to provide for the protection of consumers regarding the accuracy and authenticity of such claims; and

(3) The provisions of the Alzheimer's Special Care Disclosure Act are intended to require such facilities to disclose the reasons for those claims, require records of such disclosures to be kept, and require the Department of Health and Human Services to examine the records.

Source: Laws 1994, LB 1210, § 163; Laws 1996, LB 1044, § 499; Laws 1997, LB 608, § 6; Laws 2007, LB296, § 387.

71-516.03 Alzheimer's special care unit, defined.

For the purposes of the Alzheimer's Special Care Disclosure Act, Alzheimer's special care unit shall mean any nursing facility or assisted-living facility, licensed by the Department of Health and Human Services, which secures, segregates, or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease, dementia, or a related disorder and which advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer's disease, dementia, or related disorder care services.

Source: Laws 1994, LB 1210, § 164; Laws 1996, LB 1044, § 500; Laws 1997, LB 608, § 7; Laws 2007, LB296, § 388.

71-516.04 Facility; disclosures required; department; duties.

Any facility which offers to provide or provides care for persons with Alzheimer's disease, dementia, or a related disorder by means of an Alzheimer's special care unit shall disclose the form of care or treatment provided that distinguishes such form as being especially applicable to or suitable for such persons. The disclosure shall be made to the Department of Health and Human Services and to any person seeking placement within an Alzheimer's special care unit. The department shall examine all such disclosures in the records of the department as part of the facility's license renewal procedure at the time of licensure or relicensure.

The information disclosed shall explain the additional care provided in each of the following areas:

(1) The Alzheimer's special care unit's written statement of its overall philosophy and mission which reflects the needs of residents afflicted with Alzheimer's disease, dementia, or a related disorder;

(2) The process and criteria for placement in, transfer to, or discharge from the unit;

(3) The process used for assessment and establishment of the plan of care and its implementation, including the method by which the plan of care evolves and is responsive to changes in condition;

(4) Staff training and continuing education practices;

(5) The physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

(6) The frequency and types of resident activities;

(7) The involvement of families and the availability of family support programs; and

(8) The costs of care and any additional fees.

Source: Laws 1994, LB 1210, § 165; Laws 1996, LB 1044, § 501; Laws 2007, LB296, § 389.

71-517 Repealed. Laws 1991, LB 10, § 7.

71-518 Repealed. Laws 1991, LB 10, § 7.

(c) METABOLIC DISEASES

71-519 Screening test; duties; disease management; duties; fees authorized; immunity from liability.

(1) All infants born in the State of Nebraska shall be screened for phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, medium-chain acyl co-a dehydrogenase (MCAD) deficiency, and such other metabolic diseases as the Department of Health and Human Services may from time to time specify. Confirmatory tests shall be performed if a presumptive positive result on the screening test is obtained.

(2) The attending physician shall collect or cause to be collected the prescribed blood specimen or specimens and shall submit or cause to be submitted the same to the laboratory designated by the department for the performance of such tests within the period and in the manner prescribed by the department. If a birth is not attended by a physician and the infant does not have a physician, the person registering the birth shall cause such tests to be performed within the period and in the manner prescribed by the department. The laboratory shall within the period and in the manner prescribed by the department perform such tests as are prescribed by the department on the specimen or specimens submitted and report the results of these tests to the physician, if any, the hospital or other birthing facility or other submitter, and the department. The laboratory shall report to the department the results of such tests that are presumptive positive or confirmed positive within the period and in the manner prescribed by the department.

(3) The hospital or other birthing facility shall record the collection of specimens for tests for metabolic diseases and the report of the results of such tests or the absence of such report. For purposes of tracking, monitoring, and referral, the hospital or other birthing facility shall provide from its records, upon the department's request, information about the infant's and mother's location and contact information, and care and treatment of the infant.

(4)(a) The department shall have authority over the use, retention, and disposal of blood specimens and all related information collected in connection with metabolic disease testing conducted under subsection (1) of this section.

(b) The department shall adopt and promulgate rules and regulations relating to the retention and disposal of such specimens. The rules and regulations shall: (i) Be consistent with nationally recognized standards for laboratory accreditation and shall comply with all applicable provisions of federal law; (ii) require that the disposal be conducted in the presence of a witness who may be an individual involved in the disposal or any other individual; and (iii) provide for maintenance of a written or electronic record of the disposal, verified by such witness.

(c) The department shall adopt and promulgate rules and regulations relating to the use of such specimens and related information. Such use shall only be made for public health purposes and shall comply with all applicable provisions of federal law. The department may charge a reasonable fee for evaluating proposals relating to the use of such specimens for public health research and for preparing and supplying specimens for research proposals approved by the department.

(5) The department shall prepare written materials explaining the requirements of this section. The department shall include the following information in the pamphlet:

(a) The nature and purpose of the testing program required under this section, including, but not limited to, a brief description of each condition or disorder listed in subsection (1) of this section;

(b) The purpose and value of the infant's parent, guardian, or person in loco parentis retaining a blood specimen obtained under subsection (6) of this section in a safe place;

(c) The department's procedures for retaining and disposing of blood specimens developed under subsection (4) of this section; and

(d) That the blood specimens taken for purposes of conducting the tests required under subsection (1) of this section may be used for research pursuant to subsection (4) of this section.

(6) In addition to the requirements of subsection (1) of this section, the attending physician or person registering the birth may offer to draw an additional blood specimen from the infant. If such an offer is made, it shall be made to the infant's parent, guardian, or person in loco parentis at the time the blood specimens are drawn for purposes of subsection (1) of this section. If the infant's parent, guardian, or person in loco parentis accepts the offer of an additional blood specimen, the blood specimen shall be preserved in a manner that does not require special storage conditions or techniques, including, but not limited to, lamination. The attending physician or person making the offer shall explain to the parent, guardian, or person in loco parentis at the time the offer is made that the additional blood specimen can be used for future identification purposes and should be kept in a safe place. The attending physician or person making the offer may charge a fee that is not more than the actual cost of obtaining and preserving the additional blood specimen.

(7) The person responsible for causing the tests to be performed under subsection (2) of this section shall inform the parent or legal guardian of the infant of the tests and of the results of the tests and provide, upon any request

for further information, at least a copy of the written materials prepared under subsection (5) of this section.

(8) Dietary and therapeutic management of the infant with phenylketonuria, primary hypothyroidism, biotinidase deficiency, galactosemia, hemoglobinopathies, MCAD deficiency, or such other metabolic diseases as the department may from time to time specify shall be the responsibility of the child's parent, guardian, or custodian with the aid of a physician selected by such person.

(9) Except for acts of gross negligence or willful or wanton conduct, any physician, hospital or other birthing facility, laboratory, or other submitter making reports or notifications under sections 71-519 to 71-524 shall be immune from criminal or civil liability of any kind or character based on any statements contained in such reports or notifications.

Source: Laws 1987, LB 385, § 1; Laws 1988, LB 1100, § 99; Laws 1996, LB 1044, § 502; Laws 1998, LB 1073, § 85; Laws 2001, LB 432, § 10; Laws 2002, LB 235, § 1; Laws 2003, LB 119, § 2; Laws 2005, LB 301, § 15; Laws 2007, LB296, § 390.

A neutral law of general applicability need not be supported by a compelling governmental interest even though it may have an incidental effect of burdening religion. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

The assertion of a hybrid rights constitutional claim does not implicate a strict scrutiny review of a statute. A party may not force the government to meet the strict scrutiny standard by merely asserting claims of violations of more than one constitutional right. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section does not unlawfully burden a parent's right to freely exercise his or her religion, nor does it unlawfully burden parental rights. The Nebraska Supreme Court determines that using a rational basis test for review, this section is constitutional. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

This section is a neutral law of general applicability. It applies to all babies born in the state and does not discriminate as to which babies must be tested. Its purpose is not directed at religious practices or beliefs. Douglas Cty. v. Anaya, 269 Neb. 552, 694 N.W.2d 601 (2005).

71-520 Food supplement and treatment services program; authorized; fees.

The Department of Health and Human Services shall establish a program to provide food supplements and treatment services to individuals suffering from the metabolic diseases set forth in section 71-519. To defray or help defray the costs of any program which may be established by the department under this section, the department may prescribe and assess a scale of fees for the food supplements. The maximum prescribed fee for food supplements shall be no more than the actual cost of providing such supplements. No fees may be charged for formula, and up to two thousand dollars of pharmaceutically manufactured food supplements shall be available to an individual without fees each year.

Source: Laws 1987, LB 385, § 2; Laws 1996, LB 1044, § 503; Laws 1997, LB 610, § 1; Laws 1998, LB 1073, § 86; Laws 2002, LB 235, § 2; Laws 2005, LB 301, § 16; Laws 2007, LB296, § 391.

71-521 Tests and reports; department; duties.

The Department of Health and Human Services shall prescribe the tests, the test methods and techniques, and such reports and reporting procedures as are necessary to implement sections 71-519 to 71-524.

Source: Laws 1987, LB 385, § 3; Laws 1996, LB 1044, § 504; Laws 2002, LB 235, § 3; Laws 2005, LB 301, § 17; Laws 2007, LB296, § 392.

71-522 Central data registry; department; duties; use of data.

The Department of Health and Human Services shall establish and maintain a central data registry for the collection and storage of reported data concern-

ing metabolic diseases. The department shall use reported data to ensure that all infants born in the State of Nebraska are tested for diseases set forth in section 71-519 or by rule and regulation. The department shall also use reported data to evaluate the quality of the statewide system of newborn screening and develop procedures for quality assurance. Reported data in anonymous or statistical form may be made available by the department for purposes of research.

Source: Laws 1987, LB 385, § 4; Laws 1996, LB 1044, § 505; Laws 1998, LB 1073, § 87; Laws 2002, LB 235, § 4; Laws 2005, LB 301, § 18; Laws 2007, LB296, § 393.

71-523 Departments; powers and duties; adopt rules and regulations; contracting laboratories; requirements; fees.

(1) The Department of Health and Human Services shall provide educational and resource services regarding metabolic diseases to persons affected by sections 71-519 to 71-524 and to the public generally.

(2) The Department of Health and Human Services may apply for, receive, and administer assessed fees and federal or other funds which are available for the purpose of implementing sections 71-519 to 71-524 and may contract for or provide services as may be necessary to implement such sections.

(3) The Department of Health and Human Services shall adopt and promulgate rules and regulations to implement sections 71-519 to 71-524.

(4) The Department of Health and Human Services shall contract, following competitive bidding, with a single laboratory to perform tests, report results, set forth the fee the laboratory will charge for testing, and collect and submit fees pursuant to sections 71-519 to 71-524. The department shall require the contracting laboratory to: (a) Perform testing for all of the diseases pursuant to section 71-519 and in accordance with rules and regulations adopted and promulgated pursuant to this section, (b) maintain certification under the federal Clinical Laboratories Improvement Act of 1967, 42 U.S.C. 263a, as such act and section existed on July 20, 2002, (c) participate in appropriate quality assurance proficiency testing programs offered by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services or other professional laboratory organization, as determined by the Department of Health and Human Services, (d) maintain sufficient contingency arrangements to ensure testing delays of no longer than twenty-four hours in the event of natural disaster or laboratory equipment failure, and (e) charge to the hospital, other birthing facility, or other submitter the fee provided in the contract for laboratory testing costs and the administration fee specified in subsection (5) of this section. The administration fee collected pursuant to such subsection shall be remitted to the Department of Health and Human Services.

(5) The Department of Health and Human Services shall set an administration fee of not more than ten dollars. The department may use the administration fee to pay for the costs of the central data registry, tracking, monitoring, referral, quality assurance, program operation, program development, program evaluation, and treatment services authorized under sections 71-519 to 71-523. The fee shall be collected by the contracting laboratory as provided in subdivision (4)(e) of this section.

(6) Fees collected for the department pursuant to sections 71-519 to 71-523 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1987, LB 385, § 5; Laws 1996, LB 1044, § 506; Laws 1997, LB 610, § 2; Laws 1998, LB 1073, § 88; Laws 2002, LB 235, § 5; Laws 2005, LB 301, § 19; Laws 2007, LB296, § 394.

71-524 Enforcement; procedure.

In addition to any other remedies which may be available by law, a civil proceeding to enforce section 71-519 may be brought in the district court of the county where the infant is domiciled or found. The attending physician, the hospital or other birthing facility, the Attorney General, or the county attorney of the county where the infant is domiciled or found may institute such proceedings as are necessary to enforce such section. It shall be the duty of the Attorney General or the county attorney to whom the Department of Health and Human Services reports a violation to cause appropriate proceedings to be initiated without delay. A hearing on any action brought pursuant to this section shall be held within seventy-two hours of the filing of such action, and a decision shall be rendered by the court within twenty-four hours of the close of the hearing.

Source: Laws 1987, LB 385, § 6; Laws 1996, LB 1044, § 507; Laws 2002, LB 235, § 6; Laws 2007, LB296, § 395.

(d) CERVICAL CANCER

71-525 Repealed. Laws 1993, LB 536, § 128.

(e) IMMUNIZATION AND VACCINES

71-526 Act, how cited.

Sections 71-526 to 71-530 shall be known and may be cited as the Childhood Vaccine Act.

Source: Laws 1992, LB 431, § 1.

71-527 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Childhood communicable diseases constitute a serious threat to the public health of the people of this state and the prevention of childhood communicable diseases is a goal of the people;

(2) The effectiveness of childhood vaccines in preventing certain communicable diseases and thereby saving lives and preventing debilitating conditions has been well documented. Vaccines are among the most cost-effective components of preventive health care; for every dollar spent on childhood immunization, ten dollars are saved in later medical costs;

(3) Prevention of childhood diseases should include comprehensive, continuous health care, including regular medical examinations, treatment by a practitioner familiar with the child, and age-appropriate administration of immunizations;

(4) The United States Department of Health and Human Services, Public Health Service, has as its Healthy People 2000 objective to have at least ninety percent of all children completely immunized by age two. The United States immunization survey indicates that only seventy-seven percent of children two years of age had received the basic immunization series. Recent outbreaks of measles among preschoolers who are not immunized also have shown that inadequate immunization levels still occur;

(5) Nebraska has as its Year 2000 objective that seventy-five percent of its counties are covered by public immunization clinics, that ninety percent of its two-year-olds are minimally immunized, and that ninety-eight percent of its school-aged children are immunized;

(6) The Surgeon General's 1990 objective to decrease the incidence of cases of mumps and pertussis to less than one thousand has not been achieved, and the incidence of pertussis increased between 1979 and 1987;

(7) Immunization rates in other developed countries are higher than immunization rates in the United States;

(8) Diphtheria, tetanus, and pertussis immunization rates in European countries average forty-one percent higher than in the United States;

(9) Polio immunization rates are twenty-three percent higher in European countries than in the United States;

(10) Measles immunization rates are twenty-three percent higher in England, Denmark, and Norway than in the United States;

(11) Childhood communicable diseases should be prevented through protection of Nebraska's children by immunization against measles, mumps, rubella, diphtheria, tetanus, pertussis, polio, haemophilus influenzae type B, and such other diseases as may be indicated based on then current medical and scientific knowledge;

(12) The average cost of fully vaccinating a child in the private sector has increased dramatically in the past decade. The full battery of childhood vaccines recommended by the Centers for Disease Control and Prevention in 1982 increased five times in cost between 1982 and 1989. These increases have made it unaffordable for many children to receive their immunizations at their private practitioner's office; and

(13) There is a national effort to continue current immunization programs and to provide additional funds to implement the Healthy People 2000 objective that ninety percent of children are appropriately immunized by two years of age.

Source: Laws 1992, LB 431, § 2; Laws 1994, LB 1223, § 30.

71-528 Intent and purpose.

(1) It is the intent of the Legislature that the citizens of the State of Nebraska benefit by participation in national efforts to take innovative action to provide immunization of our children by removal of barriers which impede vaccine delivery and by improving access to immunization services.

(2) It is also the purpose of the Childhood Vaccine Act to provide authorization for childhood immunization programs and demonstration or pilot projects that document childhood immunization trends, encourage cooperation between and use of both private practitioners and public providers in offering health

care to children, and otherwise assess a total approach to immunization against childhood diseases.

Source: Laws 1992, LB 431, § 3; Laws 1994, LB 1223, § 31.

71-529 Statewide immunization action plan; department; powers.

The Department of Health and Human Services may participate in the national efforts described in sections 71-527 and 71-528 and may develop a statewide immunization action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide immunization action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately immunized;

(2) Apply for and receive public and private awards to purchase vaccines and to administer a statewide comprehensive program;

(3) Provide immunization information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness and demand for immunization by parents;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize well-child care and the use of private practitioners and which improve the availability of immunization and improve management of immunization delivery so as to ensure the adequacy of the vaccine delivery system;

(5) Evaluate the effectiveness of these statewide efforts, conduct ongoing measurement of children's immunization status, identify children at special risk for deficiencies in immunization, and report on the activities of the statewide immunization program annually to the Legislature and the citizens of Nebraska;

(6) Recognize persons who volunteer their efforts towards achieving the goal of providing immunization of the children of Nebraska and in meeting the Healthy People 2000 objective of series-complete immunization coverage for ninety percent or more of United States children by their second birthday;

(7) Establish a statewide program to immunize Nebraska children from birth up to six years of age against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, hepatitis B, and haemophilus influenzae type B. The program shall serve children who are not otherwise eligible for childhood immunization coverage with medicaid or other federal funds or are not covered by private third-party payment; and

(8) Contract to provide vaccine under the statewide program authorized under subdivision (7) of this section without cost to health care providers subject to the following conditions:

(a) In order to receive vaccine without cost, health care providers shall not charge for the cost of the vaccine. Health care providers may charge a fee for the administration of the vaccine but may not deny service because of the parent's or guardian's inability to pay such fee. Fees for administration of the vaccine shall be negotiated between the department and the health care provider, shall be uniform among participating providers, and shall be no more than the cost ceiling for the region in which Nebraska is included as set by the

Secretary of the United States Department of Health and Human Services for the Vaccines for Children Program authorized by the Omnibus Budget Reconciliation Act of 1993;

(b) Health care providers shall administer vaccines according to the schedule recommended by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention or by the American Academy of Pediatrics unless in the provider's medical judgment, subject to accepted medical practice, such compliance is medically inappropriate; and

(c) Health care providers shall maintain records on immunizations as prescribed by this section for inspection and audit by the Department of Health and Human Services or the Auditor of Public Accounts, including responses by parents or guardians to simple screening questions related to payment coverage by public or private third-party payors, identification of the administration fee as separate from any other cost charged for other services provided at the same time the vaccination service is provided, and other information as determined by the department to be necessary to comply with subdivision (5) of this section. Such immunization records may also be used for information exchange as provided in sections 71-539 to 71-544.

Source: Laws 1992, LB 431, § 4; Laws 1994, LB 1223, § 32; Laws 1996, LB 1044, § 508; Laws 1998, LB 1063, § 17; Laws 2005, LB 301, § 20; Laws 2007, LB296, § 396.

71-530 Act; entitlement not created; availability of funds; effect.

The Childhood Vaccine Act is not intended to create an entitlement to any activities described in the act, and the Department of Health and Human Services may perform the activities described in the act to the extent funds are available.

Source: Laws 1992, LB 431, § 5; Laws 1996, LB 1044, § 509.

(f) HUMAN IMMUNODEFICIENCY VIRUS INFECTION

71-531 Test; written informed consent required; anonymous testing; exemptions.

(1)(a) No person may be tested for the presence of the human immunodeficiency virus infection unless he or she has given written informed consent for the performance of such test. The written informed consent shall provide an explanation of human immunodeficiency virus infection and the meaning of both positive and negative test results.

(b) If a person signs a general consent form for the performance of medical tests or procedures which informs the person that a test for the presence of the human immunodeficiency virus infection may be performed and that the person may refuse to have such test performed, the signing of an additional consent for the specific purpose of consenting to a test related to human immunodeficiency virus is not required during the time in which the general consent form is in effect.

(2) If a person is unable to provide consent, the person's legal representative may provide consent. If the person's legal representative cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate medical care.

(3) A person seeking a human immunodeficiency virus test shall have the right to remain anonymous. A health care provider shall confidentially refer such person to a site which provides anonymous testing.

(4) This section shall not apply to:

(a) The performance by a health care provider or a health facility of a human immunodeficiency virus test when the health care provider or health facility procures, processes, distributes, or uses a human body part for a purpose specified under the Uniform Anatomical Gift Act and such test is necessary to assure medical acceptability of such gift for the purposes intended;

(b) The performance by a health care provider or a health facility of a human immunodeficiency virus test when such test is performed with the consent and written authorization of the person being tested and such test is for insurance underwriting purposes, written information about the human immunodeficiency virus is provided, including, but not limited to, the identification and reduction of risks, the person is informed of the result of such test, and when the result is positive, the person is referred for posttest counseling;

(c) The performance of a human immunodeficiency virus test by licensed medical personnel of the Department of Correctional Services when the subject of the test is committed to such department. Posttest counseling shall be required for the subject if the test is positive. A person committed to the Department of Correctional Services shall be informed by the department (i) if he or she is being tested for the human immunodeficiency virus, (ii) that education shall be provided to him or her about the human immunodeficiency virus, including, but not limited to, the identification and reduction of risks, and (iii) of the test result and the meaning of such result;

(d) Human immunodeficiency virus home collection kits licensed by the federal Food and Drug Administration; or

(e) The performance of a human immunodeficiency virus test performed pursuant to section 29-2290 or sections 71-507 to 71-513 or 71-514.01 to 71-514.05.

Source: Laws 1994, LB 819, § 5; Laws 1997, LB 194, § 1; Laws 2009, LB288, § 33.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

71-532 Test results reportable; manner.

The Department of Health and Human Services shall adopt and promulgate rules and regulations which make the human immunodeficiency virus infection reportable by name in the same manner as communicable diseases under section 71-502.

Source: Laws 1994, LB 819, § 6; Laws 1996, LB 1044, § 510; Laws 2007, LB296, § 397.

(g) INFECTED HEALTH CARE WORKERS

71-533 Repealed. Laws 2002, LB 93, § 27.

71-534 Repealed. Laws 2002, LB 93, § 27.

71-535 Repealed. Laws 2002, LB 93, § 27.

71-536 Repealed. Laws 2002, LB 93, § 27.

71-537 Repealed. Laws 2002, LB 93, § 27.

71-538 Repealed. Laws 2002, LB 93, § 27.

(h) EXCHANGE OF IMMUNIZATION INFORMATION

71-539 Legislative intent.

It is the intent of the Legislature that sections 71-539 to 71-544 provide for the exchange of immunization information between professionals, facilities, and departments for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of childhood diseases.

Source: Laws 1998, LB 1063, § 11.

71-540 Immunization information; nondisclosure.

A patient or, if the patient is a minor, the patient's parent or legal guardian may deny access under sections 71-539 to 71-544 to the patient's immunization information by signing a nondisclosure form with the professional or entity which provided the immunization. The nondisclosure form shall be kept with the immunization information of the patient and such immunization information is considered restricted immunization information.

Source: Laws 1998, LB 1063, § 12.

71-541 Immunization information; sharing authorized.

A physician, an advanced practice registered nurse practicing under and in accordance with his or her applicable certification act, a physician assistant, a pharmacist, a licensed health care facility, a public immunization clinic, a local or district health department, and the Department of Health and Human Services may share immunization information which is not restricted under section 71-540. The unrestricted immunization information shared may include, but is not limited to, the patient's name, date of birth, dates and vaccine types administered, and any immunization information obtained from other sources.

Source: Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398.

Cross References

Advanced practice registered nurse certification acts, see section 38-208.

71-542 Immunization information; access by child care providers and schools; confidentiality; violation; penalty; fees.

(1) Immunization information which is not restricted under section 71-540 concerning children enrolled in a child care program licensed pursuant to the Child Care Licensing Act, a school, or a postsecondary educational institution may be accessed by the program, school, or institution from any of the persons or entities described in section 71-541, subject to security provisions to be set by rule and regulation as provided in section 71-543. Such immunization information is limited to the child's name, date of birth, immunization provider, and all dates of immunization by vaccine type documented in the immunization

information. The access to immunization information by such a licensed program, school, or institution under this section does not change a parent's or legal guardian's right to access medical information about his or her child or ward.

(2) Immunization information received under this section is confidential, except that a child's immunization information received under this section may be disclosed to the child's parents or legal guardian. Unauthorized public disclosure of such confidential information by an individual or an officer or employee of a child care program licensed pursuant to the Child Care Licensing Act, a school, or a postsecondary educational institution is a Class III misdemeanor.

(3) The person or entity described in section 71-541 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution in accordance with this section may charge a reasonable fee to recover the cost of providing such immunization information.

Source: Laws 1998, LB 1063, § 14; Laws 2004, LB 1005, § 54.

Cross References

Child Care Licensing Act, see section 71-1908.

71-543 Rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to implement sections 71-539 to 71-544, including procedures and methods for access to and security of the immunization information.

Source: Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399.

71-544 Immunity.

Any person who receives or releases immunization information in the form and manner prescribed in sections 71-539 to 71-544 and any rules and regulations which may be adopted and promulgated pursuant to sections 71-539 to 71-544 is not civilly or criminally liable for such receipt or release.

Source: Laws 1998, LB 1063, § 16.

(i) HEPATITIS C EDUCATION AND PREVENTION ACT

71-545 Repealed. Laws 2008, LB 928, § 47.

71-546 Repealed. Laws 2008, LB 928, § 47.

71-547 Repealed. Laws 2008, LB 928, § 47.

71-548 Repealed. Laws 2008, LB 928, § 47.

71-549 Repealed. Laws 2008, LB 928, § 47.

71-550 Repealed. Laws 2008, LB 928, § 47.

(j) GENETIC TESTS

71-551 Physician; genetic tests; written informed consent; requirements; Department of Health and Human Services; duty.

(1) Except as provided in section 71-519 and except for newborn screening tests ordered by physicians to comply with the law of the state in which the

infant was born, a physician or an individual to whom the physician has delegated authority to perform a selected act, task, or function shall not order a predictive genetic test without first obtaining the written informed consent of the patient to be tested. Written informed consent consists of a signed writing executed by the patient or the representative of a patient lacking decisional capacity that confirms that the physician or individual acting under the delegated authority of the physician has explained, and the patient or his or her representative understands:

(a) The nature and purpose of the predictive genetic test;

(b) The effectiveness and limitations of the predictive genetic test;

(c) The implications of taking the predictive genetic test, including the medical risks and benefits;

(d) The future uses of the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test;

(e) The meaning of the predictive genetic test results and the procedure for providing notice of the results to the patient; and

(f) Who will have access to the sample taken to conduct the predictive genetic test and the genetic information obtained from the predictive genetic test, and the patient's right to confidential treatment of the sample and the genetic information.

(2) The Department of Health and Human Services shall develop and distribute a model informed consent form for purposes of this section. The department shall include in the model form all of the information required under subsection (1) of this section. The department shall distribute the model form and all revisions to the form to physicians and other individuals subject to this section upon request and at no charge. The department shall review the model form at least annually for five years after the first model form is distributed and shall revise the model form if necessary to make the form reflect the latest developments in medical genetics. The department may also develop and distribute a pamphlet that provides further explanation of the information included in the model form.

(3) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the physician or individual acting under the delegated authority of the physician shall give the patient a copy of the signed informed consent form and shall include the original signed informed consent form in the patient's medical record.

(4) If a patient or his or her representative signs a copy of the model informed consent form developed and distributed under subsection (2) of this section, the patient is barred from subsequently bringing a civil action for damages against the physician, or an individual to whom the physician delegated authority to perform a selected act, task, or function, who ordered the predictive genetic test, based upon failure to obtain informed consent for the predictive genetic test.

(5) A physician's duty to inform a patient under this section does not require disclosure of information beyond what a physician reasonably well-qualified to order and interpret the predictive genetic test would know. A person acting under the delegated authority of a physician shall understand and be qualified to provide the information required by subsection (1) of this section.

(6) For purposes of this section:

(a) Genetic information means information about a gene, gene product, or inherited characteristic derived from a genetic test;

(b) Genetic test means the analysis of human DNA, RNA, chromosomes, epigenetic status, and those tissues, proteins, and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. Tests of tissues, proteins, and metabolites are included only when generally accepted in the scientific and medical communities as being specifically determinative of a heritable or somatic disease-related genetic condition. Genetic test does not include a routine analysis, including a chemical analysis, of body fluids or tissues unless conducted specifically to determine a heritable or somatic disease-related genetic condition. Genetic test does not include a physical examination or imaging study. Genetic test does not include a procedure performed as a component of biomedical research that is conducted pursuant to federal common rule under 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46, as such regulations existed on January 1, 2003; and

(c) Predictive genetic test means a genetic test for an otherwise undetectable genotype or karyotype relating to the risk for developing a genetically related disease or disability, the results of which can be used to substitute a patient's prior risk based on population data or family history with a risk based on genotype or karyotype. Predictive genetic test does not include diagnostic testing conducted on a person exhibiting clinical signs or symptoms of a possible genetic condition. Predictive genetic testing does not include prenatal genetic diagnosis, unless the prenatal testing is conducted for an adult-onset condition not expected to cause clinical signs or symptoms before the age of majority.

Source: Laws 2001, LB 432, § 1; Laws 2003, LB 119, § 1; Laws 2005, LB 301, § 10; Laws 2006, LB 994, § 85; R.S.Supp.,2006, § 71-1,104.01; Laws 2007, LB296, § 333; Laws 2007, LB463, § 1183.

ARTICLE 6

VITAL STATISTICS

Cross References

Abortion reporting form, see section 28-343.
Adopted persons, information and forms, see section 43-124 et seq.
Child laborer's employment certificate, birth certificate as evidence of age, see section 48-304.
Cities of the metropolitan class, regulate registration of births and deaths, see section 14-102.
Driver's license, birth certificate as evidence of age, see section 60-484.
Health occupations and professions, birth certificate as evidence of age, see sections 38-10,103, 38-10,153, and 38-3122.
Human skeletal remains or burial goods, see section 28-1301.
Maternal and child health, reports to Chief of the Children's Bureau, United States Department of Labor, see section 71-2208.
Medically handicapped children, reports of birth, see section 71-1405.
Missing Children Identification Act, see section 43-2001.
Physicians, required to comply, see section 38-2037.
Retirement systems, birth certificate as evidence of age, see sections 23-2312, 24-704, 79-906, 81-2021, and 84-1305.01.
State identification card, birth certificate as evidence of age, see section 60-484.

Section

71-601 Act, how cited.

Sections 71-601 to 71-649 shall be known and may be cited as the Vital Statistics Act.

Source: Laws 2005, LB 301, § 21.

71-601.01 Terms, defined.

For purposes of the Vital Statistics Act:

(1) Abstract of marriage means a certified document that summarizes the facts of marriage, including, but not limited to, the name of the bride and groom, the date of the marriage, the place of the marriage, and the name of the office filing the original marriage license. An abstract of marriage does not include signatures;

(2) Certificate means the record of a vital event;

(3) Certification means the process of recording, filing, amending, or preserving a certificate, which process may be by any means, including, but not limited

to, microfilm, electronic, imaging, photographic, typewritten, or other means designated by the department; and

(4) Department means the Department of Health and Human Services.

Source: Laws 1994, LB 886, § 2; Laws 1996, LB 1044, § 512; Laws 2005, LB 301, § 24; Laws 2006, LB 1115, § 38; Laws 2007, LB296, § 400.

71-602 Department; standard forms; release of information; confidentiality.

(1) The department shall adopt and promulgate rules and regulations prescribing all standard forms for registering with or reporting to the department and for certification to the public of any birth, abortion, marriage, annulment, dissolution of marriage, or death registered in Nebraska. Such forms shall (a) provide for the registration of vital events as accurately as possible, (b) secure information about the economic, educational, occupational, and sociological backgrounds of the individuals involved in the registered events and their parents as a basis for statistical research in order to reduce morbidity and mortality and improve the quality of life, (c) accomplish such duties in a manner which will be uniform with forms for reporting similar events which have been established by the United States Public Health Service to the extent such forms are consistent with state law, and (d) permit other deviations from such forms as will reduce the costs of gathering information, increase efficiency, or protect the health and safety of the people of Nebraska without jeopardizing such uniformity.

(2) All information designated by the department on all certificates as being for health data and statistical research shall be confidential and may be released only to the United States Public Health Service or its successor, government health agencies, or a researcher as approved by the department in accordance with its rules and regulations. The department may publish analyses of any information received on the forms for scientific and public health purposes in such a manner as to assure that the identity of any individual cannot be ascertained. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

Source: Laws 1989, LB 344, § 1; Laws 1992, LB 1019, § 47; Laws 1993, LB 536, § 60; Laws 1996, LB 1044, § 513; Laws 2007, LB296, § 401.

71-602.01 Release of information; written agreements authorized.

All information designated by the department on all certificates as being for health data and statistical research shall be confidential but may be released to the department for research and statistical purposes. The department may release cost, health, and associated health risk information from medicaid records to the department for research and statistical purposes. Such release shall provide for protection of the security of the content of the information, including access limitations, storage of the information, destruction of the information, and use of the information. The release of such information pursuant to this section shall not make otherwise confidential information a public record.

Source: Laws 1993, LB 536, § 61; Laws 1996, LB 1044, § 514; Laws 2007, LB296, § 402.

71-603 Vital statistics; duties of department; rules and regulations.

The department shall provide for the registration of vital events and shall adopt, promulgate, and enforce such rules and regulations as are necessary to carry out the purposes of the Vital Statistics Act.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 1, p. 781; C.S.1922, § 8228; Laws 1927, c. 166, § 1, p. 448; C.S.1929, § 71-2401; R.S.1943, § 71-601; Laws 1965, c. 418, § 1, p. 1335; Laws 1991, LB 703, § 27; Laws 1994, LB 886, § 1; Laws 1996, LB 1044, § 511; R.S.1943, (2003), § 71-601; Laws 2005, LB 301, § 23.

71-603.01 Electronic signatures; department; duty.

The department shall provide for an electronic means of receiving electronic signatures as provided in section 86-611 for purposes of filing and amending death and fetal death certificates under the Vital Statistics Act.

Source: Laws 2005, LB 301, § 22.

71-604 Birth certificate; preparation and filing.

(1) A certificate for each live birth which occurs in the State of Nebraska shall be filed on a standard Nebraska certificate form. Such certificate shall be filed with the department within five business days after the birth.

(2) When a birth occurs in an institution or en route thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate which shall include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician, physician assistant, or other person in attendance shall provide the medical information required for the certificate within seventy-two hours after the birth.

(3) When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following:

(a) The physician or physician assistant in attendance at or immediately after the birth;

(b) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(c) Any other person in attendance at or immediately after the birth.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 5, p. 781; Laws 1921, c. 253, § 1, p. 863; C.S.1922, § 8232; Laws 1927, c. 166, § 2, p. 448; C.S.1929, § 71-2404; R.S.1943, § 71-604; Laws 1965, c. 418, § 2, p. 1335; Laws 1985, LB 42, § 2; Laws 1989, LB 344, § 9; Laws 1994, LB 886, § 3; Laws 1997, LB 307, § 135; Laws 2007, LB296, § 403; Laws 2009, LB195, § 67.

In the light of the legislative history of laws pertaining to osteopathy the term physician, used in this section, was intended to include regularly licensed osteopathic physicians. State ex rel. Johnson v. Wagner, 139 Neb. 471, 297 N.W. 906 (1941).

71-604.01 Birth certificate; sex reassignment; new certificate; procedure.

Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such

person, the department shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Source: Laws 1994, LB 886, § 4; Laws 1996, LB 1044, § 515; Laws 2007, LB296, § 404.

71-604.02 Repealed. Laws 1979, LB 39, § 3.

71-604.03 Repealed. Laws 1987, LB 385, § 7.

71-604.04 Repealed. Laws 1987, LB 385, § 7.

71-604.05 Birth certificate; restriction on filing; social security number required; exception; use; release of data to Social Security Administration.

(1) The department shall not file (a) a certificate of live birth, (b) a certificate of delayed birth registration for a registrant who is under twenty-five years of age when an application for such certificate is filed, (c) a certificate of live birth filed after adoption of a Nebraska-born person who is under twenty-five years of age or a person born outside of the jurisdiction of the United States, or (d) a certificate of live birth issued pursuant to section 71-628 unless the social security number or numbers issued to the parents are furnished by the person seeking to register the birth. No such certificate may be amended to show paternity unless the social security number of the father is furnished by the person requesting the amendment. The social security number shall not be required if no social security number has been issued to the parent or if the social security number is unknown.

(2) Social security numbers (a) shall be recorded on the birth certificate but shall not be considered part of the birth certificate and (b) shall only be used for the purpose of enforcement of child support orders in Nebraska as permitted by Title IV-D of the federal Social Security Act, as amended, or as permitted by section 7(a) of the federal Privacy Act of 1974, as amended.

(3) The department may release data to the Social Security Administration which is necessary to obtain a social security number and which is contained on the birth certificate of any individual who has applied for or is receiving medicaid or Supplemental Nutrition Assistance Program benefits. The department shall make such data available only for the purpose of obtaining a social security number for the individual.

(4) The department shall provide to the Social Security Administration each parent's name and social security number collected in the birth certification process as required by the federal Taxpayer Relief Act of 1997.

Source: Laws 1991, LB 703, § 28; Laws 1993, LB 536, § 62; Laws 1996, LB 1044, § 516; Laws 1997, LB 307, § 136; Laws 1998, LB 1073, § 89; Laws 2004, LB 1005, § 55; Laws 2007, LB296, § 405; Laws 2009, LB288, § 34.

71-605 Death certificate; cause of death; sudden infant death syndrome; how treated; cremation, disinterment, or transit permits; how executed; filing; requirements.

(1) The funeral director and embalmer in charge of the funeral of any person dying in the State of Nebraska shall cause a certificate of death to be filled out with all the particulars contained in the standard form adopted and promulgated by the department. Such standard form shall include a space for veteran status and the period of service in the armed forces of the United States and a statement of the cause of death made by a person holding a valid license as a physician or physician assistant who last attended the deceased. The standard form shall also include the deceased's social security number. Death and fetal death certificates shall be completed by the funeral directors and embalmers and physicians or physician assistants for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician or physician assistant shall have the responsibility and duty to complete and sign in his or her own handwriting or by electronic means pursuant to section 71-603.01, within twenty-four hours from the time of death, that part of the certificate of death entitled medical certificate of death. In the case of a death when no person licensed as a physician or physician assistant was in attendance, the funeral director and embalmer shall refer the case to the county attorney who shall have the responsibility and duty to complete and sign the death certificate in his or her own handwriting or by electronic means pursuant to section 71-603.01.

No cause of death shall be certified in the case of the sudden and unexpected death of a child between the ages of one week and three years until an autopsy is performed at county expense by a qualified pathologist pursuant to section 23-1824. The parents or guardian shall be notified of the results of the autopsy by their physician, physician assistant, community health official, or county coroner within forty-eight hours. The term sudden infant death syndrome shall be entered on the death certificate as the principal cause of death when the term is appropriately descriptive of the pathology findings and circumstances surrounding the death of a child.

If the circumstances show it possible that death was caused by neglect, violence, or any unlawful means, the case shall be referred to the county attorney for investigation and certification. The county attorney shall, within twenty-four hours after taking charge of the case, state the cause of death as ascertained, giving as far as possible the means or instrument which produced the death. All death certificates shall show clearly the cause, disease, or sequence of causes ending in death. If the cause of death cannot be determined within the period of time stated above, the death certificate shall be filed to establish the fact of death. As soon as possible thereafter, and not more than six weeks later, supplemental information as to the cause, disease, or sequence of causes ending in death shall be filed with the department to complete the record. For all certificates stated in terms that are indefinite, insufficient, or unsatisfactory for classification, inquiry shall be made to the person completing the certificate to secure the necessary information to correct or complete the record.

(3) A completed death certificate shall be filed with the department within five business days after the date of death. If it is impossible to complete the certificate of death within five business days, the funeral director and embalmer shall notify the department of the reason for the delay and file the certificate as soon as possible.

(4) Before any dead human body may be cremated, a cremation permit shall first be signed by the county attorney, or by his or her authorized representative as designated by the county attorney in writing, of the county in which the death occurred on a form prescribed and furnished by the department.

(5) A permit for disinterment shall be required prior to disinterment of a dead human body. The permit shall be issued by the department to a licensed funeral director and embalmer upon proper application. The request for disinterment shall be made by the next of kin of the deceased, as listed in section 38-1425, or a county attorney on a form furnished by the department. The application shall be signed by the funeral director and embalmer who will be directly supervising the disinterment. When the disinterment occurs, the funeral director and embalmer shall sign the permit giving the date of disinterment and file the permit with the department within ten days of the disinterment.

(6) When a request is made under subsection (5) of this section for the disinterment of more than one dead human body, an order from a court of competent jurisdiction shall be submitted to the department prior to the issuance of a permit for disinterment. The order shall include, but not be limited to, the number of bodies to be disinterred if that number can be ascertained, the method and details of transportation of the disinterred bodies, the place of reinterment, and the reason for disinterment. No sexton or other person in charge of a cemetery shall allow the disinterment of a body without first receiving from the department a disinterment permit properly completed.

(7) No dead human body shall be removed from the state for final disposition without a transit permit issued by the funeral director and embalmer having charge of the body in Nebraska, except that when the death is subject to investigation, the transit permit shall not be issued by the funeral director and embalmer without authorization of the county attorney of the county in which the death occurred. No agent of any transportation company shall allow the shipment of any body without the properly completed transit permit prepared in duplicate.

(8) The interment, disinterment, or reinterment of a dead human body shall be performed under the direct supervision of a licensed funeral director and embalmer, except that hospital disposition may be made of the remains of a child born dead pursuant to section 71-20,121.

(9) All transit permits issued in accordance with the law of the place where the death occurred in a state other than Nebraska shall be signed by the funeral director and embalmer in charge of burial and forwarded to the department within five business days after the interment takes place.

Source: Laws 1921, c. 253, § 2, p. 863; C.S.1922, § 8233; Laws 1927, c. 166, § 3, p. 449; C.S.1929, § 71-2405; R.S.1943, § 71-605; Laws 1949, c. 202, § 1, p. 585; Laws 1953, c. 241, § 1, p. 830; Laws 1961, c. 341, § 3, p. 1091; Laws 1965, c. 418, § 3, p. 1335; Laws 1973, LB 29, § 1; Laws 1978, LB 605, § 1; Laws 1985, LB 42, § 3; Laws 1989, LB 344, § 10; Laws 1993, LB 187, § 8; Laws 1996, LB 1044, § 517; Laws 1997, LB 307, § 137; Laws 1997, LB 752, § 172; Laws 1999, LB 46, § 4; Laws 2003, LB 95, § 33; Laws 2005, LB 54, § 14; Laws 2005, LB 301, § 25; Laws 2007, LB463, § 1184; Laws 2009, LB195, § 68.

Cross References

For authority of chiropractors to sign death certificates, see section 38-811.
For authority of physician assistants to sign death certificates, see section 38-2047.
Organ and tissue donation, notation required, see section 71-4816.

Medical certificate is not admissible as proof of cause of death. O'Neil v. Union Nat. Life Ins. Co., 162 Neb. 284, 75 N.W.2d 739 (1956).

An autopsy is required and justified and may be ordered by the county attorney, without the consent of the family, whenever it is necessary to determine whether or not the cause of death of a human being involved unlawful means. Sturgeon v. Crosby Mortuary, 140 Neb. 82, 299 N.W. 378 (1941).

In a controversy between individuals where the cause of death is a material issue, the medical certificate of death, executed by the physician last in attendance, is not competent proof of the cause of death as recited therein. Omaha & C. B. St. Ry. Co. v. Johnson, 109 Neb. 526, 191 N.W. 691 (1922).

71-605.01 Death certificate; death in military service outside continental limits of United States; recording.

Death certificates issued by or under the authority of the United States for persons who were residents of Nebraska at the time they entered the military or armed forces of the United States, and died while in the service of their country while outside the continental limits of the United States may be recorded with the department.

Source: Laws 1947, c. 233, § 1, p. 739; Laws 1949, c. 203, § 1, p. 588; Laws 1996, LB 1044, § 518; Laws 2007, LB296, § 406.

71-605.02 Death certificate; death in military service outside continental limits of United States; fees.

The department shall preserve permanently and index all such certificates and shall charge and collect in advance the fee prescribed in section 71-612, to be paid by the applicant for each certified copy supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record, whether or not the record is found on file with the department. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund as provided in section 71-612.

Source: Laws 1947, c. 233, § 2, p. 739; Laws 1965, c. 419, § 1, p. 1342; Laws 1967, c. 442, § 1, p. 1382; Laws 1973, LB 583, § 7; Laws 1991, LB 703, § 29; Laws 1992, LB 1019, § 48; Laws 1996, LB 1044, § 519; Laws 2007, LB296, § 407.

71-605.03 Repealed. Laws 1985, LB 42, § 26.

71-605.04 Death; autopsy; sudden infant death syndrome; report by county attorney or coroner; to whom.

The county attorney or coroner shall, within two days of the issuance of the autopsy results showing death suspected due to the sudden infant death syndrome, notify a representative of the Nebraska Sudden Infant Death Syndrome Foundation or the appropriate area community mental health center of the name of the parents of the sudden infant death syndrome victim.

Source: Laws 1978, LB 605, § 2; Laws 1990, LB 954, § 1.

71-606 Stillborn child; death certificate; how registered; duties; certificate of birth resulting in stillbirth.

(1) A stillborn child shall be registered as a fetal death on a certificate form furnished by the department. Such certificate shall not be required for a child which has not advanced to the twentieth week of gestation. The certificate shall be filed with the department by the funeral director and embalmer in charge of

the funeral and shall include a statement of the cause of death made by a person holding a valid license as a physician who was in attendance. In the event of hospital disposition, as provided in section 71-20,121, the entire certificate shall be completed by the attending physician and subscribed to also by the hospital administrator or his or her designated representative. If the attendant is not a physician, the death shall be referred to the county attorney for certification. The same time limit for completion shall apply as for a regular death certificate.

(2)(a) The parent of a stillborn child may request a certificate of birth resulting in stillbirth for such child, regardless of the date of filing of the corresponding fetal death certificate. The department shall provide such certificate upon request and payment of the required fee. For purposes of this section, certificate of birth resulting in stillbirth means a birth certificate issued to record the birth of a stillborn child.

(b) The person responsible for filing a fetal death certificate under this section shall notify the parent or parents of the stillborn child that such parent may request a certificate of birth resulting in stillbirth and shall provide the necessary information for making such request.

(c) The parent requesting a certificate of birth resulting in stillbirth may provide a name for the stillborn child. If no name is provided, the department shall enter upon the certificate the name ''baby boy'' or ''baby girl'' and the last name of the requesting parent. The name on the original or amended certificate of birth resulting in stillbirth shall be the same as that entered on the original or amended fetal death certificate and shall include the state file number of the corresponding fetal death certificate for such child.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 7, p. 782; C.S.1922, § 8237; C.S.1929, § 71-2409; R.S.1943, § 71-606; Laws 1965, c. 418, § 4, p. 1337; Laws 1985, LB 42, § 4; Laws 1989, LB 344, § 11; Laws 1993, LB 187, § 9; Laws 1996, LB 1044, § 520; Laws 1997, LB 307, § 138; Laws 2003, LB 95, § 34; Laws 2007, LB296, § 408; Laws 2008, LB1048, § 1.

71-607 Repealed. Laws 1994, LB 886, § 17.

71-608 Repealed. Laws 1985, LB 42, § 26.

71-608.01 Birth and death certificates; local registration; where filed; exemption.

Persons in any county containing a city of the metropolitan or primary class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established birth and death registration system shall be exempt from the requirements of direct filing of birth and death certificates required by sections 71-604, 71-605, and 71-606. The certificates for the births and deaths occurring in any such county shall be filed with the vital statistics office of the city-county or county health department within five business days of the date of the birth or death. The city-county or county health department shall forward the certificates to the department within ten business days of the date of the birth or death.

Source: Laws 1985, LB 42, § 6; Laws 1997, LB 307, § 139; Laws 2007, LB296, § 409.

71-609 Caskets; sale by retail dealer; record; report.

Every retail dealer in caskets shall keep a record of sales, which record shall include the name and post office address of the purchaser and the name and date and place of death of the deceased. A report of sales or no sales shall be forwarded to the department on the first day of each month. This requirement shall not apply to persons selling caskets only to dealers or funeral directors and embalmers. Every seller of a casket at retail who does not have charge of the disposition of the body shall enclose within the casket a notice calling attention to the requirements of the law and a blank certificate of death.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 11, p. 783; C.S.1922, § 8241; Laws 1927, c. 166, § 6, p. 450; C.S.1929, § 71-2413; R.S.1943, § 71-609; Laws 1993, LB 187, § 10; Laws 1996, LB 1044, § 521; Laws 2007, LB296, § 410.

71-610 Maternity homes; hospitals; birth reports.

Maternity homes and lying-in hospitals, and places used as such, shall report to the department on the first day of each month the sex and date of birth of all children born in their respective institutions during the preceding month. The report shall also show the names and addresses of the parents and attending physicians.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 12, p. 783; C.S.1922, § 8242; Laws 1927, c. 166, § 7, p. 451; C.S.1929, § 71-2414; R.S.1943, § 71-610; Laws 1996, LB 1044, § 522; Laws 2007, LB296, § 411.

71-611 Department; forms; duty to supply; use of computer-generated forms; authorized.

The department shall supply all necessary blanks, forms, and instructions pertaining to the recording of births and deaths to physicians, hospitals, and funeral directors and embalmers. Upon written request, the department may authorize a funeral director and embalmer licensed in Nebraska to use computer-generated death certificate forms on paper supplied by the department which is of the same quality and identical in form established in department regulations for death certificates which are not computer-generated.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 13, p. 783; C.S.1922, § 8243; Laws 1927, c. 166, § 8, p. 451; C.S.1929, § 71-2415; R.S.1943, § 71-611; Laws 1953, c. 242, § 1, p. 832; Laws 1959, c. 322, § 1, p. 1179; Laws 1985, LB 42, § 5; Laws 1992, LB 1019, § 49; Laws 1993, LB 187, § 11; Laws 1996, LB 1044, § 523; Laws 2007, LB296, § 412.

71-612 Department; certificates; copies; fees; waiver of fees, when; search of death certificates; fee; access; petty cash fund; authorized.

(1) The department, as the State Registrar, shall preserve permanently and index all certificates received. The department shall supply to any applicant for any proper purpose, as defined by rules and regulations of the department, a certified copy of the record of any birth, death, marriage, annulment, or dissolution of marriage or an abstract of marriage. The department shall supply a copy of a public vital record for viewing purposes at its office upon an

application signed by the applicant and upon proof of the identity of the applicant. The application may include the name, address, and telephone number of the applicant, purpose for viewing each record, and other information as may be prescribed by the department by rules and regulations to protect the integrity of vital records and prevent their fraudulent use. Except as provided in subsections (2), (3), (5), (6), and (7) of this section, the department shall be entitled to charge and collect in advance a fee of eleven dollars to be paid by the applicant for each certified copy or abstract of marriage supplied to the applicant or for any search made at the applicant's request for access to or a certified copy of any record or abstract of marriage, whether or not the record or abstract is found on file with the department.

(2) The department shall, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department upon the request of (a) the United States Department of Veterans Affairs or any lawful service organization empowered to represent veterans if the copy of the record or abstract of marriage is to be issued, for the welfare of any member or veteran of the armed forces of the United States or in the interests of any member of his or her family, in connection with a claim growing out of service in the armed forces of the nation or (b) the Military Department.

(3) The department may, free of charge, search for and furnish a certified copy of any record or abstract of marriage on file with the department when in the opinion of the department it would be a hardship for the claimant of old age, survivors, or disability benefits under the federal Social Security Act to pay the fee provided in this section.

(4) A strict account shall be kept of all funds received by the department. Funds received pursuant to subsections (1), (5), (6), and (8) of this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used for the purpose of administering the laws relating to vital statistics and may be used to create a petty cash fund administered by the department to facilitate the payment of refunds to individuals who apply for copies or abstracts of records. The petty cash fund shall be subject to section 81-104.01, except that the amount in the petty cash fund shall not be less than twenty-five dollars nor more than one thousand dollars.

(5) The department shall, upon request, conduct a search of death certificates for stated individuals for the Nebraska Medical Association or any of its allied medical societies or any inhospital staff committee pursuant to sections 71-3401 to 71-3403. If such death certificate is found, the department shall provide a noncertified copy. The department shall charge a fee for each search or copy sufficient to cover its actual direct costs, except that the fee shall not exceed two dollars per individual search or copy requested.

(6) The department may permit use of data from vital records for statistical or research purposes under section 71-602 or disclose data from certificates or records to federal, state, county, or municipal agencies of government for use in administration of their official duties and charge and collect a fee that will recover the department's cost of production of the data. The department may provide access to public vital records for viewing purposes by electronic means, if available, under security provisions which shall assure the integrity and security of the records and data base and shall charge and collect a fee that shall recover the department's costs.

(7) In addition to the fees charged under subsection (1) of this section, the department shall charge and collect an additional fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for access to or a certified copy of any such record, whether or not the record is found on file with the department. Any county containing a city of the metropolitan class which has an established city-county or county health department pursuant to sections 71-1626 to 71-1636 which has an established system of registering births and deaths shall charge and collect in advance a fee of one dollar for any certified copy of the record of any birth or for any search made at the applicant's request for such record, whether or not the record is found on file with the county. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(8) The department shall not charge other state agencies the fees authorized under subsections (1) and (7) of this section for automated review of any certificates or abstracts of marriage. The department shall charge and collect a fee from other state agencies for such automated review that will recover the department's cost.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 14, p. 784; Laws 1921, c. 73, § 1, p. 272; C.S.1922, § 8244; Laws 1927, c. 166, § 9, p. 451; C.S.1929, § 71-2416; Laws 1941, c. 140, § 10, p. 554; C.S.Supp.,1941, § 71-2416; Laws 1943, c. 147, § 1, p. 532; R.S. 1943, § 71-612; Laws 1951, c. 229, § 1, p. 830; Laws 1959, c. 323, § 1, p. 1180; Laws 1963, c. 410, § 1, p. 1330; Laws 1965, c. 418, § 6, p. 1338; Laws 1965, c. 419, § 2, p. 1342; Laws 1973, LB 583, § 8; Laws 1983, LB 617, § 14; Laws 1985, LB 42, § 7; Laws 1986, LB 333, § 9; Laws 1989, LB 344, § 12; Laws 1991, LB 703, § 30; Laws 1992, LB 1019, § 50; Laws 1993, LB 536, § 63; Laws 1995, LB 406, § 32; Laws 1996, LB 1044, § 524; Laws 1997, LB 307, § 140; Laws 2002, Second Spec. Sess., LB 48, § 3; Laws 2004, LB 1005, § 56; Laws 2006, LB 994, § 86; Laws 2006, LB 1115, § 39; Laws 2007, LB296, § 413.

71-613 Violation; penalty.

Except as otherwise provided in section 71-649, any person violating any of the provisions of sections 71-601.01 to 71-616 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 15, p. 784; C.S.1922, § 8245; C.S.1929, § 71-2417; R.S.1943, § 71-613; Laws 1977, LB 39, § 153; Laws 2005, LB 301, § 26.

71-614 Marriage licenses; monthly reports; county clerk; duties; failure; penalty.

(1) On or before the fifth day of each month, the county clerk of each county shall return to the department upon suitable blank forms, to be provided by the department, a statement of all marriages recorded by him or her during the preceding calendar month. If no marriages were performed in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such returns, such county

clerk shall, for each such neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the proper county, to be collected as debts of like amount are now collectible.

(2) As soon as possible after completion of an amendment to a marriage license by the department, the department shall forward a noncertified copy of the marriage license reflecting the amendment to the county clerk of the county in which the license was filed. Upon receipt of the amended copy, the county clerk shall make the necessary changes on the marriage license on file in his or her office to reflect the amendment.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 16, p. 784; C.S.1922, § 8246; Laws 1927, c. 166, § 10, p. 452; C.S.1929, § 71-2418; R.S.1943, § 71-614; Laws 1959, c. 323, § 2, p. 1180; Laws 1967, c. 443, § 1, p. 1383; Laws 1967, c. 444, § 1, p. 1385; Laws 1977, LB 73, § 1; Laws 1986, LB 525, § 13; Laws 1992, LB 1019, § 53; Laws 1996, LB 1044, § 525; Laws 1997, LB 307, § 141; Laws 2007, LB296, § 414.

71-615 Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court; failure; penalty.

On or before the fifth day of each month, the clerk of the district court of each county shall make and return to the department, upon suitable forms furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information shall be furnished by the petitioner or his or her legal representative and presented to the clerk of the court with the petition. In all cases, the furnishing of the information to complete the record shall be a prerequisite to the granting of the final decree. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such return, such clerk shall, for each neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the county.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 18, p. 785; C.S.1922, § 8248; Laws 1927, c. 166, § 11, p. 452; C.S.1929, § 71-2419; R.S.1943, § 71-615; Laws 1959, c. 323, § 3, p. 1181; Laws 1967, c. 443, § 2, p. 1384; Laws 1967, c. 444, § 2, p. 1386; Laws 1977, LB 73, § 2; Laws 1989, LB 344, § 13; Laws 1996, LB 1044, § 526; Laws 1996, LB 1296, § 28; Laws 1997, LB 229, § 40; Laws 2007, LB296, § 415.

71-616 Reports; department to tabulate.

The department shall preserve permanently and index all births, deaths, marriages, and divorces received, and shall tabulate statistics therefrom.

Source: Laws 1919, c. 190, tit. VI, art. II, div. IX, § 19, p. 785; C.S.1922, § 8249; Laws 1927, c. 166, § 12, p. 453; C.S.1929, § 71-2420; R.S.1943, § 71-616; Laws 1996, LB 1044, § 527; Laws 2007, LB296, § 416.

71-616.01 Match birth and death certificates; viewing records; department; powers.

To protect the integrity of vital records and to prevent the fraudulent use of birth certificates of deceased persons, the department is authorized to match birth and death certificates and to post the facts of death to the appropriate birth certificate. To assist in the matching process, the department is authorized to enter into agreements with offices of vital records outside the state to exchange the birth or death records or reports of each state's citizens. Copies of birth certificates issued of deceased persons shall be marked deceased.

The department may also maintain applications for viewing vital records and match the same against requests for certified copies or adopt such other security measures as may serve to identify requests to view vital records made for unlawful or fraudulent purposes.

Source: Laws 1992, LB 1019, § 51.

71-616.02 Filing and registering of information; additional methods authorized.

Information required in certificates or reports authorized by sections 71-605.02, 71-612, and 71-616.01 may be filed and registered by electronic or other means if authorized by the department and as prescribed by department regulation.

Source: Laws 1992, LB 1019, § 52.

71-616.03 Filing and issuing vital records; additional methods authorized.

The department may accept for filing and issue certified copies of vital records generated from microfilm, imaging, electronic means, or any other medium as designated by the department.

Source: Laws 1994, LB 886, § 5; Laws 1996, LB 1044, § 528; Laws 2007, LB296, § 417.

71-616.04 Preservation of vital records; methods authorized.

To preserve vital records, the department may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports of vital records. Such reproductions, when verified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

Source: Laws 1994, LB 886, § 6; Laws 1996, LB 1044, § 529; Laws 1997, LB 307, § 142; Laws 2007, LB296, § 418.

71-616.05 Repealed. Laws 2004, LB 1005, § 143.

71-617 Repealed. Laws 1985, LB 42, § 27.

71-617.01 Delayed Birth Registration Act, how cited.

Sections 71-617.01 to 71-617.15 shall be known and may be cited as the Delayed Birth Registration Act.

Source: Laws 1985, LB 42, § 8.

71-617.02 Delayed birth registration; application; fee; certificate registered; documentary evidence, defined.

A notarized application may be filed with the department for a delayed registration of birth of any person born in the State of Nebraska whose birth is not registered within one year after the date of birth. If the birth occurred in the State of Nebraska at any time since the commencement in 1905 of mandatory registration under the laws of Nebraska, the applicant shall pay the statutory file search fee prescribed by section 71-612 to determine that such birth is not recorded. The certificate shall be registered based upon documentary evidence furnished to substantiate the alleged facts of birth. As used in the Delayed Birth Registration Act, unless the context otherwise requires, documentary evidence shall mean independent records each of which was created for a different purpose.

Source: Laws 1985, LB 42, § 9; Laws 1997, LB 307, § 144; Laws 2007, LB296, § 419.

71-617.03 Delayed birth certificate; contents.

Any birth certificate filed one year or more after the date of birth shall be marked Delayed and shall show on the face of the certificate the date of the delayed registration. A summary statement of the evidence submitted in support of the delayed registration shall be listed on the certificate.

Source: Laws 1985, LB 42, § 10.

71-617.04 Delayed birth certificate; persons applying.

In order to request the issuance of a certificate of delayed birth registration, the applicant shall be at least eighteen years of age. If the applicant is not yet eighteen years of age, application may be made only by the applicant's father, mother, guardian, or attendant at birth.

Source: Laws 1985, LB 42, § 11.

71-617.05 Delayed birth certificate; application; fee; records required.

Each application for a certificate of delayed birth registration shall be accompanied by the fees required by subsection (1) of section 71-617.15 and three independent supporting records as provided in section 71-617.06, only one of which may be an affidavit of personal recollection from a person at least five years older than the applicant and having a personal knowledge of the facts at the time of birth. Any evidence used shall relate to the date and place of birth and at least one item of documentary evidence shall correctly establish parentage.

Source: Laws 1985, LB 42, § 12; Laws 2004, LB 1005, § 57.

71-617.06 Delayed birth certificate; independent supporting records; enumerated.

Independent supporting records shall include, but not be limited to, original records or certified or notarized copies of:

(1) A recorded certificate of baptism performed under age four;

(2) An insurance policy application personal history sheet;

(3) A federal census record;

(4) A school census record;

(5) A military service record;

(6) A family Bible record when proved beyond a reasonable doubt that the record was made before the child reached age four;

(7) Other evidence on file in the department taken from other registrations;

(8) A record at least five years old or established within seven years of the date of birth such as a physician's certificate or an affidavit taken from physician, hospital, nursing, or clinic records;

(9) An affidavit from a parent or longtime acquaintance;

(10) A printed notice of birth;

(11) A record from a birthday or baby book;

(12) A school record; or

(13) A church record.

An affidavit shall include the full name of the person whose birth is being registered as well as the date and place of birth and the basis of the affiant's knowledge of these facts.

Source: Laws 1985, LB 42, § 13; Laws 1997, LB 307, § 145; Laws 2007, LB296, § 420.

71-617.07 Refusal to issue delayed birth certificate; reasons; appeal.

If an applicant for a certificate of delayed birth registration fails to submit the minimum documentation required for the delayed registration or if the department has reasonable cause to question the validity or adequacy of either the applicant's sworn statement or the documentary evidence due to conflicting evidence submitted and if the deficiencies are not corrected, the department shall not issue and register a delayed certificate of birth and shall advise the applicant of the reasons for such action. The department shall further advise the applicant of his or her right of appeal to the department and then, if not satisfied, to the county court as provided in section 71-617.08.

Source: Laws 1985, LB 42, § 14; Laws 1996, LB 1044, § 531; Laws 1997, LB 307, § 146; Laws 2007, LB296, § 421.

71-617.08 Delayed birth certificate; denial; appeal; procedure.

(1) If a delayed certificate of birth is denied by the department, a petition signed and sworn to by the petitioner may be filed with the county court of Lancaster County, of the county of the petitioner's residence, or of the county in which the birth is claimed to have occurred.

(2) The petition shall be made on a form prescribed and furnished by the department and shall allege:

(a) That the person for whom a delayed certificate of birth is sought was born in this state;

(b) That no certificate of birth of such person can be found in the files or records of the department;

(c) That diligent efforts by the petitioner have failed to obtain evidence required by sections 71-617.05 and 71-617.06 that is considered acceptable by the department;

(d) That the department has refused to register a delayed certificate of birth; and

(e) Such other allegations as may be required.

Source: Laws 1985, LB 42, § 15; Laws 1996, LB 1044, § 532; Laws 1997, LB 307, § 147; Laws 2007, LB296, § 422.

71-617.09 Delayed birth certificate; petition; accompanying documents.

A statement of the department indicating why a delayed certificate of birth was not issued and registered and all documentary evidence which was submitted to the department in support of such registration shall accompany a petition filed under section 71-617.08.

Source: Laws 1985, LB 42, § 16; Laws 1996, LB 1044, § 533; Laws 1997, LB 307, § 148; Laws 2007, LB296, § 423.

71-617.10 Delayed birth certificate; hearing; notice; witnesses.

The court shall fix a time and place for a hearing upon a petition filed under section 71-617.08 and shall give the department ten calendar days' notice of such hearing. Authorized representatives of the department may appear and testify in the proceeding.

Source: Laws 1985, LB 42, § 17; Laws 1996, LB 1044, § 534; Laws 1997, LB 307, § 149; Laws 2007, LB296, § 424.

71-617.11 Delayed birth certificate; hearing; findings; order; contents.

If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage, and such other findings as the case may require and shall issue an order on a form prescribed and furnished by the department to establish a certificate of birth. The order shall include the birth data to be registered, a description of the evidence presented, and the date of the court's action.

Source: Laws 1985, LB 42, § 18; Laws 1997, LB 307, § 150; Laws 2007, LB296, § 425.

71-617.12 Delayed birth certificate; court order; clerk of the court; duties.

The clerk of the court shall forward any order made under section 71-617.11 to the department not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the department and shall constitute the certificate of birth.

Source: Laws 1985, LB 42, § 19; Laws 1997, LB 307, § 151; Laws 2007, LB296, § 426.

71-617.13 Delayed birth certificate; department; duties.

The department shall certify on a delayed registration of birth that no other record of the birth is on file with the department.

Source: Laws 1985, LB 42, § 20; Laws 1997, LB 307, § 152; Laws 2007, LB296, § 427.

71-617.14 Repealed. Laws 2004, LB 1005, § 143.

71-617.15 Delayed birth certificate; fees.

(1) The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 when an application for a delayed birth certificate is filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect an additional fee of one dollar when a delayed birth certificate is issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of a delayed birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

Source: Laws 1985, LB 42, § 22; Laws 1986, LB 333, § 10; Laws 1991, LB 703, § 31; Laws 1992, LB 1019, § 54; Laws 1995, LB 406, § 33; Laws 1996, LB 1044, § 535; Laws 1997, LB 307, § 154; Laws 2002, Second Spec. Sess., LB 48, § 4; Laws 2004, LB 1005, § 58; Laws 2006, LB 994, § 87; Laws 2007, LB296, § 428.

71-618 Repealed. Laws 1985, LB 42, § 27.

71-619 Repealed. Laws 1985, LB 42, § 27.

71-620 Repealed. Laws 1985, LB 42, § 27.

71-621 Repealed. Laws 1985, LB 42, § 27.

71-622 Repealed. Laws 1985, LB 42, § 27.

71-623 Repealed. Laws 1985, LB 42, § 27.

71-624 Repealed. Laws 1985, LB 42, § 27.

71-625 Repealed. Laws 1985, LB 42, § 27.

71-626 Adoptive birth certificate; adoption decree; court; report of adoption; contents.

(1) For each adoption of a Nebraska-born or foreign-born person decreed by any court of this state, the court shall require the preparation of a report of adoption on a form prescribed and furnished by the department. The report shall (a) include the original name, date, and place of birth and the name of the parent or parents of such person; (b) provide information necessary to establish a new certificate of birth of the person adopted; (c) provide the name and address of the child placement agency, if any, which placed the child for adoption; and (d) identify the decree of adoption and be certified by the clerk of the court.

(2) Information in the possession of the petitioner necessary to prepare the report of adoption shall be furnished with the petition for adoption by each petitioner or his or her attorney. The social or welfare agency or other person concerned shall supply the court with such additional information in his or her possession as may be necessary to complete the report. The supplying of such information shall be a prerequisite to the issuance of a decree.

(3) Whenever an adoption decree is amended or set aside, the clerk of the court shall prepare a report thereof, which shall include such facts as are necessary to identify the original adoption report and the facts amended in the adoption decree as shall be necessary to properly amend the birth record.

(4) Not later than the tenth day after the decree has been entered, the clerk of such court shall forward the report to the department whenever an adoptive birth certificate is to be filed or has already been filed.

Source: Laws 1941, c. 143, § 1, p. 571; C.S.Supp.,1941, § 43-113; R.S. 1943, § 71-626; Laws 1945, c. 168, § 1, p. 540; Laws 1959, c. 323, § 5, p. 1182; Laws 1961, c. 342, § 1, p. 1093; Laws 1965, c. 418, § 9, p. 1339; Laws 1971, LB 246, § 1; Laws 1980, LB 681, § 2; Laws 1980, LB 992, § 30; Laws 1996, LB 1044, § 536; Laws 1997, LB 307, § 155; Laws 2007, LB296, § 429.

Cross References

For proceedings for adoption of children, see Chapter 43, article 1.

71-626.01 Adopted person; new birth certificate; conditions; contents; rules and regulations.

(1) The department shall establish a new certificate of birth for a person born in the State of Nebraska whenever it receives any of the following:

(a) A report of adoption as provided in section 71-626 on a form supplied by the department or a certified copy of the decree of adoption together with the information required in such report, except that a new certificate of birth shall not be established if so requested in writing by the court decreeing the adoption, the adoptive parents, or the adopted person; or

(b) A report of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or nation declaring adopted a person born in the State of Nebraska, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth, except that a new certificate of birth shall not be established when so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(2) The new certificate of birth for a person born in the State of Nebraska shall be on the form in use at the time of its preparation and shall include the following items in addition to such other information as may be necessary to complete the form:

(a) The adoptive name of the person;

(b) The names and personal particulars of the adoptive parents;

(c) The date and place of birth as transcribed from the original certificate;

(d) The name of the attendant, printed or typed;

(e) The same birth number as was assigned to the original certificate; and

(f) The original filing date.

The data necessary to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the department.

(3) When an adoptive certificate of birth is established, the actual place of birth and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption shall not be subject to inspection except (a) upon order of a court of

competent jurisdiction, (b) as provided in sections 43-138 to 43-140, (c) as provided in sections 43-146.11 to 43-146.13, or (d) as provided by rules and regulations of the department. Upon receipt of notice that an adoption has been set aside, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction.

(4) Whenever a new certificate of birth is established by the department, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed from inspection.

(5) The department may adopt and promulgate such rules and regulations as are necessary and proper to assist it in the implementation and administration of section 71-626 and this section.

Source: Laws 1971, LB 246, § 2; Laws 1980, LB 992, § 31; Laws 1988, LB 372, § 24; Laws 1996, LB 1044, § 537; Laws 1997, LB 307, § 156; Laws 2007, LB296, § 430.

71-627 Adoptive birth certificates; filing; copies; issuance.

(1) The certificate of birth of adopted children shall be filed as other certificates of birth. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each certificate filed. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each certificate issued. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

(2) Upon request and payment of the fees required by section 71-612, a certified copy of an adoptive birth certificate shall be furnished by the department. All fees for a certified copy shall be handled as provided in section 71-612.

Source: Laws 1941, c. 143, § 2, p. 572; C.S.Supp.,1941, § 43-114; R.S. 1943, § 71-627; Laws 1953, c. 243, § 1, p. 833; Laws 1959, c. 323, § 6, p. 1183; Laws 1961, c. 342, § 2, p. 1094; Laws 1965, c. 418, § 10, p. 1340; Laws 1965, c. 419, § 4, p. 1343; Laws 1971, LB 246, § 3; Laws 1973, LB 583, § 10; Laws 1983, LB 617, § 16; Laws 1986, LB 333, § 11; Laws 1991, LB 703, § 32; Laws 1992, LB 1019, § 55; Laws 1995, LB 406, § 34; Laws 1996, LB 1044, § 538; Laws 1997, LB 307, § 157; Laws 2002, Second Spec. Sess., LB 48, § 5; Laws 2004, LB 1005, § 59; Laws 2006, LB 994, § 88; Laws 2007, LB296, § 431.

71-627.01 Adoptive birth certificate; decree of adoption of child born in another state; notice of entry of decree.

Whenever a decree of adoption is entered in any court of competent jurisdiction in the State of Nebraska, as to a child born in another state, the judge of the court in which such decree is entered shall, on forms to be furnished by the department, notify the agency having authority to issue adoptive birth certifi-

cates in the state in which such child was born for the purpose of securing the issuance of an adoptive birth certificate from the state of birth.

Source: Laws 1961, c. 342, § 3, p. 1094; Laws 1996, LB 1044, § 539; Laws 1997, LB 307, § 158; Laws 2007, LB296, § 432.

71-627.02 Adoption of foreign-born person; birth certificate; contents.

Upon receipt of a Report of Adoption or a certified copy of a decree of adoption issued by any court of competent jurisdiction in the State of Nebraska as to any foreign-born person, the department shall prepare a birth certificate in the new name of the adopted person. The birth certificate shall show specifically (1) the new name of the adopted person, (2) the date of birth and sex of the adopted person, (3) statistical information concerning the adoptive parents in place of the natural parents, and (4) the true or probable place of birth including the city or town and country.

Source: Laws 1961, c. 342, § 4, p. 1094; Laws 1980, LB 681, § 3; Laws 1980, LB 992, § 32; Laws 1994, LB 886, § 7; Laws 1996, LB 1044, § 540; Laws 1997, LB 307, § 159; Laws 2007, LB296, § 433.

71-628 Children born out of wedlock; birth certificate; issuance; when authorized.

In case of the legitimation of any child born in Nebraska by the subsequent marriage of such child's parents as provided in section 43-1406, the department, upon the receipt of a certified copy of the marriage certificate or abstract of marriage of the parents and a statement of the parents acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated, in substantially the same form as that used for other live births. The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612. All such fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall charge and collect an additional fee of one dollar for each new certificate of birth filed. All amounts collected from such additional fee shall be remitted to the State Treasurer for credit to the Nebraska Child Abuse Prevention Fund.

Source: Laws 1945, c. 173, § 1, p. 552; Laws 1959, c. 323, § 7, p. 1183; Laws 1983, LB 617, § 17; Laws 1986, LB 333, § 12; Laws 1992, LB 1019, § 56; Laws 1994, LB 886, § 8; Laws 1994, LB 1224, § 83; Laws 1995, LB 406, § 35; Laws 1997, LB 307, § 160; Laws 2002, Second Spec. Sess., LB 48, § 6; Laws 2004, LB 1005, § 60; Laws 2006, LB 994, § 89; Laws 2006, LB 1115, § 40; Laws 2007, LB296, § 434.

71-629 Children born out of wedlock; legitimized; birth certificate; copies; issuance; inspection; when authorized.

A certified copy or copies of the certificate of birth of any such legitimized child may be furnished upon request by the department. The evidence upon which the new certificate is made may be furnished upon request to a parent of such legitimized child or to the legitimized child if such child is nineteen years of age or older. The evidence upon which the new certificate is made shall be available for inspection by any other person only upon the order of a court of

competent jurisdiction, and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Source: Laws 1945, c. 173, § 2, p. 553; Laws 1996, LB 1044, § 541; Laws 1997, LB 307, § 161; Laws 2007, LB185, § 4; Laws 2007, LB296, § 435.

71-630 Birth or death certificate; erroneous or incomplete; correction; department; duties.

(1) A birth or death certificate filed with the department may be amended only in accordance with this section and sections 71-635 to 71-644 and rules and regulations adopted pursuant thereto by the department as necessary and proper to protect the integrity and accuracy of records of vital statistics.

(2) A certificate that is amended under this section shall have a properly dated reference placed on the face of the certificate and state that it is amended, except as provided in subsection (4) of this section.

(3) Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of such person or his or her parent, guardian, or legal representative, the department shall amend the certificate of birth to reflect the change in name.

(4) Upon request and receipt of a sworn acknowledgment of paternity of a child born out of wedlock signed by both parents, the department shall amend the certificate of birth to show such paternity if paternity is not shown on the birth certificate. Such certificate shall not be marked amended.

Source: Laws 1947, c. 234, § 1, p. 740; Laws 1959, c. 323, § 8, p. 1183; Laws 1971, LB 245, § 1; Laws 1996, LB 1044, § 542; Laws 1997, LB 307, § 162; Laws 2007, LB296, § 436.

71-631 Repealed. Laws 1971, LB 245, § 13.

71-632 Repealed. Laws 1971, LB 245, § 13.

71-633 Repealed. Laws 1971, LB 245, § 13.

71-634 Birth or death certificate; correction.

The department shall charge and collect the same fee as prescribed in subsection (1) of section 71-612 for each proceeding under sections 71-630 and 71-635 to 71-644. All fees so collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall collect the fees required by section 71-612 for a certified copy of the amended record. All fees for a certified copy shall be handled as provided in section 71-612.

If a certificate is amended pursuant to sections 71-630 and 71-635 to 71-644 as the result of an error committed by the department in the issuance of such certificate, the department may waive any fee required under this section.

Source: Laws 1947, c. 234, § 5, p. 741; Laws 1953, c. 244, § 1, p. 834; Laws 1959, c. 323, § 9, p. 1184; Laws 1965, c. 418, § 11, p. 1340; Laws 1965, c. 419, § 5, p. 1344; Laws 1971, LB 245, § 2; Laws 1973, LB 483, § 11; Laws 1978, LB 671, § 1; Laws 1983, LB 617, § 18; Laws 1991, LB 703, § 33; Laws 1992, LB 1019, § 57; Laws

1995, LB 406, § 36; Laws 1996, LB 1044, § 543; Laws 2001, LB 209, § 18; Laws 2004, LB 1005, § 61; Laws 2006, LB 994, § 90; Laws 2007, LB296, § 437.

71-635 Birth or death certificate; amendments; application; by whom made.

(1) To amend a birth certificate, application may be made by one of the parents, the guardian, the registrant if of legal age, or the individual responsible for filing the certificate.

(2) To amend a death or fetal death certificate, except the medical certification, application may be made by the next of kin or the funeral director and embalmer or person acting as such. Amendments to the medical certification of cause of death section of the certificate shall be requested by the attending physician or person certifying such section.

Source: Laws 1971, LB 245, § 2; Laws 1993, LB 187, § 12.

71-636 Birth certificates; amendments.

Amendment of obvious errors, of transposition of letters in words of common knowledge, or of omissions on birth certificates may be made by the department within the first year after the date of the birth, either upon its own observation, upon query, or upon request of a person with a direct and tangible interest in the certificate. When such additions or minor amendments are made by the department, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the reverse side of the certificate in such a way as not to become a part of the certificate. The certificate shall not be marked amended.

Source: Laws 1971, LB 245, § 3; Laws 1985, LB 42, § 23; Laws 1992, LB 1019, § 58; Laws 1997, LB 307, § 163; Laws 2007, LB296, § 438.

71-637 Birth or death certificates; amendment; evidence required.

All other amendments to vital records made during the first year, unless otherwise provided in sections 71-630 and 71-635 to 71-644, shall be supported by (1) an affidavit setting forth information to identify the certificate, the incorrect data as it is listed on the certificate, and the correct data as it should appear; and (2) one item of documentary evidence supporting the amendment. Certificates amended by this procedure shall be marked amended.

Source: Laws 1971, LB 245, § 4.

71-638 Birth or death certificates; application for amendment; made one year after date; evidence required.

Applications for amendments to vital records made one year or more after the event, unless otherwise provided in the regulations or by law, shall be supported by (1) an affidavit setting forth information to identify the certificate, the incorrect data as it is listed on the certificate, and the correct data as it should appear; and (2) two or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of application for amendment or within seven years of the date of the event.

Source: Laws 1971, LB 245, § 5.

71-639 Birth or death certificate; amendments; evaluation of evidence.

The department shall evaluate all evidence submitted for amendments to vital records and when it finds reason to question its validity or adequacy it may reject the amendment and shall advise the applicant of the reasons for this action.

Source: Laws 1971, LB 245, § 6; Laws 1997, LB 307, § 164; Laws 2007, LB296, § 439.

71-640 Birth certificates; given names; change; procedure.

(1) Until the registrant's first birthday, given names may be changed upon written request of (a) both parents, (b) the mother in the case of a child born out of wedlock or the death or incapacity of the father, (c) the father in the case of the death or incapacity of the mother, or (d) the guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents.

(2) At any time after the registrant's first birthday and until the seventh birthday, given names may be changed upon written request as specified in subsection (1) of this section and submission of one or more items of documentary evidence to support the change.

(3) These procedures may be employed to change a given name only once. Thereafter, and at any time after the seventh birthday, given names may be changed only upon submission of a court order.

Source: Laws 1971, LB 245, § 7.

71-640.01 Birth certificates; identification of father.

The information pertaining to the identification of the father at the time of birth of an infant born in this state and reported on a birth certificate, filled out and filed pursuant to the Vital Statistics Act, shall comply with the following:

(1) If the mother was married at the time of either conception or birth or at any time between conception and birth, the name of the husband shall be entered on the certificate as the father of the child unless (a) paternity has been determined otherwise by a court of competent jurisdiction, (b) the mother and the mother's husband execute affidavits attesting that the husband is not the father of the child, in which case information about the father shall be omitted from the certificate, or (c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. In such event, the putative father shall be shown as the father on the certificate. For affidavits executed under subdivision (b) or (c) of this subdivision, each signature shall be individually notarized;

(2) If the mother was not married at the time of either conception or birth or at any time between conception and birth, the name of the father shall not be entered on the certificate without the written consent of the mother and the person named as the father;

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate in accordance with the finding of the court; and

(4) If the father is not named on the certificate, no other information about the father shall be entered thereon.

The identification of the father as provided in this section shall not be deemed to affect the legitimacy of the child or duty to support as set forth in sections 42-377 and 43-1401.

Source: Laws 1977, LB 72, § 1; Laws 1994, LB 886, § 9; Laws 2005, LB 301, § 27.

71-640.02 Children born out of wedlock; birth certificate; enter name of father; when.

The department shall enter on the birth certificate of any child born out of wedlock the name of the father of the child upon receipt of (1) a certified copy of a court order showing that paternity has been established or a statement in writing by the father that he is the father of the child and (2) the written request of (a) the parent having legal custody of the child or (b) the guardian or agency having legal custody of the child. The surname of the child shall be determined in accordance with section 71-640.03.

Source: Laws 1978, LB 671, § 2; Laws 1994, LB 886, § 10; Laws 1997, LB 307, § 165; Laws 2007, LB296, § 440.

71-640.03 Birth certificate; surname of child.

(1) In any case in which paternity of a child is determined by a court of competent jurisdiction, the surname of the child may be entered on the record the same as the surname of the father.

(2) The surname of the child shall be the parents' prerogative, except that the department shall not accept a birth certificate with a child's surname that implies any obscene or objectionable words or abbreviations.

Source: Laws 1994, LB 886, § 11; Laws 1996, LB 1044, § 544; Laws 2007, LB296, § 441.

Under subsection (1) of this section, a district court, exercising jurisdiction in a paternity action, has discretionary power to decide whether a child's surname should be changed to the surname of the father. Under the plain language of subsection (1) of this section, after paternity is established by a district court, the district court has the discretion to decide only paternity-related issues, i.e., whether to change the child's previous surname to the father's surname. Pursuant to subsection (1) of this section, in a paternity action, a court, in deciding whether a child's surname should be changed to the father's surname, must consider the best interests of the child regarding a change of name. Jones v. Paulson, 261 Neb. 327, 622 N.W.2d 857 (2001).

Under former law, a court, exercising jurisdiction in a filiation proceeding, has the discretionary power to decide whether a child's surname shall be changed from the legal surname of the child's mother to the surname of the child's father, and must consider the best interests of the child regarding a change of name. Lancaster v. Brenneis, 227 Neb. 371, 417 N.W.2d 767 (1988).

Under former law, determination as to the name to be borne by a minor child of parties to a dissolution action is a matter initially entrusted to the sound discretion of the trial judge, which matter, on appeal, will be reviewed de novo on the record and affirmed in the absence of an abuse of the trial judge's discretion, keeping in mind that the Supreme Court will give weight to the fact that the trial judge observed and heard the witnesses and accepted one version of the facts rather than the other. Cain v. Cain, 226 Neb. 203, 410 N.W.2d 476 (1987).

Under former law, in deciding what the surname of a child conceived in wedlock but born during dissolution proceedings should be, each subsection of this section should be given equal weight, with the best interests of the child as the paramount interest. Each parent has an equal right and interest in determining the surname of the child. Cohee v. Cohee, 210 Neb. 855, 317 N.W.2d 381 (1982).

71-640.04 Birth certificate; name of father changed; when.

The name of the father as shown on the birth certificate may be changed and a new certificate issued only when a determination of paternity is made by a court of competent jurisdiction. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Source: Laws 1994, LB 886, § 12.

71-641 Birth certificates; without given name; legal change of name; procedure.

(1) Until the registrant's seventh birthday, the given name, for a child whose birth was recorded without a given name, may be added based upon an affidavit signed by (a) both parents, (b) the mother in the case of a child born out of wedlock or the death or incapacity of the father, (c) the father in the case of the death or incapacity of the mother, or (d) the guardian or agency having legal custody of the registrant in the case of the death or incapacity of both parents. A certificate amended in this manner prior to the first birthday shall not be marked amended.

(2) After the seventh birthday, one or more items of documentary evidence must be submitted to substantiate the name being added.

(3) For a legal change of name, a certified copy of the court order changing the name must be presented to the department along with data to identify the birth certificate and a request that it be amended to show the new name.

Source: Laws 1971, LB 245, § 8; Laws 1997, LB 307, § 166; Laws 2007, LB296, § 442.

71-642 Birth or death certificates; medical certification; amendment; requirements.

All items in the medical certification or of a medical nature in a vital record may be amended only upon receipt of a signed statement from those responsible for completion of the entries involved as provided in the Vital Statistics Act. The department may, at its discretion, require documentary evidence to substantiate the requested amendment.

Source: Laws 1971, LB 245, § 9; Laws 1997, LB 307, § 167; Laws 2005, LB 301, § 28.

71-643 Birth or death certificate; additional amendment; requirements.

When an entry on a vital record has been amended, that entry shall not be amended again unless (1) it can be shown that the first amendment was made through mistake, or (2) a court order is received from a court of competent jurisdiction.

Source: Laws 1971, LB 245, § 10.

71-644 Birth or death certificate; amendment; requirements.

A certificate or report that is amended under sections 71-635 to 71-644 shall indicate that it has been amended as provided by rules and regulations of the department. A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.

Source: Laws 1971, LB 245, § 11; Laws 1985, LB 42, § 24; Laws 1992, LB 1019, § 59; Laws 1994, LB 886, § 13; Laws 1996, LB 1044, § 545; Laws 2007, LB296, § 443.

71-645 Birth defects; findings and duties.

It is hereby found that the occurrence of malformation or inherited disease at the time of birth is a tragedy for the child, the family, and the community, and a

matter of vital concern to the public health. In order to provide for the protection and promotion of the health of the citizens of the state, the department shall have the responsibility for the implementation and development of scientific investigations and research concerning the causes, methods of prevention, treatment, and cure of birth defects.

Source: Laws 1972, LB 1203, § 1; Laws 1996, LB 1044, § 546; Laws 2007, LB296, § 444.

71-646 Birth defects; registry; purpose; information released.

The department shall establish a birth defects registry for the purpose of initiating and conducting investigations of the causes, mortality, methods of prevention, treatment, and cure of birth defects and allied diseases. Any information released from the registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

Source: Laws 1972, LB 1203, § 2; Laws 1993, LB 536, § 64; Laws 1996, LB 1044, § 547; Laws 2007, LB296, § 445.

71-647 Birth defects; department; powers and duties; information released.

(1) The department shall have and may exercise the following powers and duties:

(a) To conduct scientific investigations and surveys of the causes, mortality, methods of prevention, treatment, and cure of birth defects;

(b) To publish at least annually the results of such investigations and surveys for the benefit of the public health and to annually collate such publications for distribution to scientific organizations and qualified scientists and physicians;

(c) To carry on programs of professional education and training of medical students, physicians, nurses, scientists, and technicians in the causes, methods of prevention, treatment, and cure of birth defects;

(d) To conduct and support clinical counseling services in medical facilities; and

(e) To secure necessary scientific, educational, training, technical, administrative, and operational personnel and services including laboratory facilities by contract or otherwise from public or private entities in order to carry out the purposes of this section.

(2) Any information released from the birth defects registry shall be disclosed as Class I, Class II, Class III, or Class IV data as provided in sections 81-663 to 81-675.

Source: Laws 1972, LB 1203, § 3; Laws 1993, LB 536, § 65; Laws 1996, LB 1044, § 548; Laws 2007, LB296, § 446.

71-648 Birth defects; reports.

Birth defects and allied diseases shall be reported by physicians, hospitals, and persons in attendance at births in the manner and on such forms as may be prescribed by the department. Such reports may be included in the monthly report to the department on births as required by section 71-610. Such reports shall be forwarded to the department no later than the tenth day of the succeeding month after the birth. When objection is made by either parent to furnishing information relating to the medical and health condition of a live-

born child because of conflict with religion, such information shall not be required to be entered as provided in this section.

Source: Laws 1972, LB 1203, § 4; Laws 1992, LB 1019, § 60; Laws 1993, LB 536, § 66; Laws 1996, LB 1044, § 549; Laws 2007, LB296, § 447.

Cross References

Medically handicapped child, report of birth, see section 71-1405.

71-649 Vital statistics; unlawful acts; enumerated; violations; penalties; warning statement.

(1) Any person who (a) willfully and knowingly makes any false statement in a certificate, record, or report required to be filed pursuant to the Vital Statistics Act, in an application for an amendment thereof, or in an application for a certified copy of a vital record or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, certificate, or amendment thereof; (b) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed pursuant to the act or a certified copy of such certificate, record, or report; (c) willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated; (d) with the intention to deceive, willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that such certificate or certified copy was issued upon a certificate which is false in whole or in part or which relates to the birth of another person, whether living or deceased; (e) willfully and knowingly furnishes or possesses a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purposes of deception by a person other than the person to whom the certificate of birth relates; (f) without lawful authority possesses any certificate, record, or report required by the act or a copy or certified copy of such certificate, record, or report knowing the same to have been stolen or otherwise unlawfully obtained; or (g) willfully and knowingly tampers with an electronic signature authorized under section 71-603.01 shall be guilty of a Class IV felony.

(2) Any person who (a) willfully and knowingly refuses to provide information required by the Vital Statistics Act or rules and regulations adopted under the act or (b) willfully and knowingly neglects or violates any of the provisions of the act or refuses to perform any of the duties imposed upon him or her under the act shall be guilty of a Class I misdemeanor.

(3) The department may include on any appropriate certificate or document a statement warning of the consequences for any such violation.

Source: Laws 1977, LB 72, § 2; Laws 1978, LB 748, § 37; Laws 1994, LB 886, § 14; Laws 1996, LB 1044, § 550; Laws 1997, LB 307, § 168; Laws 2005, LB 301, § 29.

ARTICLE 7
WOMEN'S HEALTH

Section
71-701. Women's Health Initiative of Nebraska; created; duties.
71-702. Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.
71-703. Initiative; personnel; administrative support.
71-704. Funding intent.
71-705. Women's Health Initiative Fund; created; use; investment.
71-706. Department of Health and Human Services; powers.
71-707. Report.

71-701 Women's Health Initiative of Nebraska; created; duties.

The Women's Health Initiative of Nebraska is created within the Department of Health and Human Services. The Women's Health Initiative of Nebraska shall strive to improve the health of women in Nebraska by fostering the development of a comprehensive system of coordinated services, policy development, advocacy, and education. The initiative shall:

(1) Serve as a clearinghouse for information regarding women's health issues, including pregnancy, breast and cervical cancers, acquired immunodeficiency syndrome, osteoporosis, menopause, heart disease, smoking, and mental health issues as well as other issues that impact women's health, including substance abuse, domestic violence, teenage pregnancy, sexual assault, adequacy of health insurance, access to primary and preventative health care, and rural and ethnic disparities in health outcomes;

(2) Perform strategic planning within the Department of Health and Human Services to develop department-wide plans for implementation of goals and objectives for women's health;

(3) Conduct department-wide policy analysis on specific issues related to women's health;

(4) Coordinate pilot projects and planning projects funded by the state that are related to women's health;

(5) Communicate and disseminate information and perform a liaison function within the department and to providers of health, social, educational, and support services to women;

(6) Provide technical assistance to communities, other public entities, and private entities for initiatives in women's health, including, but not limited to, community health assessment and strategic planning and identification of sources of funding and assistance with writing of grants; and

(7) Encourage innovative responses by public and private entities that are attempting to address women's health issues.

Source: Laws 2000, LB 480, § 1; Laws 2005, LB 301, § 30; Laws 2007, LB296, § 448.

71-702 Women's Health Initiative Advisory Council; created; members; terms; duties; expenses.

(1) The Women's Health Initiative Advisory Council is created and shall consist of not more than thirty members, at least three-fourths of whom are women. At least one member shall be appointed from the following disciplines:

(a) An obstetrician/gynecologist; (b) a nurse practitioner or physician's assistant from a rural community; (c) a geriatrics physician or nurse; (d) a pediatrician; (e) a community public health representative from each congressional district; (f) a health educator; (g) an insurance industry representative; (h) a mental health professional; (i) a representative from a statewide health volunteer agency; (j) a private health care industry representative; (k) an epidemiologist or a health statistician; (l) a foundation representative; and (m) a woman who is a health care consumer from each of the following age categories: Eighteen to thirty; thirty-one to forty; forty-one to sixty-five; and sixty-six and older. The membership shall also include a representative of the University of Nebraska Medical Center, a representative from Creighton University Medical Center, the chief medical officer if one is appointed under section 81-3115, and the Title V Administrator of the Department of Health and Human Services.

(2) The Governor shall appoint advisory council members and shall consider and attempt to balance representation based on political party affiliation, race, and different geographical areas of Nebraska when making appointments. The Governor shall appoint the first chairperson and vice-chairperson of the advisory council. There shall be two ex officio, nonvoting members from the Legislature, one of which shall be the chairperson of the Health and Human Services Committee.

(3) The terms of the initial members shall be as follows: One-third shall serve for one-year terms, one-third shall serve for two-year terms, and one-third shall serve for three-year terms including the members designated chairperson and vice-chairperson. Thereafter members shall serve for three-year terms. Members may not serve more than two consecutive three-year terms.

(4) The Governor shall make the appointments within three months after July 13, 2000.

(5) The advisory council shall meet quarterly the first two years. After this time the advisory council shall meet at least every six months or upon the call of the chairperson or a majority of the voting members. A quorum shall be one-half of the voting members.

(6) The members of the advisory council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 and pursuant to policies of the advisory council. Funds for reimbursement for expenses shall be from the Women's Health Initiative Fund.

(7) The advisory council shall advise the Women's Health Initiative of Nebraska in carrying out its duties under section 71-701 and may solicit private funds to support the initiative.

Source: Laws 2000, LB 480, § 2; Laws 2004, LB 818, § 1; Laws 2007, LB296, § 449; Laws 2009, LB84, § 1; Laws 2009, LB154, § 16.

71-703 Initiative; personnel; administrative support.

The Department of Health and Human Services will determine how the department will provide personnel to carry out the Women's Health Initiative of Nebraska. The department shall employ personnel, including an executive director, necessary to carry out the powers and duties of the initiative. The Governor's Policy Research Office, the department, and other state agencies as necessary may provide administrative and technical support under the direct supervision of the Governor. The initiative may secure cooperation and assis-

tance of other appropriate government and private-sector entities for women's health issues, programs, and educational materials.

Source: Laws 2000, LB 480, § 3; Laws 2005, LB 301, § 31; Laws 2007, LB296, § 450.

71-704 Funding intent.

The Legislature recognizes the generosity of its citizens and charitable organizations that donate their time and money to provide funds to their fellow citizens. It is the intent of the Legislature to permit the Women's Health Initiative of Nebraska to obtain and expend such funds to carry out the purposes of sections 71-701 to 71-707. Private citizens and charitable organizations may donate and grant funds to the Women's Health Initiative of Nebraska to pay for programs, educational materials, promotions, and other activities undertaken by the initiative.

Source: Laws 2000, LB 480, § 4.

71-705 Women's Health Initiative Fund; created; use; investment.

The Women's Health Initiative Fund is created. The fund shall consist of money received as gifts or grants or collected as fees or charges from any federal, state, public, or private source. Money in the fund shall be used to reimburse the expenses of the Women's Health Initiative of Nebraska and expenses of members of the Women's Health Initiative Advisory Council. Nothing in sections 71-701 to 71-707 requires the Women's Health Initiative of Nebraska to accept any private donations that are not in keeping with the goals and objectives set forth by the initiative and the Department of Health and Human Services. No funds expended or received by or through the initiative shall pay for abortion referral or abortion services. 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.

Source: Laws 2000, LB 480, § 5; Laws 2005, LB 301, § 32; Laws 2007, LB296, § 451.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-706 Department of Health and Human Services; powers.

The Department of Health and Human Services shall have all powers necessary to implement the purposes and intent of sections 71-701 to 71-707, including applying for, receiving, and administering federal and other public and private funds credited to the Women's Health Initiative Fund. Any funds obtained for the Women's Health Initiative of Nebraska shall be remitted to the State Treasurer for credit to the Women's Health Initiative Fund.

Source: Laws 2000, LB 480, § 6; Laws 2005, LB 301, § 33; Laws 2007, LB296, § 452.

71-707 Report.

The Department of Health and Human Services shall issue an annual report to the Governor and the Legislature on September 1 for the preceding fiscal

year's activities of the Women's Health Initiative of Nebraska. The report shall include progress reports on any programs, activities, or educational promotions that were undertaken by the initiative. The report shall also include a status report on women's health in Nebraska and any results achieved by the initiative.

Source: Laws 2000, LB 480, § 7; Laws 2005, LB 301, § 34; Laws 2007, LB296, § 453.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Cross References

Abuse, report required, see section 28-372.
Admission when facilities are limited, see section 83-338.
Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
Children's Behavioral Health Task Force, see sections 43-4001 to 43-4003.
Community Corrections Act, see section 47-619.
Cost of patient care, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Department of Health and Human Services, official names of institutions under supervision, see section 83-107.01.
Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.
Developmental Disabilities Services Act, see section 83-1201.
Developmental disability regions, see section 83-1,143.06.
Division of Behavioral Health, see sections 81-3113 and 81-3116.
Division of Developmental Disabilities, see sections 81-3113 and 81-3116.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
Mental Health Practice Act, see section 38-2101.
Mistreatment of mentally ill person, penalty, see section 83-356.
Nebraska Mental Health Commitment Act, see section 71-901.
Nebraska Prostitution Intervention and Treatment Act, see section 71-2301.
Office of Juvenile Services, behavioral health programs and services, see section 43-407.
Patient expenses, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.
Persons with mental retardation, see sections 83-381 to 83-390.
Protection and advocacy system for persons with developmental disabilities or mentally ill individuals, see sections 20-161 to 20-166.
Psychology Practice Act, see section 38-3101.
Report of abuse, required, see section 28-372.
Rural Behavioral Health Training and Placement Program Act, see section 71-5680.
Sex Offender Commitment Act, see section 71-1201.
Sex Offender Registration Act, see section 29-4001.
State hospitals for the mentally ill, see sections 83-305 to 83-357.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Veterans, treatment, see section 80-601.
Victim notification, see section 81-1850.

Section

Section
71-815. State Advisory Committee on Substance Abuse Services; created; members; duties.
71-816. Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.
71-817. Compulsive Gamblers Assistance Fund; created; use; investment.
71-818. Repealed. Laws 2009, LB 154, § 27.
71-819. Repealed. Laws 2006, LB 994, § 162.
71-820. Repealed. Laws 2006, LB 994, § 162.
71-821. Children and Family Behavioral Health Support Act; act, how cited.
71-822. Children and Family Support Hotline; establishment.
71-823. Family Navigator Program; establishment; evaluation.
71-824. Post-adoption and post-guardianship case management services; notice; administration; evaluation.
71-825. Annual report; contents.
71-826. Legislative intent regarding appropriations; allocation.
71-827. Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.
71-828. Behavioral Health Workforce Act; act, how cited.
71-829. Legislative findings.
71-830. Behavioral Health Education Center; created; administration; duties; report.

71-801 Nebraska Behavioral Health Services Act; act, how cited.

Sections 71-801 to 71-830 shall be known and may be cited as the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 1; Laws 2006, LB 994, § 91; Laws 2009, LB154, § 17; Laws 2009, LB603, § 3.

71-802 Purposes of act.

The purposes of the Nebraska Behavioral Health Services Act are to: (1) Reorganize statutes relating to the provision of publicly funded behavioral health services; (2) provide for the organization and administration of the public behavioral health system within the department; (3) rename mental health regions as behavioral health regions; (4) provide for the naming of regional behavioral health authorities and ongoing activities of regional governing boards; (5) reorganize and rename the State Mental Health Planning and Evaluation Council, the State Alcoholism and Drug Abuse Advisory Committee, and the Nebraska Advisory Commission on Compulsive Gambling; (6) change and add provisions relating to development of community-based behavioral health services and funding for behavioral health services; and (7) authorize the closure of regional centers.

Source: Laws 2004, LB 1083, § 2; Laws 2006, LB 994, § 92.

71-803 Public behavioral health system; purposes.

The purposes of the public behavioral health system are to ensure:

(1) The public safety and the health and safety of persons with behavioral health disorders;

(2) Statewide access to behavioral health services, including, but not limited to, (a) adequate availability of behavioral health professionals, programs, and facilities, (b) an appropriate array of community-based services and continuum of care, and (c) integration and coordination of behavioral health services with primary health care services;

(3) High quality behavioral health services, including, but not limited to, (a) services that are research-based and consumer-focused, (b) services that emphasize beneficial treatment outcomes and recovery, with appropriate treatment planning, case management, community support, and consumer peer support, (c) appropriate regulation of behavioral health professionals, programs, and facilities, and (d) consumer involvement as a priority in all aspects of service planning and delivery; and

(4) Cost-effective behavioral health services, including, but not limited to, (a) services that are efficiently managed and supported with appropriate planning and information, (b) services that emphasize prevention, early detection, and early intervention, (c) services that are provided in the least restrictive environment consistent with the consumer's clinical diagnosis and plan of treatment, and (d) funding that is fully integrated and allocated to support the consumer and his or her plan of treatment.

Source: Laws 2004, LB 1083, § 3.

71-804 Terms, defined.

For purposes of the Nebraska Behavioral Health Services Act:

(1) Behavioral health disorder means mental illness or alcoholism, drug abuse, problem gambling, or other addictive disorder;

(2) Behavioral health region means a behavioral health region established in section 71-807;

(3) Behavioral health services means services, including, but not limited to, consumer-provided services, support services, inpatient and outpatient services, and residential and nonresidential services, provided for the prevention, diagnosis, and treatment of behavioral health disorders and the rehabilitation and recovery of persons with such disorders;

(4) Community-based behavioral health services or community-based services means behavioral health services that are not provided at a regional center;

(5) Department means the Department of Health and Human Services;

(6) Director means the Director of Behavioral Health;

(7) Division means the Division of Behavioral Health of the department;

(8) Medical assistance program means the program established pursuant to the Medical Assistance Act;

(9) Public behavioral health system means the statewide array of behavioral health services for children and adults provided by the public sector or private sector and supported in whole or in part with funding received and administered by the department, including behavioral health services provided under the medical assistance program;

(10) Regional center means one of the state hospitals for the mentally ill designated in section 83-305; and

(11) Regional center behavioral health services or regional center services means behavioral health services provided at a regional center.

Source: Laws 2004, LB 1083, § 4; Laws 2006, LB 1248, § 74; Laws 2007, LB296, § 454.

Cross References

Medical Assistance Act, see section 68-901.

71-805 Division; personnel; office of consumer affairs.

(1) The director shall appoint a chief clinical officer and a program administrator for consumer affairs for the division. The chief clinical officer shall be a board-certified psychiatrist and shall serve as the medical director for the division and all facilities and programs operated by the division. The program administrator for consumer affairs shall be a consumer or former consumer of behavioral health services and shall have specialized knowledge, experience, or expertise relating to consumer-directed behavioral health services, behavioral health delivery systems, and advocacy on behalf of consumers of behavioral health services and their families. The chief clinical officer and the program administrator for consumer affairs shall report to the director. The Governor and the director shall conduct a search for qualified candidates and shall solicit and consider recommendations from interested parties for such positions prior to making such appointments.

(2) The director shall establish and maintain an office of consumer affairs within the division. The program administrator for consumer affairs shall be responsible for the administration and management of the office.

Source: Laws 2004, LB 1083, § 5; Laws 2007, LB296, § 455.

71-806 Division; powers and duties; rules and regulations.

(1) The division shall act as the chief behavioral health authority for the State of Nebraska and shall direct the administration and coordination of the public behavioral health system, including, but not limited to: (a) Administration and management of the division, regional centers, and any other facilities and programs operated by the division; (b) integration and coordination of the public behavioral health system; (c) comprehensive statewide planning for the provision of an appropriate array of community-based behavioral health services and continuum of care; (d) coordination and oversight of regional behavioral health authorities, including approval of regional budgets and audits of regional behavioral health authorities; (e) development and management of data and information systems; (f) prioritization and approval of all expenditures of funds received and administered by the division, including the establishment of rates to be paid and reimbursement methodologies for behavioral health services and fees to be paid by consumers of such services; (g) cooperation with the department in the licensure and regulation of behavioral health professionals, programs, and facilities; (h) cooperation with the department in the provision of behavioral health services under the medical assistance program; (i) audits of behavioral health programs and services; and (j) promotion of activities in research and education to improve the quality of behavioral health services, recruitment and retention of behavioral health professionals, and access to behavioral health programs and services.

(2) The department shall adopt and promulgate rules and regulations to carry out the Nebraska Behavioral Health Services Act.

Source: Laws 2004, LB 1083, § 6; Laws 2006, LB 1248, § 75; Laws 2007, LB296, § 456.

71-807 Behavioral health regions; established.

Six behavioral health regions are established, consisting of the following counties:

(1) Region 1 shall consist of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, and Deuel counties;

(2) Region 2 shall consist of Grant, Hooker, Thomas, Arthur, McPherson, Logan, Keith, Lincoln, Perkins, Chase, Hayes, Frontier, Dawson, Gosper, Dundy, Hitchcock, and Red Willow counties;

(3) Region 3 shall consist of Blaine, Loup, Garfield, Wheeler, Custer, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Phelps, Kearney, Adams, Clay, Furnas, Harlan, Hamilton, Merrick, Franklin, Webster, and Nuckolls counties;

(4) Region 4 shall consist of Cherry, Keya Paha, Boyd, Brown, Rock, Holt, Knox, Cedar, Dixon, Dakota, Thurston, Wayne, Pierce, Antelope, Boone, Nance, Madison, Stanton, Cuming, Burt, Colfax, and Platte counties;

(5) Region 5 shall consist of Polk, Butler, Saunders, Seward, Lancaster, Otoe, Fillmore, Saline, Thayer, Jefferson, Gage, Johnson, Nemaha, Pawnee, York, and Richardson counties; and

(6) Region 6 shall consist of Dodge, Washington, Douglas, Sarpy, and Cass counties.

Source: Laws 2004, LB 1083, § 7.

71-808 Regional behavioral health authority; established; regional governing board; matching funds; requirements.

(1) A regional behavioral health authority shall be established in each behavioral health region by counties acting under provisions of the Interlocal Cooperation Act. Each regional behavioral health authority shall be governed by a regional governing board consisting of one county board member from each county in the region. Board members shall serve for staggered terms of three years and until their successors are appointed and qualified. Board members shall serve without compensation but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(2) The regional governing board shall appoint a regional administrator who shall be responsible for the administration and management of the regional behavioral health authority. Each regional behavioral health authority shall encourage and facilitate the involvement of consumers in all aspects of service planning and delivery within the region and shall coordinate such activities with the office of consumer affairs within the division. Each regional behavioral health authority shall establish and utilize a regional advisory committee consisting of consumers, providers, and other interested parties and may establish and utilize such other task forces, subcommittees, or other committees as it deems necessary and appropriate to carry out its duties under this section.

(3) Each county in a behavioral health region shall provide funding for the operation of the behavioral health authority and for the provision of behavioral health services in the region. The total amount of funding provided by counties under this subsection shall be equal to one dollar for every three dollars from the General Fund. The division shall annually certify the total amount of county matching funds to be provided. At least forty percent of such amount shall consist of local and county tax revenue, and the remainder shall consist of other nonfederal sources. The regional governing board of each behavioral health authority, in consultation with all counties in the region, shall determine the amount of funding to be provided by each county under this subsection. Any General Funds transferred from regional centers for the provision of communi-

ty-based behavioral health services after July 1, 2004, and funds received by a regional behavioral health authority for the provision of behavioral health services to children under section 71-826 shall be excluded from any calculation of county matching funds under this subsection.

Source: Laws 2004, LB 1083, § 8; Laws 2009, LB603, § 4.

Cross References

Interlocal Cooperation Act, see section 13-801.

71-809 Regional behavioral health authority; behavioral health services; powers and duties.

(1) Each regional behavioral health authority shall be responsible for the development and coordination of publicly funded behavioral health services within the behavioral health region pursuant to rules and regulations adopted and promulgated by the department, including, but not limited to, (a) administration and management of the regional behavioral health authority, (b) integration and coordination of the public behavioral health system within the behavioral health region, (c) comprehensive planning for the provision of an appropriate array of community-based behavioral health services and continuum of care for the region, (d) submission for approval by the division of an annual budget and a proposed plan for the funding and administration of publicly funded behavioral health services within the region, (e) submission of annual reports and other reports as required by the division, (f) initiation and oversight of contracts for the provision of publicly funded behavioral health services, and (g) coordination with the division in conducting audits of publicly funded behavioral health programs and services.

(2) Except for services being provided by a regional behavioral health authority on July 1, 2004, under applicable state law in effect prior to such date, no regional behavioral health authority shall provide behavioral health services funded in whole or in part with revenue received and administered by the division under the Nebraska Behavioral Health Services Act unless:

(a) There has been a public competitive bidding process for such services;

(b) There are no qualified and willing providers to provide such services; and

(c) The regional behavioral health authority receives written authorization from the director and enters into a contract with the division to provide such services.

(3) Each regional behavioral health authority shall comply with all applicable rules and regulations of the department relating to the provision of behavioral health services by such authority, including, but not limited to, rules and regulations which (a) establish definitions of conflicts of interest for regional behavioral health authorities and procedures in the event such conflicts arise, (b) establish uniform and equitable public bidding procedures for such services, and (c) require each regional behavioral health authority to establish and maintain a separate budget and separately account for all revenue and expenditures for the provision of such services.

Source: Laws 2004, LB 1083, § 9; Laws 2007, LB296, § 457.

71-810 Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.

(1) The division shall encourage and facilitate the statewide development and provision of an appropriate array of community-based behavioral health services and continuum of care for the purposes of (a) providing greater access to such services and improved outcomes for consumers of such services and (b) reducing the necessity and demand for regional center behavioral health services.

(2) The division may reduce or discontinue regional center behavioral health services only if (a) appropriate community-based services or other regional center behavioral health services are available for every person receiving the regional center services that would be reduced or discontinued, (b) such services possess sufficient capacity and capability to effectively replace the service needs which otherwise would have been provided at such regional center, and (c) no further commitments, admissions, or readmissions for such services are required due to the availability of community-based services or other regional center services to replace such services.

(3) The division shall notify the Governor and the Legislature of any intended reduction or discontinuation of regional center services under this section. Such notice shall include detailed documentation of the community-based services or other regional center services that are being utilized to replace such services.

(4) As regional center services are reduced or discontinued under this section, the division shall make appropriate corresponding reductions in regional center personnel and other expenditures related to the provision of such services. All funding related to the provision of regional center services that are reduced or discontinued under this section shall be reallocated and expended by the division for purposes related to the statewide development and provision of community-based services.

(5) The division may establish state-operated community-based services to replace regional center services that are reduced or discontinued under this section. The division shall provide regional center employees with appropriate training and support to transition such employees into positions as may be necessary for the provision of such state-operated services.

(6) When the occupancy of the licensed psychiatric hospital beds of any regional center reaches twenty percent or less of its licensed psychiatric hospital bed capacity on March 15, 2004, the division shall notify the Governor and the Legislature of such fact. Upon such notification, the division, with the approval of a majority of members of the Executive Board of the Legislative Council, may provide for the transfer of all remaining patients at such center to appropriate community-based services or other regional center services pursuant to this section and cease the operation of such regional center.

(7) The division, in consultation with each regional behavioral health authority, shall establish and maintain a data and information system for all persons receiving state-funded behavioral health services under the Nebraska Behavioral Health Services Act. Information maintained by the division shall include, but not be limited to, (a) the number of persons receiving regional center services, (b) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving regional center services, (c) the number of persons ordered by a mental health board to receive inpatient or outpatient treatment and receiving community-based services, (d) the number of persons voluntarily admitted to a regional center and receiving regional

center services, (e) the number of persons waiting to receive regional center services, (f) the number of persons waiting to be transferred from a regional center to community-based services or other regional center services, (g) the number of persons discharged from a regional center who are receiving community-based services or other regional center services, and (h) the number of persons admitted to behavioral health crisis centers. Each regional behavioral health authority shall provide such information as requested by the division and necessary to carry out this subsection. The division shall submit reports of such information to the Governor and the Legislature on a quarterly basis beginning July 1, 2005, in a format which does not identify any person by name, address, county of residence, social security number, or other personally identifying characteristic.

(8) The provisions of this section are self-executing and require no further authorization or other enabling legislation.

Source: Laws 2004, LB 1083, § 10; Laws 2005, LB 551, § 3; Laws 2008, LB928, § 17; Laws 2009, LB154, § 18.

71-811 Division; funding; powers and duties.

The division shall coordinate the integration and management of all funds appropriated by the Legislature or otherwise received by the department from any other public or private source for the provision of behavioral health services to ensure the statewide availability of an appropriate array of community-based behavioral health services and continuum of care and the allocation of such funds to support the consumer and his or her plan of treatment.

Source: Laws 2004, LB 1083, § 11; Laws 2007, LB296, § 458.

71-812 Behavioral Health Services Fund; created; use; investment.

(1) The Behavioral Health Services Fund is created. The fund shall be administered by the division and shall contain cash funds appropriated by the Legislature or otherwise received by the department for the provision of behavioral health services from any other public or private source and directed by the Legislature for credit to the fund.

(2) The fund shall be used to encourage and facilitate the statewide development and provision of community-based behavioral health services, including, but not limited to, (a) the provision of grants, loans, and other assistance for such purpose and (b) reimbursement to providers of such services.

(3)(a) Money transferred to the fund under section 76-903 shall be used for housing-related assistance for very low-income adults with serious mental illness, except that if the division determines that all housing-related assistance obligations under this subsection have been fully satisfied, the division may distribute any excess, up to twenty percent of such money, to regional behavioral health authorities for acquisition or rehabilitation of housing to assist such persons. The division shall manage and distribute such funds based upon a formula established by the division, in consultation with regional behavioral health authorities and the department, in a manner consistent with and reasonably calculated to promote the purposes of the public behavioral health system enumerated in section 71-803. The division shall contract with each regional behavioral health authority for the provision of such assistance. Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such assistance.

(b) For purposes of this subsection:

(i) Adult with serious mental illness means a person eighteen years of age or older who has, or at any time during the immediately preceding twelve months has had, a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet diagnostic criteria identified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and which has resulted in functional impairment that substantially interferes with or limits one or more major life functions. Serious mental illness does not include DSM V codes, substance abuse disorders, or developmental disabilities unless such conditions exist concurrently with a diagnosable serious mental illness;

(ii) Housing-related assistance includes rental payments, utility payments, security and utility deposits, and other related costs and payments; and

(iii) Very low-income means a household income of fifty percent or less of the applicable median family income estimate as established by the United States Department of Housing and Urban Development.

(4) 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.

Source: Laws 2004, LB 1083, § 12; Laws 2005, LB 40, § 5; Laws 2007, LB296, § 459.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-813 Repealed. Laws 2006, LB 994, § 162.

71-814 State Advisory Committee on Mental Health Services; created; members; duties.

(1) The State Advisory Committee on Mental Health Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of mental health services in the State of Nebraska. The committee shall consist of twenty-three members appointed by the Governor as follows: (a) One regional governing board member, (b) one regional administrator, (c) twelve consumers of behavioral health services or their family members, (d) two providers of behavioral health services, (e) two representatives from the State Department of Education, including one representative from the Division of Vocational Rehabilitation of the State Department of Education, (f) three representatives from the Department of Health and Human Services representing mental health, social services, and medicaid, (g) one representative from the Nebraska Commission on Law Enforcement and Criminal Justice, and (h) one representative from the Housing Office of the Community and Rural Development Division of the Department of Economic Development.

(2) The committee shall be responsible to the division and shall (a) serve as the state's mental health planning council as required by Public Law 102-321, (b) conduct regular meetings, (c) provide advice and assistance to the division relating to the provision of mental health services in the State of Nebraska, including, but not limited to, the development, implementation, provision, and funding of organized peer support services, (d) promote the interests of consumers and their families, including, but not limited to, their inclusion and involvement in all aspects of services design, planning, implementation, provi-

sion, education, evaluation, and research, (e) provide reports as requested by the division, and (f) engage in such other activities as directed or authorized by the division.

Source: Laws 2004, LB 1083, § 14; Laws 2006, LB 994, § 93; Laws 2007, LB296, § 460.

71-815 State Advisory Committee on Substance Abuse Services; created; members; duties.

(1) The State Advisory Committee on Substance Abuse Services is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to the provision of substance abuse services in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor and shall include at least three consumers of substance abuse services.

(2) The committee shall be responsible to the division and shall (a) conduct regular meetings, (b) provide advice and assistance to the division relating to the provision of substance abuse services in the State of Nebraska, (c) promote the interests of consumers and their families, (d) provide reports as requested by the division, and (e) engage in such other activities as directed or authorized by the division.

Source: Laws 2004, LB 1083, § 15; Laws 2005, LB 551, § 5; Laws 2006, LB 994, § 94.

71-816 Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.

(1) The Legislature finds that the main sources of funding for the Compulsive Gamblers Assistance Fund are the Charitable Gaming Operations Fund as provided in section 9-1,101 and the State Lottery Operation Trust Fund as provided in section 9-812 and Article III, section 24, of the Constitution of Nebraska. It is the intent of the Legislature that the Compulsive Gamblers Assistance Fund be used primarily for counseling and treatment services for problem gamblers and their families who are residents of Nebraska.

(2) The State Committee on Problem Gambling is created. Members of the committee shall have a demonstrated interest and commitment and specialized knowledge, experience, or expertise relating to problem gambling in the State of Nebraska. The committee shall consist of twelve members appointed by the Governor and shall include at least three consumers of problem gambling services. The committee shall appoint one of its members as chairperson of the committee and other officers as it deems appropriate. The committee shall conduct regular meetings and shall meet upon the call of the chairperson or a majority of its members to conduct its official business.

(3) The committee shall develop and recommend to the division guidelines and standards for the distribution and disbursement of money in the Compulsive Gamblers Assistance Fund. Such guidelines and standards shall be based on nationally recognized standards for problem gamblers assistance programs.

(4) In addition, the committee shall develop recommendations regarding (a) the evaluation and approval process for provider applications and contracts for treatment funding from the Compulsive Gamblers Assistance Fund, (b) the review and use of evaluation data, (c) the use and expenditure of funds for

education regarding problem gambling and prevention of problem gambling, and (d) the creation and implementation of outreach and educational programs regarding problem gambling for Nebraska residents. The committee may engage in other activities it finds necessary to carry out its duties under this section.

(5) Based on the recommendations of the committee, the division shall adopt guidelines and standards for the distribution and disbursement of money in the fund and for administration of problem gambling services in Nebraska.

(6) The division and the committee shall jointly submit a report within sixty days after the end of each fiscal year to the Legislature and the Governor that provides details of the administration of services and distribution of funds.

Source: Laws 2004, LB 1083, § 16; Laws 2005, LB 551, § 6; Laws 2006, LB 994, § 95; Laws 2008, LB1058, § 1; Laws 2009, LB189, § 1.

71-817 Compulsive Gamblers Assistance Fund; created; use; investment.

The Compulsive Gamblers Assistance Fund is created. The fund shall include revenue transferred from the State Lottery Operation Trust Fund under section 9-812 and the Charitable Gaming Operations Fund under section 9-1,101 and any other revenue received by the division for credit to the fund from any other public or private source, including, but not limited to, appropriations, grants, donations, gifts, devises, bequests, fees, or reimbursements. The division shall administer the fund for the treatment of problem gamblers as recommended by the State Committee on Problem Gambling established under section 71-816 and shall spend no more than ten percent of the money appropriated to the fund for administrative costs. The Director of Administrative Services shall draw warrants upon the Compulsive Gamblers Assistance Fund upon the presentation of proper vouchers by the division. Money from the Compulsive Gamblers Assistance Fund shall be used exclusively for the purpose of providing assistance to agencies, groups, organizations, and individuals that provide education, assistance, and counseling to individuals and families experiencing difficulty as a result of problem gambling, to promote the awareness of problem gamblers assistance programs, and to pay the costs and expenses of the division and the committee with regard to problem gambling. The division shall not provide any direct services to problem gamblers or their families. Funds appropriated from the Compulsive Gamblers Assistance Fund shall not be granted or loaned to or administered by any regional behavioral health authority unless the authority is a direct provider of a problem gamblers assistance program. 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.

Source: Laws 1993, LB 138, § 33; R.S.Supp.,1994, § 9-804.05; Laws 1995, LB 275, § 17; Laws 2000, LB 659, § 3; Laws 2001, LB 541, § 5; R.S.Supp.,2002, § 83-162.04; Laws 2004, LB 1083, § 17; Laws 2005, LB 551, § 7; Laws 2008, LB1058, § 2; Laws 2009, LB189, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-818 Repealed. Laws 2009, LB 154, § 27.

71-819 Repealed. Laws 2006, LB 994, § 162.

71-820 Repealed. Laws 2006, LB 994, § 162.

71-821 Children and Family Behavioral Health Support Act; act, how cited.

Sections 71-821 to 71-827 shall be known and may be cited as the Children and Family Behavioral Health Support Act.

Source: Laws 2009, LB603, § 5.

71-822 Children and Family Support Hotline; establishment.

No later than January 1, 2010, the department shall establish a Children and Family Support Hotline which shall:

(1) Be a single point of access for children's behavioral health triage through the operation of a twenty-four-hour-per-day, seven-day-per-week telephone line;

(2) Be administered by the division and staffed by trained personnel under the direct supervision of a qualified mental health, behavioral health, or social work professional engaged in activities of mental health treatment;

(3) Provide screening and assessment;

(4) Provide referral to existing community-based resources; and

(5) Be evaluated. The evaluation shall include, but not be limited to, the county of the caller, the reliability and consistency of the information given, an analysis of services needed or requested, and the degree to which the caller reports satisfaction with the referral service.

Source: Laws 2009, LB603, § 6.

71-823 Family Navigator Program; establishment; evaluation.

(1) No later than January 1, 2010, the department shall establish a Family Navigator Program to respond to children's behavioral health needs. The program shall be administered by the division and consist of individuals trained and compensated by the department who, at a minimum, shall:

(a) Provide peer support; and

(b) Provide connection to existing services, including the identification of community-based services.

(2) The Family Navigator Program shall be evaluated. The evaluation shall include, but not be limited to, an assessment of the quality of the interactions with the program and the effectiveness of the program as perceived by the family, whether the family followed through with the referral recommendations, the availability and accessibility of services, the waiting time for services, and cost and distance factors.

Source: Laws 2009, LB603, § 7.

71-824 Post-adoption and post-guardianship case management services; notice; administration; evaluation.

No later than January 1, 2010, the department shall provide post-adoption and post-guardianship case management services for adoptive and guardianship families of former state wards on a voluntary basis. The department shall notify adoptive parents and guardians of the availability of such services and the process to access such services and that such services are provided on a

voluntary basis. Notification shall be in writing and shall be provided at the time of finalization of the adoption agreement or completion of the guardianship and each six months thereafter until dissolution of the adoption, until termination of the guardianship, or until the former state ward attains nineteen years of age, whichever is earlier. Post-adoption and post-guardianship case management services under this section shall be administered by the Division of Children and Family Services and shall be evaluated. The evaluation shall include, but not be limited to, the number and percentage of persons receiving such services and the degree of problem resolution reported by families receiving such services.

Source: Laws 2009, LB603, § 8.

71-825 Annual report; contents.

The department shall provide an annual report, no later than December 1, to the Governor and the Legislature on the operation of the Children and Family Support Hotline established under section 71-822, the Family Navigator Program established under section 71-823, and the provision of voluntary post-adoption and post-guardianship case management services under section 71-824.

Source: Laws 2009, LB603, § 9.

71-826 Legislative intent regarding appropriations; allocation.

It is the intent of the Legislature to appropriate from the General Fund five hundred thousand dollars for fiscal year 2009-10 and one million dollars for fiscal year 2010-11 to the Department of Health and Human Services — Behavioral Health, Program 38, Behavioral Health Aid, for behavioral health services for children under the Nebraska Behavioral Health Services Act, including, but not limited to, the expansion of the Professional Partner Program and services provided using a sliding-fee schedule. General Funds appropriated pursuant to this section shall be excluded from the calculation of county matching funds under subsection (3) of section 71-808, shall be allocated to the regional behavioral health authorities, and shall be distributed based on the 2008 allocation formula. For purposes of this section, children means Nebraska residents under nineteen years of age.

Source: Laws 2009, LB603, § 10.

71-827 Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.

(1) The Children's Behavioral Health Oversight Committee of the Legislature is created as a special legislative committee. The committee shall consist of nine members of the Legislature appointed by the Executive Board of the Legislative Council as follows: (a) Two members of the Appropriations Committee of the Legislature, (b) two members of the Health and Human Services Committee of the Legislature, (c) two members of the Judiciary Committee of the Legislature, and (d) three members of the Legislature who are not members of such committees. The Children's Behavioral Health Oversight Committee shall elect a chairperson and vice-chairperson from among its members. The executive board shall appoint members of the committee no later than thirty days after May 23, 2009, and within the first six legislative days of the regular legislative

session in 2011. The committee and this section terminate on December 31, 2012.

(2) The committee shall monitor the effect of implementation of the Children and Family Behavioral Health Support Act and other child welfare and juvenile justice initiatives by the department related to the provision of behavioral health services to children and their families.

(3) The committee shall meet at least quarterly with representatives of the Division of Behavioral Health and the Division of Children and Family Services of the Department of Health and Human Services and with other interested parties and may meet at other times at the call of the chairperson.

(4) Staff support for the committee shall be provided by existing legislative staff as directed by the executive board. The committee may request the executive board to hire consultants that the committee deems necessary to carry out the purposes of the committee under this section.

(5) The committee shall provide a report to the Governor and the Legislature no later than December 1 of each year. The report shall include, but not be limited to, findings and recommendations relating to the provision of behavioral health services to children and their families.

Source: Laws 2009, LB603, § 11.

71-828 Behavioral Health Workforce Act; act, how cited.

Sections 71-828 to 71-830 shall be known and may be cited as the Behavioral Health Workforce Act.

Source: Laws 2009, LB603, § 12.

71-829 Legislative findings.

The Legislature finds that there are insufficient behavioral health professionals in the Nebraska behavioral health workforce and further that there are insufficient behavioral health professionals trained in evidence-based practice. This workforce shortage leads to inadequate accessibility and response to the behavioral health needs of Nebraskans of all ages: Children; adolescents; and adults. These shortages have led to well-documented problems of consumers waiting for long periods of time in inappropriate settings because appropriate placement and care is not available. As a result, mentally ill patients end up in hospital emergency rooms which are the most expensive level of care or are incarcerated and do not receive adequate care, if any.

As the state moves from institutional to community-based behavioral health services, the behavioral health services workforce shortage is increasingly felt by the inability to hire and retain behavioral health professionals in Nebraska. In Laws 2004, LB 1083, the Legislature pledged to ''promote activities in research and education to improve the quality of behavioral health services, the recruitment and retention of behavioral health professionals, and the availability of behavioral health services''. The purpose of the Behavioral Health Workforce Act is to realize the commitment made in LB 1083 to improve community-based behavioral health services for Nebraskans and thus focus on addressing behavioral health issues before they become a crisis through increasing the number of behavioral health professionals and train these professionals in evidence-based practice and alternative delivery methods which will improve the quality of care, including utilizing the existing infrastructure and

telehealth services which will expand outreach to more rural areas in Nebraska.

Source: Laws 2009, LB603, § 13.

71-830 Behavioral Health Education Center; created; administration; duties; report.

(1) The Behavioral Health Education Center is created beginning July 1, 2009, and shall be administered by the University of Nebraska Medical Center.

(2) The center shall:

(a) Provide funds for two additional medical residents in a Nebraska-based psychiatry program each year starting in 2010 until a total of eight additional psychiatry residents are added in 2013. Beginning in 2011 and every year thereafter, the center shall provide psychiatric residency training experiences that serve rural Nebraska and other underserved areas. As part of his or her residency training experiences, each center-funded resident shall participate in the rural training for a minimum of one year. Beginning in 2012, a minimum of two of the eight center-funded residents shall be active in the rural training each year;

(b) Focus on the training of behavioral health professionals in telehealth techniques, including taking advantage of a telehealth network that exists, and other innovative means of care delivery in order to increase access to behavioral health services for all Nebraskans;

(c) Analyze the geographic and demographic availability of Nebraska behavioral health professionals, including psychiatrists, social workers, community rehabilitation workers, psychologists, substance abuse counselors, licensed mental health practitioners, behavioral analysts, peer support providers, primary care physicians, nurses, nurse practitioners, and pharmacists;

(d) Prioritize the need for additional professionals by type and location;

(e) Establish learning collaborative partnerships with other higher education institutions in the state, hospitals, law enforcement, community-based agencies, and consumers and their families in order to develop evidence-based, recovery-focused, interdisciplinary curriculum and training for behavioral health professionals delivering behavioral health services in community-based agencies, hospitals, and law enforcement. Development and dissemination of such curriculum and training shall address the identified priority needs for behavioral health professionals; and

(f) Beginning in 2011, develop two interdisciplinary behavioral health training sites each year until a total of six sites have been developed. Four of the six sites shall be in counties with a population of fewer than fifty thousand inhabitants. Each site shall provide annual interdisciplinary training opportunities for a minimum of three behavioral health professionals.

(3) No later than December 1, 2011, and no later than December 1 of every odd-numbered year thereafter, the center shall prepare a report of its activities under the Behavioral Health Workforce Act. The report shall be filed with the Clerk of the Legislature and shall be provided to any member of the Legislature upon request.

Source: Laws 2009, LB603, § 14.

ARTICLE 9
NEBRASKA MENTAL HEALTH COMMITMENT ACT

Cross References

Abuse, report required, see section 28-372.
Admission when facilities are limited, see section 83-338.
Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
Behavioral Health Workforce Act, see section 71-828.
Blanks for warrants, certificates, and other forms, see section 83-336.
Children and Family Behavioral Health Support Act, see section 71-821.
Children's Behavioral Health Task Force, see sections 43-4001 to 43-4003.
Community Corrections Act, see section 47-619.
Cost of patient care, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Department of Health and Human Services, official names of institutions under supervision, see section 83-107.01.
Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.
Division of Behavioral Health, see sections 81-3113 and 81-3116.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
Interstate Compact on Mental Health, see section 83-801.
Jails, regulations relating to, see Chapter 47.
Mental Health Practice Act, see section 38-2101.
Mistreatment of mentally ill person, penalty, see section 83-356.
Nebraska Behavioral Health Services Act, see section 71-801.
Office of Juvenile Services, behavioral health programs and services, see section 43-407.
Patient expenses, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.
Persons with mental retardation, see sections 83-381 to 83-390.
Psychology Practice Act, see section 38-3101.
Report of abuse, required, see section 28-372.
Rural Behavioral Health Training and Placement Program Act, see section 71-5680.
Sex Offender Commitment Act, see section 71-1201.
Sex Offender Registration Act, see section 29-4001.
State hospitals for the mentally ill, see sections 83-305 to 83-357.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Veterans, treatment, see section 80-601.
Victim notification, see section 81-1850.

Section

Section

71-901 Act, how cited.

Sections 71-901 to 71-962 shall be known and may be cited as the Nebraska Mental Health Commitment Act.

Source: Laws 1976, LB 806, § 89; Laws 1988, LB 257, § 6; Laws 1994, LB 498, § 12; Laws 1996, LB 1155, § 116; R.S.1943, (1999), § 83-1078; Laws 2004, LB 1083, § 21.

71-902 Declaration of purpose.

The purpose of the Nebraska Mental Health Commitment Act is to provide for the treatment of persons who are mentally ill and dangerous. It is the public policy of the State of Nebraska that mentally ill and dangerous persons be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Nebraska Mental Health Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

Source: Laws 1976, LB 806, § 1; Laws 1996, LB 1155, § 93; R.S.1943, (1999), § 83-1001; Laws 2004, LB 1083, § 22.

Cross References

Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.

One of the declared public policy purposes of the Nebraska Mental Health Commitment Act is that all personal records required by the act shall be confidential except as otherwise specifically provided. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-903 Definitions, where found.

For purposes of the Nebraska Mental Health Commitment Act, unless the context otherwise requires, the definitions found in sections 71-904 to 71-914 shall apply.

Source: Laws 1976, LB 806, § 2; Laws 1994, LB 498, § 4; R.S.1943, (1999), § 83-1002; Laws 2004, LB 1083, § 23.

71-904 Administrator, defined.

Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee.

Source: Laws 1976, LB 806, § 5; R.S.1943, (1999), § 83-1005; Laws 2004, LB 1083, § 24.

71-905 Mental health board, defined.

Mental health board means a board created under section 71-915.

Source: Laws 1976, LB 806, § 4; R.S.1943, (1999), § 83-1004; Laws 2004, LB 1083, § 25.

71-906 Mental health professional, defined.

Mental health professional means a person licensed to practice medicine and surgery or psychology in this state under the Uniform Credentialing Act or an advanced practice registered nurse licensed under the Advanced Practice Registered Nurse Practice Act who has proof of current certification in a psychiatric or mental health specialty.

Source: Laws 1976, LB 806, § 10; Laws 1991, LB 10, § 6; Laws 1994, LB 1210, § 159; R.S.1943, (1999), § 83-1010; Laws 2004, LB 1083, § 26; Laws 2005, LB 534, § 1; Laws 2007, LB463, § 1185.

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Uniform Credentialing Act, see section 38-101.

The opinion of a general practitioner of medicine as to mental conditions is admissible in commitment proceedings, provided a proper foundation is laid. Lux v. Mental Health Board of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

71-907 Mentally ill, defined.

Mentally ill means having a psychiatric disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others.

Source: Laws 1977, LB 204, § 27; R.S.1943, (1999), § 83-1009.01; Laws 2004, LB 1083, § 27.

71-908 Mentally ill and dangerous person, defined.

Mentally ill and dangerous person means a person who is mentally ill or substance dependent and because of such mental illness or substance dependence presents:

(1) A substantial risk of serious harm to another person or persons within the near future as manifested by evidence of recent violent acts or threats of violence or by placing others in reasonable fear of such harm; or

(2) A substantial risk of serious harm to himself or herself within the near future as manifested by evidence of recent attempts at, or threats of, suicide or serious bodily harm or evidence of inability to provide for his or her basic human needs, including food, clothing, shelter, essential medical care, or personal safety.

Source: Laws 1976, LB 806, § 9; Laws 1977, LB 204, § 26; Laws 1985, LB 252, § 2; R.S.1943, (1999), § 83-1009; Laws 2004, LB 1083, § 28.

1. Requirements of section
2. Evidentiary issues
3. Standard of proof
4. Constitutionality
5. Appeal

1. Requirements of section

Involuntary commitment as a mentally ill dangerous person is improper when, although a person is clearly mentally ill, there is no showing of dangerousness. Petersen v. County Board of Mental Health, 203 Neb. 622, 279 N.W.2d 844 (1979).

Showing that a person is a spendthrift and improvident is insufficient to demonstrate dangerousness as required by this statute. Petersen v. County Board of Mental Health, 203 Neb. 622, 279 N.W.2d 844 (1979).

The requirements of this section, which defines a mentally ill dangerous person, are met when medical diagnoses of paranoid schizophrenia and an unprovoked assault and threatening behavior are shown by clear and convincing proof. Lux v. Mental Health Board of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

2. Evidentiary issues

There is no definite time-oriented period to determine whether an act is recent for the purposes of this section. Each case must be decided on the basis of the surrounding facts and circumstances. In re Interest of Kochner, 266 Neb. 114, 662 N.W.2d 195 (2003).

To meet the definition of a mentally ill dangerous person, the State must show that the person suffers from a mental illness and that the person presents a substantial risk of harm to others or to himself or herself. In re Interest of Kochner, 266 Neb. 114, 662 N.W.2d 195 (2003).

A person who is mentally retarded does not fall within the definition of ''mentally ill dangerous person'' unless there is a secondary diagnosis of mental illness. In re Interest of Wickwire, 259 Neb. 305, 609 N.W.2d 384 (2000).

Actions and statements of a person alleged to be mentally ill and dangerous which occur prior to the hearing are probative of the subject's present mental condition. However, in order for a past act to have any evidentiary value, it must form some foundation for a prediction of future dangerousness and be, therefore, probative of that issue. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

In proving the dangerousness of a mentally ill person as manifested by ''evidence of inability to provide for his basic human needs,'' within the meaning of this section, expert testimony may be used to prove such a condition. In re Interest of Kinnebrew, 224 Neb. 885, 402 N.W.2d 264 (1987).

An act occurring five years prior to the mental health commitment hearing is recent within the meaning of this section where:

(a) There is evidence that the act is still probative of the subject's future dangerousness; (b) the subject has not had an opportunity to commit a more recent act because he has been in confinement; and (c) there is reliable medical evidence that there is a high probability of repetition of such act by the subject. Under Mental Health Commitment Act, the determination of whether an act of violence is recent must be decided on the basis of all the surrounding facts and circumstances. In re Interest of Blythman, 208 Neb. 51, 302 N.W.2d 666 (1981).

An act or threat is ''recent'' within the meaning of this section, if the time interval between it and the hearing of the mental health board is not greater than that which would indicate processing of the complaint was carried on with reasonable diligence under the circumstances existing having due regard for the rights and welfare of the alleged mentally ill dangerous person and the protection of society in general. Hill v. County Board of Mental Health, Douglas County, 203 Neb. 610, 279 N.W.2d 838 (1979).

Although this section refers to ''recent violent acts,'' commitment may be based upon evidence of only one violent act or threat. Lux v. Mental Health Board of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

3. Standard of proof

The State must prove by clear and convincing evidence that an individual poses a substantial risk of harm to others or to himself to have that individual declared mentally ill and dangerous under the Nebraska Mental Health Commitment Act. In re Interest of Dickson, 238 Neb. 148, 469 N.W.2d 357 (1991).

Evidence must be clear and convincing to support a finding that a person is mentally ill and dangerous. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

4. Constitutionality

The definitions of mentally ill dangerous persons in the Nebraska Mental Health Commitment Act and the statutes governing persons acquitted of a crime on grounds of insanity are constitutional and do not violate equal protection guarantees. Tulloch v. State, 237 Neb. 138, 465 N.W.2d 448 (1991).

5. Appeal

An order adjudicating an individual as a mentally ill dangerous person pursuant to this section and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

71-909 Outpatient treatment, defined.

Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (1) taking prescribed medication, (2) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (3) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs.

Source: Laws 1994, LB 498, § 5; R.S.1943, (1999), § 83-1007.01; Laws 2004, LB 1083, § 29.

71-910 Peace officer or law enforcement officer, defined.

Peace officer or law enforcement officer means a sheriff, a jailer, a marshal, a police officer, or an officer of the Nebraska State Patrol.

Source: Laws 1976, LB 806, § 11; Laws 1981, LB 95, § 5; Laws 1988, LB 1030, § 52; R.S.1943, (1999), § 83-1011; Laws 2004, LB 1083, § 30.

71-911 Regional center, defined.

Regional center means a state hospital for the mentally ill as designated in section 83-305.

Source: Laws 1976, LB 806, § 7; R.S.1943, (1999), § 83-1007; Laws 2004, LB 1083, § 31.

71-912 Subject, defined.

Subject means any person concerning whom a certificate or petition has been filed under the Nebraska Mental Health Commitment Act. Subject does not include any person under eighteen years of age unless such person is an emancipated minor.

Source: Laws 1976, LB 806, § 14; Laws 1996, LB 1155, § 94; R.S.1943, (1999), § 83-1014; Laws 2004, LB 1083, § 32.

71-913 Substance dependent, defined.

Substance dependent means having a behavioral disorder that involves a maladaptive pattern of repeated use of controlled substances, illegal drugs, or alcohol, usually resulting in increased tolerance, withdrawal, and compulsive using behavior and including a cluster of cognitive, behavioral, and physiological symptoms involving the continued use of such substances despite significant adverse effects resulting from such use.

Source: Laws 1985, LB 252, § 3; R.S.1943, (1999), § 83-1009.02; Laws 2004, LB 1083, § 33.

71-914 Treatment facility, defined.

Treatment facility means a facility which is licensed to provide services for persons who are mentally ill or substance dependent or both.

Source: Laws 1976, LB 806, § 6; Laws 1985, LB 252, § 1; Laws 1995, LB 275, § 24; R.S.1943, (1999), § 83-1006; Laws 2004, LB 1083, § 34.

71-915 Mental health boards; created; powers; duties; compensation.

(1) The presiding judge in each district court judicial district shall create at least one but not more than three mental health boards in such district and shall appoint sufficient members and alternate members to such boards. Members and alternate members of a mental health board shall be appointed for four-year terms. The presiding judge may remove members and alternate members of the board at his or her discretion. Vacancies shall be filled for the unexpired term in the same manner as provided for the original appointment. Members of the mental health board shall have the same immunity as judges of the district court.

(2) Each mental health board shall consist of an attorney licensed to practice law in this state and any two of the following but not more than one from each category: A physician, a psychologist, a psychiatric social worker, a psychiatric nurse, a clinical social worker, or a layperson with a demonstrated interest in mental health and substance dependency issues. The attorney shall be chairperson of the board. Members and alternate members of a mental health board shall take and subscribe an oath to support the United States Constitution and the Constitution of Nebraska and to faithfully discharge the duties of the office according to law.

(3) The mental health board shall have the power to issue subpoenas, to administer oaths, and to do any act necessary and proper for the board to carry out its duties. No mental health board hearing shall be conducted unless three members or alternate members are present and able to vote. Any action taken at any mental health board hearing shall be by majority vote.

(4) The mental health board shall prepare and file an annual inventory statement with the county board of its county of all county personal property in its custody or possession. Members of the mental health board shall be compensated and shall be reimbursed for their actual and necessary expenses by the county or counties being served by such board. Compensation shall be at an hourly rate to be determined by the presiding judge of the district court, except that such compensation shall not be less than fifty dollars for each hearing of the board. Members shall also be reimbursed for their actual and

necessary expenses, not including charges for meals. Mileage shall be determined pursuant to section 23-1112.

Source: Laws 1976, LB 806, § 27; Laws 1981, LB 95, § 7; Laws 1990, LB 822, § 39; Laws 1994, LB 498, § 6; R.S.1943, (1999), § 83-1017; Laws 2004, LB 1083, § 35.

71-916 Mental health board; training; department; duties.

(1) The Department of Health and Human Services shall provide appropriate training to members and alternate members of each mental health board and shall consult with consumer and family advocacy groups in the development and presentation of such training. Members and alternate members shall be reimbursed for any actual and necessary expenses incurred in attending such training in a manner and amount determined by the presiding judge of the district court. No person shall remain on a mental health board or be eligible for appointment or reappointment as a member or alternate member of such board unless he or she has attended and satisfactorily completed such training pursuant to rules and regulations adopted and promulgated by the department.

(2) The department shall provide the mental health boards with blanks for warrants, certificates, and other forms and printed copies of applicable rules and regulations of the department that will enable the boards to carry out their powers and duties under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act.

Source: Laws 2004, LB 1083, § 36; Laws 2006, LB 1199, § 35; Laws 2007, LB296, § 461.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-917 Clerk of the district court; duties relating to mental health board.

The clerk of the district court appointed for that purpose by a district judge of that district court judicial district shall sign and issue all notices, appointments, warrants, subpoenas, or other process required to be issued by the mental health board and shall affix his or her seal as clerk of the district court. The clerk shall file and preserve in his or her office all papers connected with any proceedings of the mental health board and all related notices, reports, and other communications. The clerk shall keep minutes of all proceedings of the board. All required notices, reports, and communications may be sent by mail unless otherwise provided in the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The fact and date that such notices, reports, and communications have been sent and received shall be noted on the proper record.

Source: Laws 1976, LB 806, § 16; Laws 1981, LB 95, § 6; Laws 2000, LB 884, § 5; R.S.Supp.,2002, § 83-1016; Laws 2004, LB 1083, § 37; Laws 2006, LB 1199, § 36.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-918 Facility or programs for treatment of mental illness, substance dependence, or personality disorders; voluntary admission; unconditional discharge; exception.

Any person may voluntarily apply for admission to any public or private hospital, other treatment facility, or program for treatment of mental illness, substance dependence, or personality disorders in accordance with the regulations of such facilities or programs governing such admissions. Any person who is voluntarily admitted for such treatment shall be unconditionally discharged from such hospital, treatment facility, or program not later than forty-eight hours after delivery of his or her written request to any official of such hospital, treatment facility, or program, unless action is taken under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to continue his or her custody.

Source: Laws 1976, LB 806, § 29; Laws 1978, LB 501, § 1; Laws 1985, LB 252, § 4; Laws 2000, LB 884, § 6; R.S.Supp.,2002, § 83-1019; Laws 2004, LB 1083, § 38; Laws 2006, LB 1199, § 37.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-919 Mentally ill and dangerous person; dangerous sex offender; emergency protective custody; evaluation by mental health professional.

(1) A law enforcement officer who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender and that the harm described in section 71-908 or subdivision (1) of section 83-174.01 is likely to occur before mental health board proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be initiated to obtain custody of the person may take such person into emergency protective custody, cause him or her to be taken into emergency protective custody, or continue his or her custody if he or she is already in custody. Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Services facility as provided in subsection (2) of this section. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities. A mental health professional who has probable cause to believe that a person is mentally ill and dangerous or a dangerous sex offender may cause such person to be taken into custody and shall have a limited privilege to hold such person until a law enforcement officer or other authorized person arrives to take custody of such person.

(2)(a) A person taken into emergency protective custody under this section shall be admitted to an appropriate and available medical facility unless such person has a prior conviction for a sex offense listed in section 29-4003.

(b) A person taken into emergency protective custody under this section who has a prior conviction for a sex offense listed in section 29-4003 shall be admitted to a jail or Department of Correctional Services facility unless a medical or psychiatric emergency exists for which treatment at a medical facility is required. The person in emergency protective custody shall remain at the medical facility until the medical or psychiatric emergency has passed and it is safe to transport such person, at which time the person shall be transferred to an available jail or Department of Correctional Services facility.

(3) Upon admission to a facility of a person taken into emergency protective custody by a law enforcement officer under this section, such officer shall execute a written certificate prescribed and provided by the Department of

Health and Human Services. The certificate shall allege the officer's belief that the person in custody is mentally ill and dangerous or a dangerous sex offender and shall contain a summary of the person's behavior supporting such allegations. A copy of such certificate shall be immediately forwarded to the county attorney.

(4) The administrator of the facility shall have such person evaluated by a mental health professional as soon as reasonably possible but not later than thirty-six hours after admission. The mental health professional shall not be the mental health professional who causes such person to be taken into custody under this section and shall not be a member or alternate member of the mental health board that will preside over any hearing under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act with respect to such person. A person shall be released from emergency protective custody after completion of such evaluation unless the mental health professional determines, in his or her clinical opinion, that such person is mentally ill and dangerous or a dangerous sex offender.

Source: Laws 1976, LB 806, § 30; Laws 1978, LB 501, § 2; Laws 1988, LB 257, § 2; Laws 1996, LB 1044, § 964; Laws 1996, LB 1155, § 95; R.S.1943, (1999), § 83-1020; Laws 2004, LB 1083, § 39; Laws 2006, LB 1199, § 38; Laws 2007, LB296, § 462.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-920 Mentally ill and dangerous person; certificate of mental health professional; contents.

(1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is mentally ill and dangerous shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;

(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is mentally ill and dangerous and the clinical basis for such opinion.

Source: Laws 2004, LB 1083, § 40.

71-921 Person believes another to be a mentally ill and dangerous person; notify county attorney; petition; when.

(1) Any person who believes that another person is mentally ill and dangerous may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in section 71-908, he or she shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county, and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next-of-kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is mentally ill and dangerous;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, attempts, or threats which shall be specified and described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or substance dependence and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

Source: Laws 1976, LB 806, § 34; Laws 1981, LB 95, § 9; Laws 2000, LB 884, § 8; R.S.Supp.,2002, § 83-1024; Laws 2004, LB 1083, § 41.

71-922 Mental health board proceedings; commencement; custody; conditions; dismissal; when.

(1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 71-921 or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-920 or the administrator of the treatment center or medical facility having charge of the subject of his or her intention to file such petition. The county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 71-921 may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is mentally ill and dangerous as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of . . . . . , Alleged to be Mentally Ill and Dangerous. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 71-924, and upon such motion by the county attorney, the mental health board shall dismiss the petition.

Source: Laws 1976, LB 806, § 36; Laws 1981, LB 95, § 10; Laws 2000, LB 884, § 9; R.S.Supp.,2002, § 83-1026; Laws 2004, LB 1083, § 42; Laws 2005, LB 551, § 9.

71-923 Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.

Upon the filing of the petition under section 71-921, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections 71-943 to 71-960, and a list of the names, addresses, and telephone numbers of mental health professionals in that immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. The failure of a subject to appear as required under this section shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody.

Source: Laws 1976, LB 806, § 37; Laws 1981, LB 95, § 11; Laws 1996, LB 1155, § 98; R.S.1943, (1999), § 83-1027; Laws 2004, LB 1083, § 43.

71-924 Hearing; mental health board; duties.

A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is mentally ill and dangerous as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall proceed to enter a treatment order pursuant to section 71-925. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

Source: Laws 1976, LB 806, § 45; Laws 1981, LB 95, § 14; R.S.1943, (1999), § 83-1035; Laws 2004, LB 1083, § 44.

71-925 Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is mentally ill and dangerous and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908.

(2) If the mental health board finds that the subject is not mentally ill and dangerous, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is mentally ill and dangerous but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health board are available and would suffice to prevent the harm described in section 71-908, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is mentally ill and dangerous and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in section 71-908, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment

pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

Source: Laws 1976, LB 806, § 47; Laws 1978, LB 501, § 7; Laws 1981, LB 95, § 16; Laws 1996, LB 1155, § 102; R.S.1943, (1999), § 83-1037; Laws 2004, LB 1083, § 45.

The board of mental health's conclusion that a person before it is a mentally ill dangerous person and that a less restrictive alternative is not available or would not suffice to prevent the harm described in section 83-1009 must be supported by clear and convincing evidence. In re Interest of Vance, 242 Neb. 109, 493 N.W.2d 620 (1992).

In determining whether a person is dangerous, the focus must be on the subject's condition at the time of the hearing, not the date the subject of the commitment hearing was initially taken into custody. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

Statute requires proof that person is dangerous before he will be subject to involuntary confinement. Richards v. Douglas County, 213 Neb. 313, 328 N.W.2d 783 (1983).

71-926 Subject; custody pending entry of treatment order.

(1) At the conclusion of a mental health board hearing under section 71-924 and prior to the entry of a treatment order by the board under section 71-925, the board may (a) order that the subject be retained in custody until the entry of such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in section 71-908 and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at the nearest appropriate and available medical facility and shall not be placed in a jail. Each county shall make arrangements with appropriate medical facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order.

Source: Laws 1976, LB 806, § 49; Laws 1988, LB 257, § 4; Laws 1996, LB 1044, § 967; Laws 1996, LB 1155, § 103; R.S.1943, (1999), § 83-1039; Laws 2004, LB 1083, § 46.

71-927 Mentally ill and dangerous subject; board; issue warrant; contents; immunity.

If the mental health board finds the subject to be mentally ill and dangerous and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Nebraska Mental Health Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility.

Source: Laws 1976, LB 806, § 51; Laws 1985, LB 252, § 5; Laws 1994, LB 337, § 1; R.S.1943, (1999), § 83-1041; Laws 2004, LB 1083, § 47.

71-928 Inpatient treatment; subject taken to facility; procedure.

When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 71-927, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person.

Source: Laws 1976, LB 806, § 52; R.S.1943, (1999), § 83-1042; Laws 2004, LB 1083, § 48.

71-929 Mental health board; execution of warrants; costs; procedure.

(1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Nebraska Mental Health Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

Source: Laws 2004, LB 1083, § 49.

71-930 Treatment order of mental health board; appeal; final order of district court; appeal.

The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 71-925 to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

Source: Laws 1976, LB 806, § 53; Laws 1991, LB 732, § 155; R.S.1943, (1999), § 83-1043; Laws 2004, LB 1083, § 50.

In reviewing a district court's judgment under this act, the Supreme Court will affirm the district court's judgment unless, as a matter of law, the judgment is unsupported by evidence which is clear and convincing. In re Interest of Rasmussen, 236 Neb. 572, 462 N.W.2d 621 (1990).

This section requires the district court to review appeals from the mental health board de novo on the record, and this court to hear appeals from the district court in accordance with criminal procedures. In re Interest of Aandahl, 219 Neb. 414, 363 N.W.2d 392 (1985).

A finding that the accused is incompetent to stand trial may be appealed to the Supreme Court as a final order. State v. Guatney, 207 Neb. 501, 299 N.W.2d 538 (1980).

The Supreme Court will not interfere on appeal with a final order made by the district court in mental health commitment proceedings unless it can say as a matter of law that the order is not supported by clear and convincing evidence. Hill v. County Board of Mental Health, Douglas County, 203 Neb. 610, 279 N.W.2d 838 (1979).

Commitment proceedings are judicial in nature and the District Courts must review the decisions of Mental Health Boards de novo on the record. Lux v. Mental Health Board of Polk County, 202 Neb. 106, 274 N.W.2d 141 (1979).

An order adjudicating an individual as a mentally ill dangerous person pursuant to section 71-908 and ordering that person retained for an indeterminate amount of time is an order affecting a substantial right in a special proceeding from which an appeal may be taken. In re Interest of Saville, 10 Neb. App. 194, 626 N.W.2d 644 (2001).

The subject of a mental health petition (or the county attorney) has the statutory right to appeal the mental health board's decision to the district court, which reviews the case de novo on the record. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-931 Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.

(1) Any treatment order entered by a mental health board under section 71-925 shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or substance dependence, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

Source: Laws 1976, LB 806, § 54; Laws 1978, LB 501, § 9; Laws 1981, LB 95, § 17; Laws 1996, LB 1155, § 105; R.S.1943, (1999), § 83-1044; Laws 2004, LB 1083, § 51.

71-932 Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.

The person or entity designated by the mental health board under section 71-931 to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

Source: Laws 1976, LB 806, § 55; Laws 1978, LB 501, § 10; Laws 1996, LB 1155, § 106; R.S.1943, (1999), § 83-1045; Laws 2004, LB 1083, § 52.

71-933 Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.

(1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or substance dependence. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2)(a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

Source: Laws 1994, LB 498, § 9; R.S.1943, (1999), § 83-1045.01; Laws 2004, LB 1083, § 53.

71-934 Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.

The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Nebraska Mental Health Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Source: Laws 1994, LB 498, § 10; Laws 1996, LB 1155, § 107; R.S.1943, (1999), § 83-1045.02; Laws 2004, LB 1083, § 54.

71-935 Mental health board; review hearing; order discharge or change treatment disposition; when.

(1) Upon the filing of a periodic report under section 71-932, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a

change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 71-937 or 71-938, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71-931 to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-932 to the satisfaction of the board that (a) cause no longer exists for the care or treatment of the subject or (b) a less restrictive treatment alternative exists for the subject. When discharge or a change in disposition is in issue, due process protections afforded under the Nebraska Mental Health Commitment Act shall attach to the subject.

Source: Laws 1976, LB 806, § 56; Laws 1994, LB 498, § 11; Laws 1996, LB 1155, § 108; R.S.1943, (1999), § 83-1046; Laws 2004, LB 1083, § 55.

The Nebraska Mental Health Commitment Act clearly and plainly contemplates that due process be afforded at hearings other than the one held upon the filing of the initial petition. In re Interest of Powers, 242 Neb. 19, 493 N.W.2d 166 (1992).

Upon review of a commitment under this section, the State must prove by clear and convincing evidence that the individual remains mentally ill and dangerous. In re Interest of Dickson, 238 Neb. 148, 469 N.W.2d 357 (1991).

71-936 Regional center or treatment facility; administrator; discharge of involuntary patient; notice.

When the administrator of any regional center or treatment facility for the treatment of persons who are mentally ill or substance dependent determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

Source: Laws 1967, c. 251, § 16, p. 670; Laws 1981, LB 95, § 4; R.S.1943, (1999), § 83-340.01; Laws 2004, LB 1083, § 56.

71-937 Mental health board; notice of release; hearing.

A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is mentally ill and dangerous and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Nebraska Mental Health Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

Source: Laws 1981, LB 95, § 26; Laws 2003, LB 724, § 10; R.S.Supp.,2003, § 83-1079; Laws 2004, LB 1083, § 57.

71-938 Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.

The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Nebraska Mental Health Commitment Act, and such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is mentally ill and dangerous, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 71-925.

Source: Laws 1981, LB 95, § 27; R.S.1943, (1999), § 83-1080; Laws 2004, LB 1083, § 58.

71-939 Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.

When any person receiving treatment at a treatment facility or program for persons with mental illness or substance dependence pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall issue the warrant of the board directed to the sheriff of the county for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in this section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

Source: Laws 1969, c. 215, § 10, p. 835; Laws 1976, LB 806, § 19; R.S.1943, (1994), § 83-308.02; Laws 1996, LB 1155, § 112; R.S. 1943, (1999), § 83-1071; Laws 2004, LB 1083, § 59.

71-940 Person with mental illness or substance dependence; committed under other state's laws; return to other state; procedure; warrant issued.

The Governor may, upon demand from officials of another state, deliver to the executive authority of another state or his or her designee any person who is absent without authorization from a treatment facility or program for persons with mental illness or substance dependence to which such person has been committed under the laws of the other state either through civil commitment, as a result of being found not responsible for a criminal act by reason of

insanity or mental illness, or as a result of being found not competent to stand trial for a criminal charge. The demand shall be accompanied by a certified copy of the commitment and sworn statement by the administrator of the treatment facility or program stating that (1) the person is absent without authorization, (2) the person is currently dangerous to himself, herself, or others, and (3) the demanding state is willing to accept the person back for further treatment. If the Governor is satisfied that the demand conforms to law, the Governor shall issue a warrant under seal of this state authorizing the return of such person to the demanding state at the expense of the demanding state.

Source: Laws 1996, LB 1155, § 113; R.S.1943, (1999), § 83-1072; Laws 2004, LB 1083, § 60.

71-941 Person with mental illness or substance dependence; arrested under warrant; notice; rights; writ of habeas corpus; hearing.

(1) A person arrested upon a warrant pursuant to section 71-940 shall not be delivered to a demanding state until he or she is notified of the demand for his or her surrender and has had an opportunity to apply for a writ of habeas corpus. If an application is filed, notice of the time and place for hearing on the writ shall be given to the county attorney of the county where the arrest was made. The person arrested shall have the right to counsel and the right to have counsel appointed for him or her if the person is indigent. Pending the determination of the court upon the application for the writ, the person detained shall be maintained in a suitable facility as described in section 71-919 or a hospital for persons with mental illness.

(2) At a hearing on a writ of habeas corpus, the State of Nebraska shall show that there is probable cause to believe that (a) such person is absent without authorization from a treatment facility or program for persons with mental illness or substance dependence to which he or she was committed located in the demanding state, (b) the demanding state has reason to believe that such person is currently dangerous to himself, herself, or others, and (c) the demanding state is willing to accept the person back for further treatment.

Source: Laws 1996, LB 1155, § 114; R.S.1943, (1999), § 83-1073; Laws 2004, LB 1083, § 61.

71-942 Person with mental illness, substance dependence, or personality disorder; dangerous sex offender; located outside state; demand return; procedure.

The Governor may appoint an agent to demand of the executive authority of another state any person who is located in such other state, who was receiving treatment at a treatment facility or program in this state pursuant to the Nebraska Mental Health Commitment Act, the Sex Offender Commitment Act, or section 29-1823, 29-2203, or 29-3701 to 29-3704, and who is absent without authorization from such treatment facility or program. The demand shall be accompanied by a certified copy of the order of commitment and a sworn statement by the administrator of the treatment facility or program stating that (1) the person is absent without authorization, (2) the administrator or program director of such treatment facility or program believes that such person is currently dangerous to himself, herself, or others, and (3) the treatment facility or program is willing to accept the person back for further treatment. This

section does not prevent extradition under the Uniform Criminal Extradition Act if such act applies.

Source: Laws 1996, LB 1155, § 115; R.S.1943, (1999), § 83-1074; Laws 2004, LB 1083, § 62; Laws 2006, LB 1199, § 39.

Cross References

Sex Offender Commitment Act, see section 71-1201.
Uniform Criminal Extradition Act, see section 29-758.

71-943 Subjects' rights during proceedings against them.

In addition to the rights granted subjects by any other provisions of the Nebraska Mental Health Commitment Act, such subjects shall be entitled to the rights provided in sections 71-943 to 71-960 during proceedings concerning the subjects under the act.

Source: Laws 1976, LB 806, § 57; Laws 2000, LB 884, § 10; R.S.Supp.,2002, § 83-1047; Laws 2004, LB 1083, § 63.

71-944 Subject's rights; written notice of the time and place of hearing; reasons alleged for treatment; procedure.

A subject shall, in advance of the mental health board hearing conducted under section 71-924 or 71-1208, be entitled to written notice of the time and place of such hearing, the reasons alleged for believing that he or she is mentally ill and dangerous or a dangerous sex offender requiring inpatient or outpatient treatment ordered by the mental health board, and all rights to which such subject is entitled under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. The notice requirements shall be deemed satisfied by personal service upon the subject of the summons or notice of time and place of the hearing and copies of the petition and list of rights required by sections 71-923 and 71-924 or sections 71-1207 and 71-1208. If the subject has counsel and if the physician or mental health professional on the board determines that the nature of the alleged mental disorder or personality disorder, if true, is such that it is not prudent to disclose the label of the mental disorder or personality disorder to the subject, then notice of this label may be disclosed to the subject's counsel rather than to the subject. When the subject does not have counsel, the subject has a right to the information about his or her mental illness or personality disorder, including its label. The clerk shall issue the summons by order of the mental health board.

Source: Laws 1976, LB 806, § 58; Laws 1981, LB 95, § 18; Laws 2000, LB 884, § 11; R.S.Supp.,2002, § 83-1048; Laws 2004, LB 1083, § 64; Laws 2006, LB 1199, § 40.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-945 Subject's rights; representation by counsel; appointment of counsel if indigent.

A subject shall have the right to be represented by counsel in all proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. Counsel for a subject who is in custody shall have full access to and the right to consult privately with the subject at all reasonable times. As soon as possible after a subject is taken into emergency protective custody

under section 71-919, or after the filing of a petition under section 71-921 or 71-1205, whichever occurs first, and before the mental health board hearing conducted under section 71-924 or 71-1208, the board shall determine whether the subject is indigent. If the subject is found to be indigent, the board shall certify that fact to the district or county court by causing to be delivered to the clerk of such court a certificate for appointment of counsel as soon as possible after a subject is taken into emergency protective custody or such petition is filed.

Source: Laws 1976, LB 806, § 59; Laws 1981, LB 95, § 19; Laws 2000, LB 884, § 12; R.S.Supp.,2002, § 83-1049; Laws 2004, LB 1083, § 65; Laws 2006, LB 1199, § 41.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-946 Appointment of counsel; procedure.

The appointment of counsel under section 71-945 shall be in accordance with the following procedures:

(1) Except in counties having a public defender, upon the receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the district judge or the county judge of the county in which the proceedings are pending of the receipt of such certificate. The judge to whom the certificate was issued shall appoint an attorney to represent the person concerning whom an application is filed before the mental health board, whereupon the clerk of the court shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board. The clerk of the district court or the clerk of the county court shall also keep and maintain a record of all appointments which shall be conclusive evidence thereof. All appointments of counsel under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act may be made at any time or place in the state; and

(2) In counties having a public defender, upon receipt from the mental health board of a certificate for the appointment of counsel, the clerk of the district court shall notify the public defender of his or her appointment to represent the person and shall enter upon the certificate the name of the attorney appointed and deliver the certificate of appointment of counsel to the mental health board.

Source: Laws 1976, LB 806, § 60; Laws 2000, LB 884, § 13; R.S.Supp.,2002, § 83-1050; Laws 2004, LB 1083, § 66; Laws 2006, LB 1199, § 42.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-947 Appointed counsel; fees; reimbursement of costs incurred; procedure.

Counsel appointed as provided in subdivision (1) of section 71-946 shall apply to the court in which his or her appointment is recorded for fees for services performed. Such counsel may also apply to the court to secure separate professional examination of the person for whom counsel was appointed and shall be reimbursed for costs incurred in securing such separate examination or examinations or in having other professional persons as witnesses before the

mental health board. The court, upon hearing the application, shall fix reasonable fees, including reimbursement of costs incurred. The county board of the county in which the application was filed shall allow the account, bill, or claim presented by the attorney for services performed under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act in the amount determined by the court. No such account, bill, or claim shall be allowed by the county board until the amount thereof has been determined by the court.

Source: Laws 1976, LB 806, § 61; Laws 2000, LB 884, § 14; R.S.Supp.,2002, § 83-1051; Laws 2004, LB 1083, § 67; Laws 2006, LB 1199, § 43.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-948 Subject's rights; independent evaluation and assistance in proceedings; fees and expenses.

A subject or the subject's counsel shall have the right to employ mental health professionals of his or her choice to independently evaluate the subject's mental condition and testify for and otherwise assist the subject in proceedings under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act. If the subject is indigent, only one such person may be employed except with leave of the mental health board. Any person so employed by a subject determined by the board to be indigent, except a subject represented by the public defender, shall apply to the board for expenses reasonably necessary to such person's effective assistance of the subject and for reasonable fees for services performed by such person in assisting the subject. The board shall then fix reasonable fees and expenses, and the county board shall allow payment to such person in the full amount fixed by the board.

Source: Laws 1976, LB 806, § 62; Laws 1994, LB 1210, § 161; R.S.1943, (1999), § 83-1052; Laws 2004, LB 1083, § 68; Laws 2006, LB 1199, § 44.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-949 Counsel for subject; rights; enumerated; discovery; appeal from denial of discovery; when.

Counsel for a subject, upon request made to the county attorney at any time after the subject has been taken into emergency protective custody under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, or after the filing of a petition under section 71-921 or 71-1205, whichever occurs first, shall have the right to be provided with (1) the names of all witnesses expected to testify in support of the petition, (2) knowledge of the location and access at reasonable times for review or copying of all written documents including reports of peace officers, law enforcement agencies, and mental health professionals, (3) access to all other tangible objects in the possession of the county attorney or to which the county attorney has access, and (4) written records of any treatment facility or mental health professional which or who has at any time treated the subject for mental illness, substance dependence, or a personality disorder, which records are relevant to the issues of whether the subject is mentally ill and dangerous or a dangerous sex offender and, if so, what treatment disposition should be ordered by the mental

health board. The board may order further discovery at its discretion. The county attorney shall have a reciprocal right to discover items and information comparable to those first discovered by the subject. The county court and district court shall have the power to rule on objections to discovery in matters which are not self-activating. The right of appeal from denial of discovery shall be at the time of the conclusion of the mental health board hearing.

Source: Laws 1976, LB 806, § 63; Laws 1981, LB 95, § 20; R.S.1943, (1999), § 83-1053; Laws 2004, LB 1083, § 69; Laws 2006, LB 1199, § 45.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-950 Continuances; liberally granted.

Continuances shall be liberally granted at the request of the subject. Continuances may be granted to permit the subject to obtain voluntary treatment at a private facility.

Source: Laws 1976, LB 806, § 64; Laws 1985, LB 252, § 6; R.S.1943, (1999), § 83-1054; Laws 2004, LB 1083, § 70.

71-951 Mental health board hearings; closed to public; exception; where conducted.

All mental health board hearings under the Nebraska Mental Health Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

Source: Laws 1976, LB 806, § 65; Laws 2000, LB 884, § 15; R.S.Supp.,2002, § 83-1055; Laws 2004, LB 1083, § 71.

Mental health board hearings are closed to the public except at the request of the subject. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

71-952 Subject's rights; appear in person and testify in own behalf; present witnesses and evidence.

A subject shall appear personally and be afforded the opportunity to testify in his or her own behalf and to present witnesses and tangible evidence in defending against the petition at the hearing.

Source: Laws 1976, LB 806, § 66; Laws 1981, LB 95, § 21; R.S.1943, (1999), § 83-1056; Laws 2004, LB 1083, § 72.

71-953 Subject's rights; compulsory process to obtain testimony of witnesses.

A subject shall be entitled to compulsory process to obtain the testimony of witnesses in his or her favor.

Source: Laws 1976, LB 806, § 67; R.S.1943, (1999), § 83-1057; Laws 2004, LB 1083, § 73.

71-954 Subject's rights; confront and cross-examine adverse witnesses and evidence.

A subject shall have the right at a hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act to confront and cross-examine adverse witnesses and evidence equivalent to the rights of confrontation granted by Amendments VI and XIV of the United States Constitution and Article I, section 11, of the Constitution of Nebraska.

Source: Laws 1976, LB 806, § 68; Laws 1981, LB 95, § 22; Laws 2000, LB 884, § 16; R.S.Supp.,2002, § 83-1058; Laws 2004, LB 1083, § 74; Laws 2006, LB 1199, § 46.

Cross References

Sex Offender Commitment Act, see section 71-1201.

Pursuant to this section, the subject of a petition under the Nebraska Mental Health Commitment Act has the right to confront and cross-examine adverse witnesses and evidence equivalent to the rights granted under the Confrontation Clauses of the U.S. and Nebraska Constitutions. In the absence of a waiver by the subject of a petition for commitment of his or her right to confrontation, in order to admit the telephonic testimony of a mental health professional during a civil commitment hearing, the State must demonstrate that (1) such testimony is necessary to further an important public policy and (2) the mental health professional is truly unavailable as a witness, thus necessitating telephonic testimony. The requirements of a demonstration of an important public policy and necessity are conjunctive, and the absence of a demonstration of either precludes the admission of the telephonic testimony. In re Interest of S.B., 263 Neb. 175, 639 N.W.2d 78 (2002).

71-955 Hearings; rules of evidence applicable.

The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Nebraska Mental Health Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Source: Laws 1976, LB 806, § 69; Laws 1981, LB 95, § 23; Laws 2000, LB 884, § 17; R.S.Supp.,2002, § 83-1059; Laws 2004, LB 1083, § 75.

The transcript of the proceeding before a mental health board may not be treated as evidence before the board, the district court, or this court unless the facts in the transcript are offered as evidence, are not objected to, and are received by the trier of fact. In re Interest of Kinnebrew, 224 Neb. 885, 402 N.W.2d 264 (1987).

This statute makes the general rules of evidence applicable to proceedings under the Mental Health Commitment Act. In re Interest of Blythman, 208 Neb. 51, 302 N.W.2d 666 (1981).

This section does not mandate Miranda-type warnings precede a psychiatric interview by a doctor. Kraemer v. Mental Health Board of the State of Nebraska, 199 Neb. 784, 261 N.W.2d 626 (1978).

71-956 Subject's rights; written statements; contents.

A subject shall be entitled to written statements by the mental health board as to the evidence relied on and reasons (1) for finding clear and convincing evidence at the subject's hearing that he or she is mentally ill and dangerous or a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in section 71-908 or subdivision (1) of section 83-174.01 and (2) for choosing the particular treatment specified by its order of final disposition. The mental health board shall make similar written findings when it orders a subject held in custody rather than released on conditions pending hearings to determine whether he or she is mentally ill and dangerous or a dangerous sex offender and in need of treatment ordered by the mental health board or pending the entry of an order of final disposition under section 71-925 or 71-1209.

Source: Laws 1976, LB 806, § 70; Laws 1981, LB 95, § 24; R.S.1943, (1999), § 83-1060; Laws 2004, LB 1083, § 76; Laws 2006, LB 1199, § 47.

71-957 Proceedings shall be of record; reporter; expenses and fees.

All proceedings held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act shall be of record, and all oral proceedings shall be reported verbatim by either a qualified shorthand reporter or by tape-recording equipment equivalent in quality to that required in county courts by section 25-2732. The written findings of the mental health board shall be part of the subject's records and shall be available to the parties in the case and to the treatment facility where the subject is receiving treatment pursuant to a commitment order of the mental health board under section 71-925 or 71-1209. Any qualified shorthand reporter who reports proceedings presided over by a board or otherwise than in his or her capacity as an official district court stenographic reporter shall apply to the court for reasonable expenses and fees for services performed in such hearings. The court shall fix reasonable expenses and fees, and the county board shall allow payment to the reporter in the full amount fixed by the court.

Source: Laws 1976, LB 806, § 71; Laws 2000, LB 884, § 18; R.S.Supp.,2002, § 83-1061; Laws 2004, LB 1083, § 77; Laws 2006, LB 1199, § 48.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-958 Qualified mental health professional; provide medical treatment to subject; when.

Any qualified mental health professional, upon being authorized by the administrator of the treatment facility having custody of the subject, may provide appropriate medical treatment for the subject while in custody, except that a subject shall not be subjected to such quantities of medication or other treatment within such period of time prior to any hearing held under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act as will substantially impair his or her ability to assist in his or her defense at such hearing.

Source: Laws 1976, LB 806, § 72; Laws 2000, LB 884, § 19; R.S.Supp.,2002, § 83-1062; Laws 2004, LB 1083, § 78; Laws 2006, LB 1199, § 49.

Cross References

Mistreatment of mentally ill person, penalty, see section 83-356.
Sex Offender Commitment Act, see section 71-1201.

71-959 Subject in custody or receiving treatment; rights; enumerated.

A subject in custody or receiving treatment under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act has the right:

(1) To be considered legally competent for all purposes unless he or she has been declared legally incompetent. The mental health board shall not have the power to declare an individual incompetent;

(2) To receive prompt and adequate evaluation and treatment for mental illness, personality disorders, and physical ailments and to participate in his or her treatment planning activities to the extent determined to be appropriate by the mental health professional in charge of the subject's treatment;

(3) To refuse treatment medication, except (a) in an emergency, such treatment medication as is essential in the judgment of the mental health professional in charge of such treatment to prevent the subject from causing injury to himself, herself, or others or (b) following a hearing and order of a mental health board, such treatment medication as will substantially improve his or her mental illness or personality disorder or reduce the risk posed to the public by a dangerous sex offender;

(4) To communicate freely with any other person by sealed mail, personal visitation, and private telephone conversations;

(5) To have reasonably private living conditions, including private storage space for personal belongings;

(6) To engage or refuse to engage in religious worship and political activity;

(7) To be compensated for his or her labor in accordance with the federal Fair Labor Standards Act, 29 U.S.C. 206, as such section existed on January 1, 2004;

(8) To have access to a patient grievance procedure; and

(9) To file, either personally or by counsel, petitions or applications for writs of habeas corpus for the purpose of challenging the legality of his or her custody or treatment.

Source: Laws 1976, LB 806, § 76; Laws 2000, LB 884, § 21; R.S.Supp.,2002, § 83-1066; Laws 2004, LB 1083, § 79; Laws 2006, LB 1199, § 50.

Cross References

Sex Offender Commitment Act, see section 71-1201.

The determination of what constitutes ''prompt and adequate'' treatment, as those terms are used in subsection (2) of this section, will inherently be a factual determination to be made based on the evidence and circumstances presented in each particular case. Navarette v. Settle, 10 Neb. App. 479, 633 N.W.2d 588 (2001).

71-960 Subject; waive rights; manner.

A subject may waive any of the proceedings or rights incident to proceedings granted him or her under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act by failing to request any right expressly required to be requested but, in the case of all other such rights, only if the record reflects that such waiver was made personally, intelligently, knowingly, understandingly, and voluntarily by the subject and such subject's legal guardian or conservator, if any. Such rights may otherwise be denied only by a mental health board or court order for good cause shown after notice to the subject, the subject's counsel, and such subject's guardian or conservator, if any, and an opportunity to be heard. If the mental health board determines that the subject is not able to waive his or her rights under this section, it shall be up to the discretion of the subject's counsel to exercise such rights. When the subject is not represented by counsel, the rights may not be waived.

Source: Laws 1976, LB 806, § 74; Laws 1996, LB 1155, § 109; Laws 2000, LB 884, § 20; R.S.Supp.,2002, § 83-1064; Laws 2004, LB 1083, § 80; Laws 2006, LB 1199, § 51.

Cross References

Sex Offender Commitment Act, see section 71-1201.

71-961 Subject's records; confidential; exceptions.

(1) All records kept on any subject shall remain confidential except as otherwise provided by law. Such records shall be accessible to (a) the subject, except as otherwise provided in subsection (2) of this section, (b) the subject's legal counsel, (c) the subject's guardian or conservator, if any, (d) the mental health board having jurisdiction over the subject, (e) persons authorized by an order of a judge or court, (f) persons authorized by written permission of the subject, (g) agents or employees of the Department of Health and Human Services upon delivery of a subpoena from the department in connection with a licensing or licensure investigation by the department, (h) individuals authorized to receive notice of the release of a sex offender pursuant to section 83-174, (i) the Nebraska State Patrol or the department pursuant to section 69-2409.01, or (j) the Office of Parole Administration if the subject meets the requirements for lifetime community supervision pursuant to section 83-174.03.

(2) Upon application by the county attorney or by the administrator of the treatment facility where the subject is in custody and upon a showing of good cause therefor, a judge of the district court of the county where the mental health board proceedings were held or of the county where the treatment facility is located may order that the records not be made available to the subject if, in the judgment of the court, the availability of such records to the subject will adversely affect his or her mental illness or personality disorder and the treatment thereof.

(3) When a subject is absent without authorization from a treatment facility or program described in section 71-939 or 71-1223 and is considered to be dangerous to others, the subject's name and description and a statement that the subject is believed to be considered dangerous to others may be disclosed in order to aid in the subject's apprehension and to warn the public of such danger.

Source: Laws 1976, LB 806, § 78; Laws 1996, LB 1055, § 17; Laws 1996, LB 1155, § 111; Laws 1997, LB 307, § 230; R.S.1943, (1999), § 83-1068; Laws 2004, LB 1083, § 81; Laws 2006, LB 1199, § 52; Laws 2007, LB296, § 463.

71-962 Violations; penalty.

Any person who willfully (1) files or causes to be filed a certificate or petition under the Nebraska Mental Health Commitment Act or the Sex Offender Commitment Act, knowing any of the allegations thereof to be false, (2) deprives a subject of any of the rights granted the subject by either act or section 83-390, or (3) breaches the confidentiality of records required by section 71-961 shall be guilty of a Class II misdemeanor in addition to any civil liability which he or she may incur for such actions.

Source: Laws 1976, LB 806, § 79; Laws 1977, LB 41, § 63; Laws 2000, LB 884, § 22; R.S.Supp.,2002, § 83-1069; Laws 2004, LB 1083, § 82; Laws 2006, LB 1199, § 53.

Cross References

Sex Offender Commitment Act, see section 71-1201.

The Nebraska Mental Health Commitment Act provides for a criminal penalty for any person who willfully breaches the confidentiality of records as required by section 83-1068, in addition to any civil liability which may be incurred by such acts. In re Interest of Michael M., 6 Neb. App. 560, 574 N.W.2d 774 (1998).

ARTICLE 10

STATE ANATOMICAL BOARD, DISPOSAL OF DEAD BODIES

Cross References

Bodies, use for teaching, see section 38-1417.
Control of remains, see section 38-1425.
Eye tissue removal, see section 71-4813.
Funeral Directing and Embalming Practice Act, see section 38-1401.
Offenses relating to dead human bodies, see sections 28-1301 and 28-1302.
Organ and tissue donation, hospital protocols, see section 71-4814 et seq.
Pituitary gland removal, see section 71-4813.
Uniform Anatomical Gift Act, see section 71-4812.
Unmarked Human Burial Sites and Skeletal Remains Protection Act, see section 12-1201.

Section

71-1001 State Anatomical Board; members; powers and duties.

The heads of the anatomy departments of the medical schools and colleges of this state, one professor of anatomy appointed by the head of the anatomy department from each medical school or college of this state, one professor of anatomy appointed from each dental school or college of this state, and one layperson appointed by the Department of Health and Human Services shall constitute the State Anatomical Board of the State of Nebraska for the distribution, delivery, and use of certain dead human bodies, described in section 71-1002, to and among such schools, colleges, and persons as are entitled thereto under the provisions of such section. The board shall have power to establish rules and regulations for its government and for the collection, storage, and distribution of dead human bodies for anatomical purposes. It shall have power to appoint and remove its officers and agents. It shall keep minutes of its meetings. It shall cause a record to be kept of all of its transactions, of bodies received and distributed by it, and of the school, college, or person receiving every such body, and its records shall be open at all times to the inspection of each member of the board and to every county attorney within this state.

Source: Laws 1929, c. 158, § 1, p. 551; C.S.1929, § 71-2801; R.S.1943, § 71-1001; Laws 1969, c. 570, § 1, p. 2314; Laws 1978, LB 583, § 1; Laws 1979, LB 98, § 2; Laws 1992, LB 860, § 2; Laws 1996, LB 1044, § 556; Laws 2007, LB296, § 464.

71-1002 Board; dead human bodies subject to burial or cremation at public expense; delivery to board; claimant of body; requirements.

(1) All public officers, agents, and servants of this state, of every county, city, township, district, and other municipal subdivision thereof, and of every almshouse, prison, morgue, hospital, or other institution, having charge, control, or possession of any dead human body which is not claimed within the time and in the manner provided by this section are required to immediately notify the State Anatomical Board, or such agent, school, college, or person as may be

designated by the board, of the dead human body. Such institution shall, without fee or reward, surrender and deliver such dead human body to the board or to such agent, schools, colleges, physicians, and surgeons as may be designated by the board for anatomical use and study.

(2) The notice required by subsection (1) of this section is not required and the body does not have to be delivered to the board if (a) any person claims the body for burial within ten days after death, (b) the deceased was discharged from the military or naval service of the United States, or (c) an autopsy has been performed on the body.

(3) Any person may claim and receive such dead human body from the State Anatomical Board if (a) application in writing is made to the board for such body for the purpose of burial or cremation within thirty days after delivery to the board, (b) such claimant agrees in writing to assume the expense of burial or cremation, and (c) the board determines that such claim has been made in good faith and not for the purpose of claiming social security or other burial benefits payable for burial of the deceased or obtaining payment for the expense of embalming and burying the deceased.

(4) If the duly authorized officer or agent of the board deems any such body unfit for anatomical purposes, he or she shall notify the county commissioners of the county in which the death occurred, and the county commissioners shall then direct some person to take charge of such body and cause it to be buried or cremated. The expense of such burial or cremation shall be fixed and paid by order of the county commissioners from any funds available for such purpose.

Source: Laws 1929, c. 158, § 2, p. 551; C.S.1929, § 71-2802; R.S.1943, § 71-1002; Laws 1969, c. 570, § 2, p. 2315; Laws 1971, LB 268, § 1; Laws 1972, LB 1256, § 1; Laws 1996, LB 1155, § 28; Laws 1998, LB 1354, § 6; Laws 2005, LB 54, § 15.

71-1003 Board; dead human bodies; distribution.

The State Anatomical Board, or its duly authorized officers or agents, may take and receive such dead bodies, and shall hold the same for a period of thirty days from the date of delivery, during which time any such body may be claimed, as provided in section 71-1002. The board shall distribute the bodies among the medical, chiropractic, osteopathic and dental schools and colleges, and physicians and surgeons designated by the board, under such rules and regulations as may be adopted by it. The number of bodies so distributed to the schools and colleges aforesaid shall be in proportion to the number of students matriculated in the first-year work of such schools and colleges. If there shall be more bodies than are required by such schools and colleges, the board, or its duly authorized officers, may, from time to time, designate physicians and surgeons to receive such bodies, and the number of bodies they may receive; *Provided,* that such physicians and surgeons have complied with all rules and regulations which the board may adopt for such disposition. All expenses incurred by the board in receiving, caring for and delivering any such body shall be paid by those receiving such body.

Source: Laws 1929, c. 158, § 3, p. 552; C.S.1929, § 71-2803; R.S.1943, § 71-1003; Laws 1971, LB 268, § 2.

Cross References

Board of Funeral Directing and Embalming, distribution to and use by, see section 38-1417.

71-1004 Board; dead human bodies; transportation.

The State Anatomical Board may employ a carrier or carriers for the transportation of bodies, referred to in sections 71-1001 to 71-1006, and may transport such bodies, or order them to be transported, under such rules and regulations as it may adopt.

Source: Laws 1929, c. 158, § 4, p. 553; C.S.1929, § 71-2804; R.S.1943, § 71-1004.

71-1005 Board; bodies; examination.

The State Anatomical Board, or its duly authorized officers or agents, shall have power to make an examination of any such dead body as may be necessary, and certify as to the cause of death.

Source: Laws 1929, c. 158, § 5, p. 553; C.S.1929, § 71-2805; R.S.1943, § 71-1005.

71-1006 Violations; penalty.

Every officer, agent or employee of this state, and every officer, agent or employee of any county, city, township, or other municipal subdivision thereof, and every other person, into whose possession the body of any such deceased person may come, who shall willfully neglect to notify the State Anatomical Board, or its duly authorized officers or agents, of the existence of such body, or who shall refuse to deliver possession of such body to the board, or to its duly authorized officers or agents, or who shall mutilate, or permit such body to be mutilated, so that it is not valuable for anatomical purposes, or who shall refuse or neglect to perform any of the duties enjoined upon him by sections 71-1001 to 71-1006, shall be guilty of a Class V misdemeanor.

Source: Laws 1929, c. 158, § 6, p. 553; C.S.1929, § 71-2806; R.S.1943, § 71-1006; Laws 1977, LB 39, § 154.

71-1007 Board; purpose.

The purpose of the State Anatomical Board is to: (1) Provide for the orderly receipt, maintenance, distribution, and use of human bodies used for medical education and research; (2) insure that proper and considerate care is given to human bodies used for medical education and research; and (3) insure that an orderly and equitable procedure is used for the allocation of human bodies to colleges and universities in Nebraska which provide medical education and research.

Source: Laws 1979, LB 98, § 1.

ARTICLE 11

DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT

Cross References

Abuse, report required, see section 28-372.
Admission when facilities are limited, see section 83-338.
Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
Behavioral Health Workforce Act, see section 71-828.
Children and Family Behavioral Health Support Act, see section 71-821.
Children's Behavioral Health Task Force, see sections 43-4001 to 43-4003.
Community Corrections Act, see section 47-619.
Contagious diseases, see Chapter 71, article 5.
Cost of patient care, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Department of Health and Human Services, official names of institutions under supervision, see section 83-107.01.

Developmental Disabilities Services Act, see section 83-1201.
Developmental disability regions, see section 83-1,143.06.
Division of Developmental Disabilities, see sections 81-3113 and 81-3116.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
Mental Health Practice Act, see section 38-2101.
Mistreatment of mentally ill person, penalty, see section 83-356.
Nebraska Behavioral Health Services Act, see section 71-801.
Nebraska Mental Health Commitment Act, see section 71-901.
Office of Juvenile Services, behavioral health programs and services, see section 43-407.
Patient expenses, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.
Persons with mental retardation, see sections 83-381 to 83-390.
Protection and advocacy system for persons with developmental disabilities, see sections 20-161 to 20-166.
Psychology Practice Act, see section 38-3101.
Report of abuse, required, see section 28-372.
Rural Behavioral Health Training and Placement Program Act, see section 71-5680.
Sex Offender Commitment Act, see section 71-1201.
Sex Offender Registration Act, see section 29-4001.
State hospitals for the mentally ill, see sections 83-305 to 83-357.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.

Section

71-1101 Act, how cited.

Sections 71-1101 to 71-1134 shall be known and may be cited as the Developmental Disabilities Court-Ordered Custody Act.

Source: Laws 2005, LB 206, § 1.

71-1102 Public policy.

The Legislature recognizes the right of all persons, including individuals with developmental disabilities, to enjoy personal liberty and freedom. It is the public policy of the State of Nebraska to encourage persons with developmental disabilities to voluntarily choose their own services. It is also the public policy of the State of Nebraska to use guardians, preferably family members, to make and support service and placement decisions when a person with developmental disabilities is determined by a court to be incompetent, but there are instances in which the threat of harm to other persons in society is sufficient that a court should balance the rights of such person with the interests of society and place care and custody of such person with the State of Nebraska for appropriate treatment and services.

Source: Laws 2005, LB 206, § 2.

71-1103 Purpose of act.

The purpose of the Developmental Disabilities Court-Ordered Custody Act is to provide a procedure for court-ordered custody and treatment for a person with developmental disabilities when he or she poses a threat of harm to others.

Source: Laws 2005, LB 206, § 3.

71-1104 Definitions, where found.

For purposes of the Developmental Disabilities Court-Ordered Custody Act, the definitions in sections 71-1105 to 71-1116 apply.

Source: Laws 2005, LB 206, § 4.

71-1105 Court, defined.

Court means the district court in which a petition is filed pursuant to the Developmental Disabilities Court-Ordered Custody Act.

Source: Laws 2005, LB 206, § 5.

71-1106 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2005, LB 206, § 6.

71-1107 Developmental disability, defined.

Developmental disability means mental retardation or a severe chronic cognitive impairment, other than mental illness, that is manifested before the age of twenty-two years and is likely to continue indefinitely.

Source: Laws 2005, LB 206, § 7.

71-1108 Independent mental health professional, defined.

Independent mental health professional means a psychiatrist or psychologist with expertise in treating persons with developmental disabilities who has not previously been involved in the treatment of the subject in a significant way.

Source: Laws 2005, LB 206, § 8.

71-1109 Least restrictive alternative, defined.

Least restrictive alternative means a placement and services provided in a manner no more restrictive of a subject's liberty and no more intrusive than necessary to provide appropriate treatment and protect society.

Source: Laws 2005, LB 206, § 9.

71-1110 Mental retardation, defined.

Mental retardation means a state of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which originates in the developmental period.

Source: Laws 2005, LB 206, § 10.

71-1111 Petitioner, defined.

Petitioner means the Attorney General or the county attorney who files a petition under section 71-1117.

Source: Laws 2005, LB 206, § 11.

71-1112 Risk analysis, defined.

Risk analysis means a comprehensive evaluation of a person's potential for future dangerous behavior towards others, including recommendations to minimize the likelihood of harm to others in the least restrictive alternative.

Source: Laws 2005, LB 206, § 12.

71-1113 Severe chronic cognitive impairment, defined.

Severe chronic cognitive impairment means clinically significant difficulties in the ability to remember, think, perceive, apply sound judgment, and adequately use deductive reasoning not attributable to a mental illness.

Source: Laws 2005, LB 206, § 13.

71-1114 Subject, defined.

Subject means a person who is named in a petition filed under the Developmental Disabilities Court-Ordered Custody Act.

Source: Laws 2005, LB 206, § 14.

71-1115 Threat of harm to others, defined.

Threat of harm to others means a significant likelihood of substantial harm to others as evidenced by one or more of the following: Having inflicted or attempted to inflict serious bodily injury on another; having committed an act that would constitute a sexual assault or attempted sexual assault; having committed lewd and lascivious conduct toward a child; having set or attempted to set fire to another person or to any property of another without the owner's consent; or, by the use of an explosive, having damaged or destroyed property, put another person at risk of harm, or injured another person.

Source: Laws 2005, LB 206, § 15.

71-1116 Treatment, defined.

Treatment means the support and services which will assist a subject to acquire the skills and behaviors needed to function in society so that the subject

does not pose a threat of harm to others and is able to cope with his or her personal needs and the demands of his or her environment.

Source: Laws 2005, LB 206, § 16.

71-1117 Petition; where filed; contents; evidentiary rules; applicability.

The Attorney General or county attorney may file a petition in the district court of the county in which a subject resides or the county in which an alleged act constituting a threat of harm to others occurs. The petition shall allege that the subject is a person in need of court-ordered custody and treatment and shall contain the following:

(1) The name and address of the subject, if known;

(2) A statement that the subject is believed to be eighteen years of age or older or that the subject is a juvenile who will become eighteen years of age within ninety days after the date of filing the petition;

(3) The name and address of the subject's guardian or closest relative, if known;

(4) The name and address of any other person having custody and control of the subject, if known;

(5) A statement that the subject has a developmental disability and poses a threat of harm to others;

(6) The factual basis to support the allegation that the subject has a developmental disability; and

(7) The factual basis to support the allegation that the subject poses a threat of harm to others.

The Nebraska Evidence Rules shall apply to proceedings under the Developmental Disabilities Court-Ordered Custody Act unless otherwise specified.

Source: Laws 2005, LB 206, § 17.

Cross References

Nebraska Evidence Rules, see section 27-1103.

71-1118 Subject; rights.

A subject has the following rights pursuant to the Developmental Disabilities Court-Ordered Custody Act:

(1) The right to be represented by legal counsel and to have counsel appointed if the subject cannot afford to pay the cost of counsel;

(2) The right to have a guardian ad litem appointed to act on the subject's behalf if the court determines that he or she is unable to assist in his or her own defense;

(3) The right to have a timely hearing on the merits of the petition before a district court judge;

(4) The right to have reasonable continuances, for good cause shown, in order to properly prepare for a hearing on the petition;

(5) The right to testify, subpoena witnesses, require testimony before the court, and offer evidence;

(6) The right to confront and cross-examine witnesses;

(7) The right to have an expert witness of the subject's own choice evaluate the subject, testify, and provide recommendations to the court and to have such expert paid for by the county if the subject cannot afford the costs of such expert; and

(8) The right to have a transcript prepared for the purpose of an appeal, to appeal a final decision of the court, and to have the costs of such transcript and appeal paid by the county if the subject cannot afford such costs.

Source: Laws 2005, LB 206, § 18.

71-1119 Emergency custody; application; court order; evaluation by department.

(1) The petitioner may apply to the court to have the subject taken into emergency custody and held pending a hearing on the petition and disposition pursuant to sections 71-1122 to 71-1126. The application for emergency custody shall be supported by affidavit or sworn testimony which establishes probable cause to believe that (a) the subject is eighteen years of age or older or will become eighteen years of age within ninety days after the date of filing the application, (b) the subject is a person with a developmental disability, (c) the subject poses a threat of harm to others, and (d) if the application is not granted, substantial harm to others is likely to occur before a trial and disposition of the matter can be completed.

(2) If the court concludes that there is probable cause to grant the application pursuant to subsection (1) of this section, the court may issue an ex parte order granting the application. The department shall provide a recommendation of an appropriate treatment program for the subject which has available space and is willing to hold the subject in emergency custody. The court shall direct the sheriff or any other peace officer to take the subject into emergency custody and deliver him or her to the program ordered by the court to be held pending further hearing and order of the court. The order shall establish terms and conditions of the emergency placement as appropriate under the Developmental Disabilities Court-Ordered Custody Act. The department shall evaluate the subject within seven days after the date the application is granted to determine if the subject is a person with one or more developmental disabilities and poses a threat of harm to others. The results of the evaluation shall be provided to the court and all parties.

Source: Laws 2005, LB 206, § 19.

71-1120 Emergency custody order; expedited hearing.

If an emergency custody order is issued by the court under section 71-1119, the subject has a right to an expedited hearing to challenge the order. At such hearing, the petitioner has the burden of showing that there is probable cause to continue the emergency custody order. Such hearing shall be held within ten days after the date the subject is taken into emergency custody unless such requirement is waived by the subject or the subject is granted a continuance based upon his or her request. The Nebraska Evidence Rules do not apply at a hearing under this section. Upon conclusion of such hearing, the court may continue, modify, or vacate the emergency custody order.

Source: Laws 2005, LB 206, § 20.

Cross References

Nebraska Evidence Rules, see section 27-1103.

71-1121 Petition and summons; service.

The petitioner shall cause notice of the petition and summons to be served on the subject, the subject's attorney, if any, the subject's guardian, if any, the subject's closest relative, if known, any other person having custody and control of the subject, if known, and the department.

Source: Laws 2005, LB 206, § 21.

71-1122 Petition; hearing; procedure; representation by legal counsel.

When a petition is filed under the Developmental Disabilities Court-Ordered Custody Act, the court shall ensure that the subject is represented by legal counsel and shall set a time and date for a hearing on the petition. The clerk of the court shall provide notice of the date and time of such hearing to the subject, the subject's legal counsel, the subject's guardian, if any, the subject's closest relative, if known, any other person having custody and control of the subject, if known, the petitioner, and the department. The notice of hearing on the petition shall state the date, time, and location of the hearing and shall contain a list of the subject's rights under section 71-1118. The court may order an examination and evaluation of the subject to be completed by the department prior to the hearing, and the results shall be provided to all parties. The hearing on the petition shall be held within ninety days after the date of filing the petition or, if the subject is in emergency custody pursuant to section 71-1119, as soon as practicable but not later than forty-five days from the date when the subject was taken into emergency custody unless continuances are granted by the court upon the subject's motion.

Source: Laws 2005, LB 206, § 22.

71-1123 Subject; response to petition.

The subject may admit or deny the allegations of the petition or choose to not answer. If the subject denies the allegations of the petition, the court shall proceed to conduct a hearing on the petition. If the subject is unable to understand the nature and possible consequences of the proceedings or chooses to not answer, the court shall enter a denial of the allegations of the petition on the subject's behalf and shall proceed to conduct a hearing on the petition. If the subject admits to the allegations of the petition, the court shall determine whether the admission is free and voluntary and, if the court finds a factual basis to support the admission, may find the subject to be a person in need of court-ordered custody and treatment.

Source: Laws 2005, LB 206, § 23.

71-1124 Burden of proof; court findings; dispositional hearing; when required.

The petitioner has the burden to prove by clear and convincing evidence that the subject is a person in need of court-ordered custody and treatment. The court shall make specific findings of fact and state its conclusions of law.

If after the hearing is complete the court finds that the subject is not a person in need of court-ordered custody and treatment, it shall dismiss the petition and immediately release the subject from any emergency custody order.

If after the hearing is complete the court finds that the subject is a person in need of court-ordered custody and treatment, the court shall order the department to evaluate the subject and submit a plan for custody and treatment of the subject in the least restrictive alternative within thirty days and provide a copy to all parties in interest. The court shall set the matter for dispositional hearing within fifteen days after receipt of the department's plan, unless continued for good cause shown.

Source: Laws 2005, LB 206, § 24.

71-1125 Departmental plan; contents.

The plan submitted by the department pursuant to section 71-1124 shall include the evaluation and recommendations of an independent mental health professional. The independent mental health professional may have been previously involved in evaluating the subject and advising the court pursuant to the Developmental Disabilities Court-Ordered Custody Act and may also be an employee of or a contractor with the department. The plan shall include: A history of the subject's past treatment, if any; a comprehensive evaluation of the subject's developmental disabilities; a risk analysis; the treatment and staffing requirements of the subject; appropriate terms and conditions to provide custody and treatment of the subject in the least restrictive alternative; and an appropriate treatment program that is capable of providing and willing to provide treatment in accordance with the plan.

Source: Laws 2005, LB 206, § 25.

71-1126 Dispositional hearing; considerations; court order.

At the dispositional hearing, the court shall consider the plan submitted pursuant to section 71-1125, the arguments of the parties, and any other relevant evidence. The Nebraska Evidence Rules shall not apply at the dispositional hearing. The plan shall be approved by the court unless it is shown by a preponderance of the evidence that the plan is not the least restrictive alternative for the subject. After the hearing is completed, the court shall issue an order of disposition placing custody of the subject with the department and setting forth the treatment plan for the subject. The court shall establish the duration of the court-ordered custody and treatment of the subject, but such duration under the initial order shall not be longer than one year.

Source: Laws 2005, LB 206, § 26.

Cross References

Nebraska Evidence Rules, see section 27-1103.

71-1127 Court-ordered custody and treatment; annual review hearings; procedure.

The court shall hold annual review hearings of each order of disposition issued under section 71-1126 prior to the expiration date of such order. Prior to the annual review hearing, the department shall submit an updated plan for custody and treatment of the subject. It shall be the burden of the state to show by clear and convincing evidence that court-ordered custody and treatment continues to be necessary. The court shall determine whether the evidence supports continuing the court-ordered custody and treatment of the subject. At the review hearing, the court shall consider the evidence received at the

original and any subsequent hearings, the plan and updates submitted by the department, progress reports and recommendations from the treatment program, and any other relevant evidence. Following the review hearing, the court may continue or modify the court-ordered custody and treatment or may vacate such custody and treatment and dismiss the matter.

Source: Laws 2005, LB 206, § 27.

71-1128 Review hearing; when authorized; notice.

(1) If at any time it appears that the subject no longer poses a threat of harm to others, any party may file a motion for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by a preponderance of the evidence that the subject no longer poses a threat of harm to others. If it is shown that the subject no longer poses a threat of harm to others, the court shall enter an order dismissing the case and immediately release the subject.

(2) If at any time it appears that (a) the plan submitted under section 71-1124 or 71-1127 is not sufficient to protect society or the subject or (b) the circumstances upon which the plan was based have changed significantly, any party may file a motion, to be granted for good cause shown, for a review hearing to be held as soon as practicable. The party filing the motion under this subsection shall have the burden of showing by clear and convincing evidence that the court-ordered custody and treatment of the subject should be modified or vacated.

(3) Upon the filing of a motion for a review hearing pursuant to this section, the department shall immediately provide notice to the Attorney General and the county attorney who filed a petition under section 71-1117 if the proceeding by which the subject is placed in court-ordered custody included evidence of a sex offense as defined in section 83-174.01 or if any prior proceedings resulting in a civil commitment or court-ordered custody included evidence of a sex offense as defined in section 83-174.01.

Source: Laws 2005, LB 206, § 28; Laws 2006, LB 1199, § 54.

71-1129 Jurisdiction of court.

A court which finds a subject to be in need of court-ordered custody and treatment shall have concurrent jurisdiction to hear and decide issues regarding appointment or replacement of a guardian for as long as the subject is in court-ordered custody and treatment.

Source: Laws 2005, LB 206, § 29.

71-1130 Findings under act; effect.

No findings under the Developmental Disabilities Court-Ordered Custody Act, including a finding that a person is in need of court-ordered custody and treatment, shall lead to a presumption that such person is incompetent to stand trial.

Source: Laws 2005, LB 206, § 30.

71-1131 Costs; payment; public defender; appointment.

If the subject cannot afford to pay, the county shall pay court costs, costs of emergency custody, and related expenses for a petition filed pursuant to the

Developmental Disabilities Court-Ordered Custody Act, including the costs of legal counsel appointed to represent the subject and any expert hired to evaluate and testify on behalf of the subject. In counties having a public defender, the court may appoint the public defender as legal counsel for the subject. The county shall be responsible for the cost of transporting the subject to and from court hearings under the act and to any emergency custody or other custody ordered under the act. The department shall pay the costs of the department's evaluations of the subject, the costs of the plans completed by the department and the independent mental health professional, and the costs of the court-ordered custody and treatment of the subject following an order of disposition, except as provided by sections 83-363 to 83-380.

Source: Laws 2005, LB 206, § 31.

71-1132 Treatment needs of subject; rights of subject or subject's guardian.

Jurisdiction of the court under the Developmental Disabilities Court-Ordered Custody Act does not prohibit a subject or a subject's guardian from consenting to medical care or to a more restrictive setting, on a temporary basis, than that ordered by the court to satisfy the treatment needs of the subject.

Source: Laws 2005, LB 206, § 32.

71-1133 Juvenile; when subject to act.

In the case of a juvenile in need of court-ordered custody and treatment, a petitioner may file a petition and begin proceedings under the Developmental Disabilities Court-Ordered Custody Act within ninety days before the juvenile's eighteenth birthday. No order under the act shall be effective until the subject reaches his or her eighteenth birthday.

Source: Laws 2005, LB 206, § 33.

71-1134 Reports.

The department in collaboration with the Advisory Committee on Developmental Disabilities established under section 83-1212.01 shall submit quarterly reports to the court, all parties of record, and the guardian of any subject in court-ordered custody.

The department shall submit an annual report to the Legislature regarding the implementation of the Developmental Disabilities Court-Ordered Custody Act. Such reports shall not contain any name, address, or other identifying factors or other confidential information regarding any subject.

Source: Laws 2005, LB 206, § 34.

ARTICLE 12

SEX OFFENDER COMMITMENT AND TREATMENT

Cross References

Abuse, report required, see section 28-372.
Admission when facilities are limited, see section 83-338.
Beatrice State Developmental Center, see sections 83-217 to 83-227.02.
Behavioral Health Workforce Act, see section 71-828.
Blanks for warrants, certificates, and other forms, see section 83-336.
Children and Family Behavioral Health Support Act, see section 71-821.
Children's Behavioral Health Task Force, see sections 43-4001 to 43-4003.
Community Corrections Act, see section 47-619.
Cost of patient care, liability of patient and relatives, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Department of Health and Human Services, official names of institutions under supervision, see section 83-107.01.

Developmental Disabilities Court-Ordered Custody Act, see section 71-1101.
Division of Behavioral Health, see sections 81-3113 and 81-3116.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
Insurance coverage of mental health conditions, see sections 44-791 to 44-795.
Mental Health Practice Act, see section 38-2101.
Mistreatment of mentally ill person, penalty, see section 83-356.
Nebraska Behavioral Health Services Act, see section 71-801.
Nebraska Mental Health Commitment Act, see section 71-901.
Office of Juvenile Services, behavioral health programs and services, see section 43-407.
Patient expenses, see sections 83-348 to 83-355 and 83-363 to 83-380.01.
Persons supposed mentally ill, limitations on restraint of liberty, see section 83-357.
Persons with mental retardation, see sections 83-381 to 83-390.
Psychology Practice Act, see section 38-3101.
Report of abuse, required, see section 28-372.
Rural Behavioral Health Training and Placement Program Act, see section 71-5680.
Sex Offender Registration Act, see section 29-4001.
State hospitals for the mentally ill, see sections 83-305 to 83-357.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Veterans, treatment, see section 80-601.
Victim notification, see section 81-1850.

(a) SEX OFFENDER COMMITMENT ACT

Section

Section

(b) TREATMENT AND MANAGEMENT SERVICES

71-1227. Repealed. Laws 2009, LB 154, § 27.
71-1228. Repealed. Laws 2009, LB 154, § 27.

(a) SEX OFFENDER COMMITMENT ACT

71-1201 Act, how cited.

Sections 71-1201 to 71-1226 shall be known and may be cited as the Sex Offender Commitment Act.

Source: Laws 2006, LB 1199, § 57.

71-1202 Purpose of act.

The purpose of the Sex Offender Commitment Act is to provide for the court-ordered treatment of sex offenders who have completed their sentences but continue to pose a threat of harm to others. It is the public policy of the State of Nebraska that dangerous sex offenders be encouraged to obtain voluntary treatment. If voluntary treatment is not obtained, such persons shall be subject to involuntary custody and treatment only after mental health board proceedings as provided by the Sex Offender Commitment Act. Such persons shall be subjected to emergency protective custody under limited conditions and for a limited period of time.

Source: Laws 2006, LB 1199, § 58.

71-1203 Terms, defined.

For purposes of the Sex Offender Commitment Act:

(1) The definitions found in sections 71-905, 71-906, 71-907, 71-910, 71-911, and 83-174.01 apply;

(2) Administrator means the administrator or other chief administrative officer of a treatment facility or his or her designee;

(3) Outpatient treatment means treatment ordered by a mental health board directing a subject to comply with specified outpatient treatment requirements, including, but not limited to, (a) taking prescribed medication, (b) reporting to a mental health professional or treatment facility for treatment or for monitoring of the subject's condition, or (c) participating in individual or group therapy or educational, rehabilitation, residential, or vocational programs;

(4) Subject means any person concerning whom (a) a certificate has been filed under section 71-1204, (b) a certificate has been filed under section 71-919 and such person is held pursuant to subdivision (2)(b) of section 71-919, or (c) a petition has been filed under the Sex Offender Commitment Act. Subject does not include any person under eighteen years of age unless such person is an emancipated minor; and

(5) Treatment facility means a facility which provides services for persons who are dangerous sex offenders.

Source: Laws 2006, LB 1199, § 59.

71-1204 Emergency protective custody; dangerous sex offender determination; written certificate; contents.

(1) A mental health professional who, upon evaluation of a person admitted for emergency protective custody under section 71-919, determines that such person is a dangerous sex offender shall execute a written certificate as provided in subsection (2) of this section not later than twenty-four hours after the completion of such evaluation. A copy of such certificate shall be immediately forwarded to the county attorney.

(2) The certificate shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder who may be called as a witness at a mental health board hearing with respect to the subject, if known;

(e) The name and address of the medical facility in which the subject is being held for emergency protective custody and evaluation;

(f) The name and work address of the certifying mental health professional;

(g) A statement by the certifying mental health professional that he or she has evaluated the subject since the subject was admitted for emergency protective custody and evaluation; and

(h) A statement by the certifying mental health professional that, in his or her clinical opinion, the subject is a dangerous sex offender and the clinical basis for such opinion.

Source: Laws 2006, LB 1199, § 60.

71-1205 Person believes another to be a dangerous sex offender; notify county attorney; petition; when; contents.

(1) Any person who believes that another person is a dangerous sex offender may communicate such belief to the county attorney. The filing of a certificate by a law enforcement officer under section 71-919 shall be sufficient to communicate such belief. If the county attorney concurs that such person is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by a mental health board is available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the county attorney shall file a petition as provided in this section.

(2) The petition shall be filed with the clerk of the district court in any county within: (a) The judicial district in which the subject is located; (b) the judicial district in which the alleged behavior of the subject occurred which constitutes the basis for the petition; or (c) another judicial district in the State of Nebraska, if authorized, upon good cause shown, by a district judge of the judicial district in which the subject is located. In such event, all proceedings before the mental health board shall be conducted by the mental health board serving such other county and all costs relating to such proceedings shall be paid by the county of residence of the subject. In the order transferring such

cause to another county, the judge shall include such directions as are reasonably necessary to protect the rights of the subject.

(3) The petition shall be in writing and shall include the following information:

(a) The subject's name and address, if known;

(b) The name and address of the subject's spouse, legal counsel, guardian or conservator, and next of kin, if known;

(c) The name and address of anyone providing psychiatric or other care or treatment to the subject, if known;

(d) A statement that the county attorney has probable cause to believe that the subject of the petition is a dangerous sex offender;

(e) A statement that the beliefs of the county attorney are based on specific behavior, acts, criminal convictions, attempts, or threats which shall be described in detail in the petition; and

(f) The name and address of any other person who may have knowledge of the subject's mental illness or personality disorder and who may be called as a witness at a mental health board hearing with respect to the subject, if known.

Source: Laws 2006, LB 1199, § 61.

71-1206 Mental health board proceedings; commencement; petition; custody of subject; conditions; dismissal; when.

(1) Mental health board proceedings shall be deemed to have commenced upon the earlier of (a) the filing of a petition under section 71-1205 or (b) notification by the county attorney to the law enforcement officer who took the subject into emergency protective custody under section 71-919 or the administrator of the treatment facility having charge of the subject of the intention of the county attorney to file such petition. The county attorney shall file such petition as soon as reasonably practicable after such notification.

(2) A petition filed by the county attorney under section 71-1205 may contain a request for the emergency protective custody and evaluation of the subject prior to commencement of a mental health board hearing pursuant to such petition with respect to the subject. Upon receipt of such request and upon a finding of probable cause to believe that the subject is a dangerous sex offender as alleged in the petition, the court or chairperson of the mental health board may issue a warrant directing the sheriff to take custody of the subject. If the subject is already in emergency protective custody under a certificate filed under section 71-919, a copy of such certificate shall be filed with the petition. The subject in such custody shall be held in an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(3) The petition and all subsequent pleadings and filings in the case shall be entitled In the Interest of . . . . . , Alleged to be a Dangerous Sex Offender. The county attorney may dismiss the petition at any time prior to the commencement of the hearing of the mental health board under section 71-1208, and

upon such motion by the county attorney, the mental health board shall dismiss the petition.

Source: Laws 2006, LB 1199, § 62.

71-1207 Petition; summons; hearing; sheriff; duties; failure to appear; warrant for custody.

Upon the filing of the petition under section 71-1205, the clerk of the district court shall cause a summons fixing the time and place for a hearing to be prepared and issued to the sheriff for service. The sheriff shall personally serve upon the subject and the subject's legal guardian or custodian, if any, the summons and copies of the petition, the list of rights provided by sections 71-943 to 71-960, and a list of the names, addresses, and telephone numbers of mental health professionals in the immediate vicinity by whom the subject may be evaluated prior to his or her hearing. The summons shall fix a time for the hearing within seven calendar days after the subject has been taken into emergency protective custody. The failure of a subject to appear as required under this section shall constitute grounds for the issuance by the mental health board of a warrant for his or her custody.

Source: Laws 2006, LB 1199, § 63.

71-1208 Hearing; mental health board; duties.

A hearing shall be held by the mental health board to determine whether there is clear and convincing evidence that the subject is a dangerous sex offender as alleged in the petition. At the commencement of the hearing, the board shall inquire whether the subject has received a copy of the petition and list of rights accorded him or her by sections 71-943 to 71-960 and whether he or she has read and understood them. The board shall explain to the subject any part of the petition or list of rights which he or she has not read or understood. The board shall inquire of the subject whether he or she admits or denies the allegations of the petition. If the subject admits the allegations, the board shall proceed to enter a treatment order pursuant to section 71-1209. If the subject denies the allegations of the petition, the board shall proceed with a hearing on the merits of the petition.

Source: Laws 2006, LB 1199, § 64.

71-1209 Burden of proof; mental health board; hearing; orders authorized; conditions; rehearing.

(1) The state has the burden to prove by clear and convincing evidence that (a) the subject is a dangerous sex offender and (b) neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the mental health board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01.

(2) If the mental health board finds that the subject is not a dangerous sex offender, the board shall dismiss the petition and order the unconditional discharge of the subject.

(3) If the mental health board finds that the subject is a dangerous sex offender but that voluntary hospitalization or other treatment alternatives less restrictive of the subject's liberty than treatment ordered by the mental health

board are available and would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall (a) dismiss the petition and order the unconditional discharge of the subject or (b) suspend further proceedings for a period of up to ninety days to permit the subject to obtain voluntary treatment. At any time during such ninety-day period, the county attorney may apply to the board for reinstatement of proceedings with respect to the subject, and after notice to the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, the board shall hear the application. If no such application is filed or pending at the conclusion of such ninety-day period, the board shall dismiss the petition and order the unconditional discharge of the subject.

(4) If the subject admits the allegations of the petition or the mental health board finds that the subject is a dangerous sex offender and that neither voluntary hospitalization nor other treatment alternatives less restrictive of the subject's liberty than inpatient or outpatient treatment ordered by the board are available or would suffice to prevent the harm described in subdivision (1) of section 83-174.01, the board shall, within forty-eight hours, (a) order the subject to receive outpatient treatment or (b) order the subject to receive inpatient treatment. If the subject is ordered by the board to receive inpatient treatment, the order shall commit the subject to the custody of the Department of Health and Human Services for such treatment.

(5) A subject who (a) is ordered by the mental health board to receive inpatient treatment and (b) has not yet been admitted for such treatment pursuant to such order may petition for a rehearing by the mental health board based on improvement in the subject's condition such that inpatient treatment ordered by the board would no longer be necessary or appropriate.

(6) A treatment order by the mental health board under this section shall represent the appropriate available treatment alternative that imposes the least possible restraint upon the liberty of the subject. The board shall consider all treatment alternatives, including any treatment program or conditions suggested by the subject, the subject's counsel, or other interested person. Inpatient hospitalization or custody shall only be considered as a treatment alternative of last resort. The county attorney and the subject may jointly offer a proposed treatment order for adoption by the board. The board may enter the proposed order without a full hearing.

(7) The mental health board may request the assistance of the Department of Health and Human Services or any other person or public or private entity to advise the board prior to the entry of a treatment order pursuant to this section and may require the subject to submit to reasonable psychiatric and psychological evaluation to assist the board in preparing such order. Any mental health professional conducting such evaluation at the request of the mental health board shall be compensated by the county or counties served by such board at a rate determined by the district judge and reimbursed for mileage at the rate provided in section 81-1176.

Source: Laws 2006, LB 1199, § 65.

71-1210 Subject; custody pending entry of treatment order.

(1) At the conclusion of a mental health board hearing under section 71-1208 and prior to the entry of a treatment order by the board under section 71-1209, the board may (a) order that the subject be retained in custody until the entry of

such order and the subject may be admitted for treatment pursuant to such order or (b) order the subject released from custody under such conditions as the board deems necessary and appropriate to prevent the harm described in subdivision (1) of section 83-174.01 and to assure the subject's appearance at a later disposition hearing by the board. A subject shall be retained in custody under this section at an appropriate and available medical facility, jail, or Department of Correctional Services facility. A dangerous sex offender shall not be admitted to a medical facility for emergency protective custody unless a medical or psychiatric emergency exists requiring treatment not available at a jail or correctional facility. Each county shall make arrangements with appropriate facilities inside or outside the county for such purpose and shall pay the cost of the emergency protective custody of persons from such county in such facilities.

(2) A subject who has been ordered to receive inpatient or outpatient treatment by a mental health board may be provided treatment while being retained in emergency protective custody and pending admission of the subject for treatment pursuant to such order.

Source: Laws 2006, LB 1199, § 66.

71-1211 Dangerous sex offender; board; issue warrant; contents; immunity.

If the mental health board finds the subject to be a dangerous sex offender and commits the subject to the custody of the Department of Health and Human Services to receive inpatient treatment, the department shall secure placement of the subject in an appropriate inpatient treatment facility to receive such treatment. The board shall issue a warrant authorizing the administrator of such treatment facility to receive and keep the subject as a patient. The warrant shall state the findings of the board and the legal settlement of the subject, if known, or any available information relating thereto. Such warrant shall shield every official and employee of the treatment facility against all liability to prosecution of any kind on account of the reception and detention of the subject if the detention is otherwise in accordance with the Sex Offender Commitment Act, rules and regulations adopted and promulgated under the act, and policies of the treatment facility.

Source: Laws 2006, LB 1199, § 67.

71-1212 Inpatient treatment; subject taken to facility; procedure.

When an order of a mental health board requires inpatient treatment of a subject within a treatment facility, the warrant filed under section 71-1211, together with the findings of the mental health board, shall be delivered to the sheriff of the county who shall execute such warrant by conveying and delivering the warrant, the findings, and the subject to the treatment facility. The administrator, over his or her signature, shall acknowledge the delivery on the original warrant which the sheriff shall return to the clerk of the district court with his or her costs and expenses endorsed thereon. If neither the sheriff nor deputy sheriff is available to execute the warrant, the chairperson of the mental health board may appoint some other suitable person to execute the warrant. Such person shall take and subscribe an oath or affirmation to faithfully discharge his or her duty and shall be entitled to the same fees as the sheriff. The sheriff, deputy sheriff, or other person appointed by the mental health board may take with him or her such assistance as may be required to execute

the warrant. No female subject shall be taken to a treatment facility without being accompanied by another female or relative of the subject. The administrator in his or her acknowledgment of delivery shall record whether any person accompanied the subject and the name of such person.

Source: Laws 2006, LB 1199, § 68.

71-1213 Mental health board; execution of warrants; costs; procedure.

(1) If a mental health board issues a warrant for the admission or return of a subject to a treatment facility and funds to pay the expenses thereof are needed in advance, the board shall estimate the probable expense of conveying the subject to the treatment facility, including the cost of any assistance that might be required, and shall submit such estimate to the county clerk of the county in which such person is located. The county clerk shall certify the estimate and shall issue an order on the county treasurer in favor of the sheriff or other person entrusted with the execution of the warrant.

(2) The sheriff or other person executing the warrant shall include in his or her return a statement of expenses actually incurred, including any excess or deficiency. Any excess from the amount advanced for such expenses under subsection (1) of this section shall be paid to the county treasurer, taking his or her receipt therefor, and any deficiency shall be obtained by filing a claim with the county board. If no funds are advanced, the expenses shall be certified on the warrant and paid when returned.

(3) The sheriff shall be reimbursed for mileage at the rate provided in section 33-117 for conveying a subject to a treatment facility under this section. For other services performed under the Sex Offender Commitment Act, the sheriff shall receive the same fees as for like services in other cases.

(4) All compensation and expenses provided for in this section shall be allowed and paid out of the treasury of the county by the county board.

Source: Laws 2006, LB 1199, § 69.

71-1214 Treatment order of mental health board; appeal; final order of district court; appeal.

The subject of a petition or the county attorney may appeal a treatment order of the mental health board under section 71-1209 to the district court. Such appeals shall be de novo on the record. A final order of the district court may be appealed to the Court of Appeals in accordance with the procedure in criminal cases. The final judgment of the court shall be certified to and become a part of the records of the mental health board with respect to the subject.

Source: Laws 2006, LB 1199, § 70.

71-1215 Treatment order; individualized treatment plan; contents; copy; filed; treatment; when commenced.

(1) Any treatment order entered by a mental health board under section 71-1209 shall include directions for (a) the preparation and implementation of an individualized treatment plan for the subject and (b) documentation and reporting of the subject's progress under such plan.

(2) The individualized treatment plan shall contain a statement of (a) the nature of the subject's mental illness or personality disorder, (b) the least restrictive treatment alternative consistent with the clinical diagnosis of the

subject, and (c) intermediate and long-term treatment goals for the subject and a projected timetable for the attainment of such goals.

(3) A copy of the individualized treatment plan shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, within five working days after the entry of the board's order. Treatment shall be commenced within two working days after preparation of the plan.

(4) The subject shall be entitled to know the contents of the individualized treatment plan and what the subject must do in order to meet the requirements of such plan.

(5) The subject shall be notified by the mental health board when the mental health board has changed the treatment order or has ordered the discharge of the subject from commitment.

Source: Laws 2006, LB 1199, § 71.

71-1216 Person responsible for subject's individualized treatment plan; periodic progress reports; copies; filed and served.

The person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan shall submit periodic reports to the mental health board of the subject's progress under such plan and any modifications to the plan. The mental health board may distribute copies of such reports to other interested parties as permitted by law. With respect to a subject ordered by the mental health board to receive inpatient treatment, such initial report shall be filed with the mental health board for review and inclusion in the subject's file and served upon the county attorney, the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, no later than ten days after submission of the subject's individualized treatment plan. With respect to each subject committed by the mental health board, such reports shall be so filed and served no less frequently than every ninety days for a period of one year following submission of the subject's individualized treatment plan and every six months thereafter.

Source: Laws 2006, LB 1199, § 72.

71-1217 Outpatient treatment provider; duties; investigation by county attorney; warrant for immediate custody of subject; when.

(1) Any provider of outpatient treatment to a subject ordered by a mental health board to receive such treatment shall report to the board and to the county attorney if (a) the subject is not complying with his or her individualized treatment plan, (b) the subject is not following the conditions set by the mental health board, (c) the treatment plan is not effective, or (d) there has been a significant change in the subject's mental illness or personality disorder or the level of risk posed to the public. Such report may be transmitted by facsimile, but the original of the report shall be mailed to the board and the county attorney no later than twenty-four hours after the facsimile transmittal.

(2)(a) Upon receipt of such report, the county attorney shall have the matter investigated to determine whether there is a factual basis for the report.

(b) If the county attorney determines that there is no factual basis for the report or that no further action is warranted, he or she shall notify the board and the treatment provider and take no further action.

(c) If the county attorney determines that there is a factual basis for the report and that intervention by the mental health board is necessary to protect the subject or others, the county attorney may file a motion for reconsideration of the conditions set forth by the board and have the matter set for hearing.

(d) The county attorney may apply for a warrant to take immediate custody of the subject pending a rehearing by the board under subdivision (c) of this subsection if the county attorney has reasonable cause to believe that the subject poses a threat of danger to himself or herself or others prior to such rehearing. The application for a warrant shall be supported by affidavit or sworn testimony by the county attorney, a mental health professional, or any other informed person. The application for a warrant and the supporting affidavit may be filed with the board by facsimile, but the original shall be filed with the board not later than three days after the facsimile transmittal, excluding holidays and weekends. Sworn testimony in support of the warrant application may be taken over the telephone at the discretion of the board.

Source: Laws 2006, LB 1199, § 73.

71-1218 Outpatient treatment; hearing by board; warrant for custody of subject; subject's rights; board determination.

The mental health board shall, upon motion of the county attorney, or may, upon its own motion, hold a hearing to determine whether a subject ordered by the board to receive outpatient treatment can be adequately and safely served by the individualized treatment plan for such subject on file with the board. The mental health board may issue a warrant directing any law enforcement officer in the state to take custody of the subject and directing the sheriff or other suitable person to transport the subject to a treatment facility or public or private hospital with available capacity specified by the board where he or she will be held pending such hearing. No person may be held in custody under this section for more than seven days except upon a continuance granted by the board. At the time of execution of the warrant, the sheriff or other suitable person designated by the board shall personally serve upon the subject, the subject's counsel, and the subject's legal guardian or conservator, if any, a notice of the time and place fixed for the hearing, a copy of the motion for hearing, and a list of the rights provided by the Sex Offender Commitment Act. The subject shall be accorded all the rights guaranteed to a subject by the act. Following the hearing, the board shall determine whether outpatient treatment will be continued, modified, or ended.

Source: Laws 2006, LB 1199, § 74.

71-1219 Mental health board; review hearing; order discharge or change treatment disposition; when.

(1) Upon the filing of a periodic report under section 71-1216, the subject, the subject's counsel, or the subject's legal guardian or conservator, if any, may request and shall be entitled to a review hearing by the mental health board and to seek from the board an order of discharge from commitment or a change in treatment ordered by the board. The mental health board shall schedule the review hearing no later than fourteen calendar days after receipt

of such request. The mental health board may schedule a review hearing (a) at any time pursuant to section 71-1221 or 71-1222, (b) upon the request of the subject, the subject's counsel, the subject's legal guardian or conservator, if any, the county attorney, the official, agency, or other person or entity designated by the mental health board under section 71-1215 to prepare and oversee the subject's individualized treatment plan, or the mental health professional directly involved in implementing such plan, or (c) upon the board's own motion.

(2) The board shall immediately discharge the subject or enter a new treatment order with respect to the subject whenever it is shown by any person or it appears upon the record of the periodic reports filed under section 71-1216 to the satisfaction of the board that (a) the subject's mental illness or personality disorder has been successfully treated or managed to the extent that the subject no longer poses a threat to the public or (b) a less restrictive treatment alternative exists for the subject which does not increase the risk that the subject will commit another sex offense. When discharge or a change in disposition is in issue, due process protections afforded under the Sex Offender Commitment Act shall attach to the subject.

Source: Laws 2006, LB 1199, § 75.

71-1220 Regional center or treatment facility; administrator; discharge of involuntary patient; notice.

When the administrator of any regional center or treatment facility for the treatment of dangerous sex offenders determines that any involuntary patient in such facility may be safely and properly discharged or placed on convalescent leave, the administrator of such regional center or treatment facility shall immediately notify the mental health board of the judicial district from which such patient was committed.

Source: Laws 2006, LB 1199, § 76.

71-1221 Mental health board; notice of release; hearing.

A mental health board shall be notified in writing of the release by the treatment facility of any individual committed by the mental health board. Such notice shall immediately be forwarded to the county attorney. The mental health board shall, upon the motion of the county attorney, or may upon its own motion, conduct a hearing to determine whether the individual is a dangerous sex offender and consequently not a proper subject for release. Such hearing shall be conducted in accordance with the procedures established for hearings under the Sex Offender Commitment Act. The subject of such hearing shall be accorded all rights guaranteed to the subject of a petition under the act.

Source: Laws 2006, LB 1199, § 77.

71-1222 Mental health board; person released from treatment; compliance with conditions of release; conduct hearing; make determination.

The mental health board shall, upon the motion of the county attorney, or may upon its own motion, hold a hearing to determine whether a person who has been ordered by the board to receive inpatient or outpatient treatment is adhering to the conditions of his or her release from such treatment, including the taking of medication. The subject of such hearing shall be accorded all rights guaranteed to a subject under the Sex Offender Commitment Act, and

such hearing shall apply the standards used in all other hearings held pursuant to the act. If the mental health board concludes from the evidence at the hearing that there is clear and convincing evidence that the subject is a dangerous sex offender, the board shall so find and shall within forty-eight hours enter an order of final disposition providing for the treatment of such person in accordance with section 71-1209.

Source: Laws 2006, LB 1199, § 78.

71-1223 Escape from treatment facility or program; notification required; contents; warrant; execution; peace officer; powers.

When any person receiving treatment at a treatment facility or program for dangerous sex offenders pursuant to an order of a court or mental health board is absent without authorization from such treatment facility or program, the administrator or program director of such treatment facility or program shall immediately notify the Nebraska State Patrol and the court or clerk of the mental health board of the judicial district from which such person was committed. The notification shall include the person's name and description and a determination by a psychiatrist, clinical director, administrator, or program director as to whether the person is believed to be currently dangerous to others. The clerk shall issue the warrant of the board directed to the sheriff of the county for the arrest and detention of such person. Such warrant may be executed by the sheriff or any other peace officer. Pending the issuance of the warrant of the mental health board, any peace officer may seize and detain such person when the peace officer has probable cause to believe that the person is reported to be absent without authorization as described in the section. Such person shall be returned to the treatment facility or program or shall be taken to a facility as described in section 71-919 until he or she can be returned to such treatment facility or program.

Source: Laws 2006, LB 1199, § 79.

71-1224 Rights of subjects.

In addition to the rights granted subjects by any other provisions of the Sex Offender Commitment Act, such subjects shall be entitled to the rights provided in sections 71-943 to 71-960 during proceedings concerning the subjects under the act.

Source: Laws 2006, LB 1199, § 80.

71-1225 Mental health board hearings; closed to public; exception; where conducted.

All mental health board hearings under the Sex Offender Commitment Act shall be closed to the public except at the request of the subject and shall be held in a courtroom or at any convenient and suitable place designated by the mental health board. The board shall have the right to conduct the proceeding where the subject is currently residing if the subject is unable to travel.

Source: Laws 2006, LB 1199, § 81.

71-1226 Hearings; rules of evidence applicable.

The rules of evidence applicable in civil proceedings shall apply at all hearings held under the Sex Offender Commitment Act. In no event shall evidence be considered which is inadmissible in criminal proceedings.

Source: Laws 2006, LB 1199, § 82.

(b) TREATMENT AND MANAGEMENT SERVICES

71-1227 Repealed. Laws 2009, LB 154, § 27.

71-1228 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 13

FUNERAL DIRECTORS, EMBALMING, AND CREMATION

Cross References

Burial Pre-Need Sale Act, see section 12-1101.
Casket sales, regulations, see section 71-609.
Disposal of bodies, see section 71-1002 et seq.
Embalming fluids containing arsenic or strychnine, use prohibited, see section 28-425.
Funeral Directing and Embalming Practice Act, see section 38-1401.
State Anatomical Board, see section 71-1001 et seq.
Uniform Credentialing Act, see section 38-101.

(a) FUNERAL DIRECTORS AND EMBALMING

Section
71-1301. Transferred to section 38-1402.
71-1302. Transferred to section 38-1414.
71-1303. Transferred to section 38-1415.
71-1304. Transferred to section 38-1416.
71-1305. Transferred to section 38-1417.
71-1306. Transferred to section 38-1418.
71-1307. Repealed. Laws 1957, c. 295, § 15.
71-1308. Repealed. Laws 1957, c. 295, § 15.
71-1309. Repealed. Laws 1957, c. 295, § 15.
71-1310. Repealed. Laws 1957, c. 295, § 15.
71-1311. Repealed. Laws 1957, c. 295, § 15.
71-1312. Repealed. Laws 1957, c. 295, § 15.
71-1313. Repealed. Laws 1957, c. 295, § 15.
71-1314. Repealed. Laws 1957, c. 295, § 15.
71-1315. Repealed. Laws 1957, c. 295, § 15.
71-1316. Repealed. Laws 1957, c. 295, § 15.
71-1317. Repealed. Laws 1957, c. 295, § 15.
71-1318. Repealed. Laws 1957, c. 295, § 15.
71-1319. Repealed. Laws 1957, c. 295, § 15.
71-1320. Repealed. Laws 1957, c. 295, § 15.
71-1321. Repealed. Laws 1957, c. 295, § 15.
71-1322. Repealed. Laws 1957, c. 295, § 15.
71-1323. Repealed. Laws 1957, c. 295, § 15.
71-1324. Repealed. Laws 1957, c. 295, § 15.
71-1325. Repealed. Laws 1993, LB 187, § 39.
71-1326. Repealed. Laws 2007, LB 463, § 1319.
71-1327. Transferred to section 38-1419.
71-1327.01. Transferred to section 38-1420.
71-1328. Repealed. Laws 1993, LB 187, § 39.
71-1329. Repealed. Laws 2007, LB 463, § 1319.
71-1330. Repealed. Laws 1993, LB 187, § 39.
71-1331. Transferred to section 38-1423.
71-1332. Repealed. Laws 2007, LB 463, § 1319.
71-1333. Transferred to section 38-1424.
71-1333.01. Repealed. Laws 2007, LB 463, § 1319.

(a) FUNERAL DIRECTORS AND EMBALMING

71-1301 Transferred to section 38-1402.

71-1302 Transferred to section 38-1414.

71-1303 Transferred to section 38-1415.

71-1304 Transferred to section 38-1416.

71-1305 Transferred to section 38-1417.

71-1306 Transferred to section 38-1418.

71-1307 Repealed. Laws 1957, c. 295, § 15.

71-1308 Repealed. Laws 1957, c. 295, § 15.

71-1309 Repealed. Laws 1957, c. 295, § 15.

71-1310 Repealed. Laws 1957, c. 295, § 15.

71-1311 Repealed. Laws 1957, c. 295, § 15.

71-1312 Repealed. Laws 1957, c. 295, § 15.

71-1313 Repealed. Laws 1957, c. 295, § 15.

71-1314 Repealed. Laws 1957, c. 295, § 15.

71-1315 Repealed. Laws 1957, c. 295, § 15.

71-1316 Repealed. Laws 1957, c. 295, § 15.

71-1317 Repealed. Laws 1957, c. 295, § 15.

71-1318 Repealed. Laws 1957, c. 295, § 15.

71-1319 Repealed. Laws 1957, c. 295, § 15.

71-1320 Repealed. Laws 1957, c. 295, § 15.

71-1321 Repealed. Laws 1957, c. 295, § 15.

71-1322 Repealed. Laws 1957, c. 295, § 15.

71-1323 Repealed. Laws 1957, c. 295, § 15.

71-1324 Repealed. Laws 1957, c. 295, § 15.

71-1325 Repealed. Laws 1993, LB 187, § 39.

71-1326 Repealed. Laws 2007, LB 463, § 1319.

71-1327 Transferred to section 38-1419.

71-1327.01 Transferred to section 38-1420.

71-1328 Repealed. Laws 1993, LB 187, § 39.

71-1329 Repealed. Laws 2007, LB 463, § 1319.

71-1330 Repealed. Laws 1993, LB 187, § 39.

71-1331 Transferred to section 38-1423.

71-1332 Repealed. Laws 2007, LB 463, § 1319.

71-1333 Transferred to section 38-1424.

71-1333.01 Repealed. Laws 2007, LB 463, § 1319.

71-1333.02 Repealed. Laws 2007, LB 463, § 1319.

71-1333.03 Repealed. Laws 2007, LB 463, § 1319.

71-1334 Repealed. Laws 1988, LB 1100, § 185.

71-1335 Repealed. Laws 1988, LB 1100, § 185.

71-1336 Repealed. Laws 2003, LB 242, § 154.

71-1337 Repealed. Laws 1991, LB 10, § 7.

71-1338 Repealed. Laws 1991, LB 10, § 7.

71-1339 Transferred to section 38-1425.

71-1340 Transferred to section 38-1426.

71-1341 Transferred to section 38-1427.

71-1342 Repealed. Laws 1986, LB 643, § 25.

71-1343 Repealed. Laws 1986, LB 643, § 25.

71-1344 Repealed. Laws 1986, LB 643, § 25.

71-1345 Repealed. Laws 2007, LB 463, § 1319.

71-1346 Transferred to section 38-1428.

71-1347 Repealed. Laws 2002, LB 1021, § 111.

71-1348 Repealed. Laws 1993, LB 187, § 39.

71-1349 Repealed. Laws 2002, LB 1021, § 111.

71-1350 Repealed. Laws 2002, LB 1021, § 111.

71-1351 Repealed. Laws 2002, LB 1021, § 111.

71-1352 Repealed. Laws 2002, LB 1021, § 111.

71-1353 Repealed. Laws 2002, LB 1021, § 111.

71-1354 Repealed. Laws 2007, LB 463, § 1319.

(b) CREMATION OF HUMAN REMAINS ACT

71-1355 Act, how cited.

Sections 71-1355 to 71-1385 shall be known and may be cited as the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 1.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-1356 Terms, defined.

For purposes of the Cremation of Human Remains Act, unless the context otherwise requires:

(1) Alternative container means a container in which human remains are placed in a cremation chamber for cremation;

(2) Authorizing agent means a person vested with the right to control the disposition of human remains pursuant to section 38-1425;

(3) Casket means a rigid container made of wood, metal, or other similar material, ornamented and lined with fabric, which is designed for the encasement of human remains;

(4) Cremated remains means the residue of human remains recovered after cremation and the processing of such remains by pulverization, leaving only bone fragments reduced to unidentifiable dimensions, and the unrecoverable residue of any foreign matter, such as eyeglasses, bridgework, or other similar material, that was cremated with the human remains;

(5) Cremated remains receipt form means a form provided by a crematory authority to an authorizing agent or his or her representative that identifies cremated remains and the person authorized to receive such remains;

(6) Cremation means the technical process that uses heat and evaporation to reduce human remains to bone fragments;

(7) Cremation chamber means the enclosed space within which a cremation takes place;

(8) Crematory means a building or portion of a building which contains a cremation chamber and holding facility;

(9) Crematory authority means the legal entity subject to licensure by the department to maintain and operate a crematory and perform cremation;

(10) Crematory operator means a person who is responsible for the operation of a crematory;

(11) Delivery receipt form means a form provided by a funeral establishment to a crematory authority to document the receipt of human remains by such authority for the purpose of cremation;

(12) Department means the Division of Public Health of the Department of Health and Human Services;

(13) Director means the Director of Public Health of the Division of Public Health;

(14) Funeral director has the same meaning as in section 71-507;

(15) Funeral establishment has the same meaning as in section 38-1411;

(16) Holding facility means the area of a crematory designated for the retention of human remains prior to cremation and includes a refrigerated facility;

(17) Human remains means the body of a deceased person, or a human body part, in any stage of decomposition and includes limbs or other portions of the anatomy that are removed from a person or human remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;

(18) Permanent container means a receptacle made of durable material for the long-term placement of cremated remains; and

(19) Temporary container means a receptacle made of cardboard, plastic, or other similar material in which cremated remains are placed prior to the placement of such remains in an urn or other permanent container.

Source: Laws 2003, LB 95, § 2; Laws 2007, LB296, § 469; Laws 2007, LB463, § 1186.

71-1357 Crematory; license required.

A crematory shall not be established, operated, or maintained in this state except by a crematory authority licensed by the department under the Cremation of Human Remains Act. The department shall issue a license to a crematory authority that satisfies the requirements for licensure under the act. Human remains shall not be cremated in this state except at a crematory operated by a crematory authority licensed under the act.

Source: Laws 2003, LB 95, § 3; Laws 2007, LB463, § 1187.

71-1358 Crematory; building and location requirements.

(1) A crematory shall conform to all building codes and environmental regulations.

(2) A crematory may be constructed at any location consistent with applicable zoning and environmental regulations.

Source: Laws 2003, LB 95, § 4.

71-1359 License; application; requirements; fee.

An applicant for an initial or renewal license as a crematory authority shall file a written application with the department. The application shall be accompanied by the license fee required under section 71-1363 and a certificate confirming that the crematory operator has attended, prior to issuance of the license, a training course provided by the Cremation Association of North America or by the manufacturer of the cremation chamber maintained and operated by the crematory authority and shall set forth the full name and address of the applicant, the address and location of the crematory, the name of the crematory operator, the name and address of the owner of the crematory, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the Cremation of Human Remains Act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

Source: Laws 2003, LB 95, § 5.

71-1360 License; expiration.

Except as otherwise provided in the Cremation of Human Remains Act, licenses issued pursuant to the act shall expire five years after the date of issuance. Licenses shall be issued only for the crematory authority named in the application and shall not be transferable or assignable.

Source: Laws 2003, LB 95, § 6.

71-1361 Crematory; change in location, ownership, or name; application; requirements; fee.

(1) A crematory authority desiring to relocate a crematory shall file a written application with the department at least thirty days prior to the designated date of such relocation. The application shall be accompanied by a fee determined by the department in rules and regulations.

(2) A crematory authority desiring to change ownership of a crematory shall file a written application with the department at least thirty days prior to the designated date of such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

(3) A crematory authority desiring to change its name shall file a written application with the department at least thirty days prior to such change. The application shall be accompanied by a fee determined by the department in rules and regulations.

Source: Laws 2003, LB 95, § 7; Laws 2007, LB463, § 1188.

71-1362 Provisional license.

A provisional license may be issued to a crematory authority that substantially complies with requirements for licensure under the Cremation of Human Remains Act and rules and regulations adopted and promulgated under the act. Such provisional license shall be valid for a period of up to one year, shall not be renewed, and may be converted to a regular license upon a showing that the crematory authority fully complies with the requirements for licensure under the act and rules and regulations.

Source: Laws 2003, LB 95, § 8.

71-1363 Licensure; fees.

(1) The fee for an initial or renewal license as a crematory authority shall include a fee determined by the department in rules and regulations.

(2) If the license application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall collect the same fee as provided in subsection (1) of this section for reinstatement of a license that has lapsed or has been suspended. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall collect a fee of twenty-five dollars for a certified statement that a crematory authority is licensed in this state and a fee of five dollars for verification that a crematory authority is licensed in this state.

(5) The department shall adopt and promulgate rules and regulations for the establishment of fees under the Cremation of Human Remains Act.

(6) The department shall collect fees authorized under the act and shall remit such fees to the State Treasurer for credit to the Health and Human Services Cash Fund. Such fees shall only be used for activities related to the licensure of crematory authorities.

Source: Laws 2003, LB 95, § 9; Laws 2007, LB296, § 470; Laws 2007, LB463, § 1189.

71-1364 Department; inspection; report; duties; noncompliance; procedure.

(1) The department may inspect or provide for the inspection of any crematory operated by a crematory authority licensed under the Cremation of Human Remains Act in such manner and at such times as provided in rules and regulations adopted and promulgated by the department.

(2) The department shall issue an inspection report and provide a copy of the report to the crematory authority within ten working days after the completion of an inspection. The department shall review any findings of noncompliance contained in such report within twenty working days after such inspection.

(3) If the department determines, after such review, that the evidence supports a finding of noncompliance by a crematory authority with any applicable provisions of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act, the department may send a letter to the crematory authority requesting a statement of compliance. The letter shall include a description of each alleged violation, a request that the crematory authority submit a statement of compliance within ten working days, and a notice that the department may take further action if the statement of compliance is not submitted. The statement of compliance shall indicate any actions by the crematory authority which have been or will be taken and the period of time estimated to be necessary to correct each alleged violation. If the crematory authority fails to submit such statement of compliance or fails to make a good faith effort to correct the alleged violations, the department may take further action as provided in sections 71-1366 to 71-1369.

Source: Laws 2003, LB 95, § 10.

71-1365 Complaints; department; duties; confidentiality; immunity.

(1) Any person may submit a complaint to the department and request investigation of an alleged violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act. The department shall review all complaints and determine whether to conduct an investigation relating to such complaints.

(2) A complaint submitted to the department under this section shall be confidential. A person submitting such complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for submitting the complaint or for disclosure of documents, records, or other information to the department relating to such complaint.

Source: Laws 2003, LB 95, § 11.

71-1366 Imminent danger; department; powers.

(1) If the director determines that a crematory authority is operating a crematory so as to create an imminent danger of death or serious physical harm to persons employed at or in proximity to such crematory, he or she may order the temporary suspension or temporary limitation of the license of the crematory authority and may order the temporary closure of the crematory pending further action by the department. A hearing shall be held by the department no later than ten days after the date of such order. The department shall also simultaneously institute proceedings for revocation, suspension, or limitation of the license of the crematory authority.

(2) A continuance of the hearing under subsection (1) of this section shall be granted by the department upon written request from the crematory authority. Such continuance shall not exceed thirty days.

(3) A temporary suspension or temporary limitation order by the director under this section shall take effect when served upon the crematory authority and shall not exceed ninety days. If further action is not taken by the department within such period, the temporary suspension or temporary limitation shall expire.

Source: Laws 2003, LB 95, § 12.

71-1367 Deny or refuse to renew license; disciplinary action; grounds.

The department may deny or refuse to renew a license under the Cremation of Human Remains Act or take disciplinary action against a crematory authority licensed under the act as provided in section 71-1368 on any of the following grounds:

(1) Violation of the Cremation of Human Remains Act or rules and regulations adopted and promulgated under the act;

(2) Conviction of any crime involving moral turpitude;

(3) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony and which has a rational connection with the fitness or capacity of the crematory authority to operate a crematory;

(4) Conviction of a violation pursuant to section 71-1371;

(5) Obtaining a license as a crematory authority by false representation or fraud;

(6) Misrepresentation or fraud in the operation of a crematory; or

(7) Failure to allow access by an agent or employee of the Department of Health and Human Services to a crematory operated by the crematory authority for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of such department.

Source: Laws 2003, LB 95, § 13; Laws 2007, LB296, § 471.

71-1368 Disciplinary actions; fine; disposition.

(1) The department may impose any one or more of the following types of disciplinary action against a crematory authority licensed under the Cremation of Human Remains Act:

(a) A fine not to exceed five hundred dollars per violation;

(b) A limitation on the license and upon the right of the crematory authority to operate a crematory to the extent, scope, or type of operation, for such time, and under such conditions as the director finds necessary and proper;

(c) Placement of the license on probation for a period not to exceed two years during which the crematory may continue to operate under terms and conditions fixed by the order of probation;

(d) Suspension of the license for a period not to exceed two years during which the crematory may not operate; and

(e) Revocation and permanent termination of the license.

(2) Any fine imposed and unpaid under the Cremation of Human Remains Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the crematory is located. The department shall remit fines to the State Treasurer, within thirty days after receipt, for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2003, LB 95, § 14; Laws 2007, LB296, § 472.

71-1369 Appeal.

Any party to a decision of the department under the Cremation of Human Remains Act may appeal such decision. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2003, LB 95, § 15.

Cross References

Administrative Procedure Act, see section 84-920.

71-1370 License; reinstatement or relicensure.

(1) If the license of a crematory authority has lapsed for nonpayment of fees, such license shall be eligible for reinstatement at any time upon application to the department and payment of the applicable fee as provided in section 71-1363.

(2) If the license of a crematory authority has been placed on probation, such license shall be eligible for reinstatement at the end of the period of probation upon successful completion of an inspection if the department determines an inspection is warranted.

(3) If the license of a crematory authority has been suspended, such license shall be eligible for reinstatement at the end of the period of suspension upon successful completion of an inspection and payment of the applicable fee as provided in section 71-1363.

(4) If the license of a crematory authority has been suspended, such license may be reinstated by the department prior to the completion of the term of suspension upon petition by the licensee. After reviewing such petition and any material submitted by the licensee with such petition, the department may order an inspection or investigation of the licensee. Based on such review and such inspection or investigation, if any, the director shall (a) grant full reinstatement of the license, (b) modify the suspension, or (c) deny the petition for reinstatement. The director's decision shall become final thirty days after mailing the decision to the licensee unless the licensee requests a hearing within such period. Any requested hearing shall be held according to rules and regulations of the department for administrative hearings in contested cases.

(5) If the license of a crematory authority has been revoked, such crematory authority shall not be eligible for relicensure until five years after the date of such revocation. A reapplication for an initial license may be made by the crematory authority at the end of such five-year period.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2003, LB 95, § 16.

71-1371 Nuisance; abatement; acts prohibited; penalty.

(1) Maintaining or operating a crematory in violation of the Cremation of Human Remains Act or any rules and regulations of the department adopted and promulgated under the act is a public nuisance and may be abated as a nuisance as provided by law.

(2) It is a Class III misdemeanor to (a) establish, operate, or maintain a crematory subject to the Cremation of Human Remains Act without being licensed as a crematory authority under the act, (b) hold oneself out to the public as a crematory authority without being licensed under the act, or (c) perform a cremation without a cremation authorization form signed by the authorizing agent and a completed permit for transit or cremation as provided by the department or a cremation permit.

(3) Signing a cremation authorization form with actual knowledge that the form contains false, incorrect, or misleading information is a Class III misdemeanor.

(4) A violation of any other provision of the Cremation of Human Remains Act is a Class III misdemeanor.

Source: Laws 2003, LB 95, § 17.

71-1372 Injunction; authorized.

The department may maintain an action in the name of the State of Nebraska for an injunction against any person for establishing, operating, or maintaining a crematory without first obtaining a license as a crematory authority under the Cremation of Human Remains Act. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, operate, or maintain a crematory without obtaining a license as a crematory authority under the act, without alleging any further or more particular facts concerning the same.

Source: Laws 2003, LB 95, § 18.

71-1373 Cremation; right to authorize.

The right to authorize the cremation of human remains and the final disposition of the cremated remains, except in the case of a minor subject to section 23-1824 and unless other directions have been given by the decedent in the form of a testamentary disposition or a pre-need contract, vests pursuant to section 38-1425.

Source: Laws 2003, LB 95, § 19; Laws 2007, LB463, § 1190.

71-1374 Crematory authority; delivery receipt form; duties.

(1) A crematory authority upon receiving human remains shall sign a delivery receipt form and shall hold the human remains, prior to cremation, as provided in this section. The form shall include the name of the deceased, the time and date of delivery of such remains, and the signatures of the owner of the crematory or his or her representative and the funeral director or his or her representative.

(2) If a crematory authority is unable to cremate the human remains immediately upon taking receipt thereof, the crematory authority shall place the human remains in a holding facility. A holding facility shall be designed and

constructed to (a) comply with all applicable public health laws, (b) provide for the health and safety of persons employed at such facility, and (c) prevent any unauthorized access to such facility.

(3) A crematory authority may refuse to accept for holding an alternative container or casket from which there is any evidence of leakage of the body fluids from the human remains in the container.

(4) If human remains received by the crematory authority are not embalmed, such remains shall be held no longer than twenty-four hours from the time of death unless the human remains are placed within a refrigerated facility in accordance with the laws of this state.

Source: Laws 2003, LB 95, § 20.

71-1375 Crematory operation; limitations.

(1) No person shall be permitted in a crematory, unless authorized by the crematory authority, while any human remains are in the crematory awaiting cremation, being cremated, or being removed from the cremation chamber.

(2) The human remains of more than one person shall not be simultaneously cremated within the same cremation chamber unless the crematory authority has received specific written authorization from the authorizing agent for the human remains to be so cremated.

Source: Laws 2003, LB 95, § 21.

71-1376 Crematory authority; operation; requirements.

(1) A crematory authority shall not accept human remains for cremation without a proper label indicating the name of the deceased and the name and location of the funeral establishment placed on the exterior of the alternative container or casket.

(2) No crematory authority shall make or enforce any rules requiring that human remains be placed in a casket before cremation or that human remains be cremated in a casket. No crematory authority shall refuse to accept human remains for cremation if the human remains are not in a casket.

(3) No crematory authority shall accept human remains for cremation unless the human remains are delivered to the crematory authority in an alternative container or casket or delivered to the crematory authority's holding facility to be placed in an alternative container or casket. Human remains delivered to a crematory in an alternative container shall not be removed from the alternative container, and the alternative container shall be cremated with the human remains. A crematory authority may refuse (a) a noncombustible casket or any other container that is not an alternative container or (b) a casket or container that is not labeled as required under subsection (1) of this section.

(4) An alternative container shall:

(a) Be composed of readily combustible materials suitable for cremation;

(b) Be able to be closed to provide for complete encasement of the human remains;

(c) Be resistant to leakage or spillage;

(d) Be rigid enough for easy handling; and

(e) Provide protection for the health and safety of persons handling such container.

Source: Laws 2003, LB 95, § 22.

71-1377 Cremation authorization form; required; contents.

(1) A crematory authority shall not cremate human remains until it has received:

(a) A cremation authorization form as provided in subsection (2) of this section;

(b) A completed and executed permit for transit or cremation as provided by the department or the appropriate cremation permit from the state from which the human remains were delivered, indicating that the human remains are to be cremated; and

(c) A delivery receipt form.

(2) A cremation authorization form shall be signed by the authorizing agent and shall include, but not be limited to, the following information:

(a) The name of the deceased;

(b) Date and place of death;

(c) The identity of the funeral director involved in the preparation of the human remains for cremation, if any;

(d) Notification that the death did or did not occur from a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health;

(e) The name of the authorizing agent and the relationship between the authorizing agent and the deceased;

(f) Authorization by the authorizing agent for the crematory authority to cremate the human remains;

(g) A representation that the authorizing agent is aware of no objection to the human remains being cremated by any person who has a right to control the disposition of the human remains;

(h) A representation that the human remains do not contain any material, implants, or conditions that may be potentially hazardous to equipment or persons performing the cremation;

(i) The name of the person authorized to claim the cremated remains from the crematory authority; and

(j) The intended disposition of the cremated remains.

(3) A crematory authority shall retain, for at least seven years after the cremation, in printed or electronic format, copies of the cremation authorization form, permit for transit or cremation as provided by the department or cremation permit, cremated remains receipt form, delivery receipt form, and any other records required under the Cremation of Human Remains Act.

Source: Laws 2003, LB 95, § 23.

71-1378 Cremation authorization form; signature.

(1) Any person signing a cremation authorization form shall be deemed to warrant the truthfulness of any facts set forth on such form, including the identity of the deceased whose remains are sought to be cremated and the

authority of the person to authorize such cremation. Any person signing a cremation authorization form is personally liable for all damages resulting from false, incorrect, or misleading information contained on such form.

(2) A crematory authority may cremate human remains upon the receipt of a cremation authorization form signed by an authorizing agent and a completed and executed permit for transit or cremation or cremation permit as required by law.

Source: Laws 2003, LB 95, § 24.

71-1379 Potentially hazardous implant or condition; jewelry or other valuables; requirements.

(1) No human remains shall be cremated with the knowledge that the human remains contain a pacemaker or defibrillator or other potentially hazardous implant or condition. The authorizing agent shall take all necessary steps to ensure that any such hazardous implant or condition is removed or corrected prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of such potentially hazardous implant or condition in the human remains, the funeral director shall ensure that all necessary steps have been taken to remove or correct the implant or condition before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal or correction of the hazardous implant or condition prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with hazardous implants or conditions are in the custody of a crematory authority, such authority shall have the hazardous implants or conditions removed or corrected by a licensed funeral director and embalmer or a licensed embalmer at a funeral establishment within an embalming preparation room or at a medical facility by appropriate medical personnel.

(2) No human remains shall be cremated with the knowledge that the human remains contain jewelry or other valuables. The authorizing agent shall take all necessary steps to ensure that any jewelry or other valuables are removed prior to cremation. If an authorizing agent informs the funeral director and the crematory authority on the cremation authorization form of the presence of jewelry or other valuables on the human remains, the funeral director shall ensure that all necessary steps have been taken to remove the jewelry or other valuables before delivering the human remains to the crematory. A funeral director who knowingly fails to ensure the removal of the jewelry or other valuables prior to delivery and who knowingly delivers such human remains shall be liable for any damages resulting from such failure. If human remains with jewelry or other valuables are in the custody of a crematory authority, such authority shall provide for the removal of such jewelry or other valuables by a licensed funeral director and embalmer or his or her agent.

Source: Laws 2003, LB 95, § 25.

71-1380 Dispute; crematory authority or funeral establishment; powers and duties.

(1) If a crematory authority or funeral establishment (a) is aware of any dispute concerning the cremation of human remains or (b) has a reasonable basis to believe that such a dispute exists or to question any of the representa-

tions made by the authorizing agent with respect to such remains, until the crematory authority receives a court order that a dispute with respect to such remains has been settled, the crematory authority or funeral establishment may refuse to accept such human remains for cremation or to perform a cremation of such remains.

(2) If a crematory authority or funeral establishment is aware of any dispute concerning the release or disposition of cremated remains, the crematory authority or funeral establishment may refuse to release cremated remains until the dispute has been resolved or the crematory authority or funeral establishment has been provided with a court order authorizing the release or disposition of the cremated remains.

Source: Laws 2003, LB 95, § 26.

71-1381 Cremated remains; how treated.

(1) Insofar as is possible, upon completion of the cremation, all of the recoverable residue of the cremation shall be removed from the cremation chamber and any foreign matter or anything other than bone fragments shall be removed from such residue and shall be disposed of by the crematory authority. The remaining bone fragments shall be processed by pulverization so as to reduce the fragments to unidentifiable particles. This subsection shall not apply when the commingling of human remains during cremation is otherwise authorized by law. The presence of incidental and unavoidable residue in the cremation chamber from a prior cremation is not a violation of this subsection.

(2) The cremated remains with proper identification shall be placed in a temporary container or permanent container selected or provided by the authorizing agent. The cremated remains shall not be contaminated with any other object unless specific written authorization to the contrary has been received from the authorizing agent.

(3) If the entirety of the cremated remains will not fit within a temporary container or permanent container, then the remainder of such remains shall be returned to the authorizing agent or his or her representative in a separate container with proper identification.

(4) If the cremated remains are to be shipped, the temporary container or permanent container shall be packed securely in a suitable shipping container that complies with the requirements of the shipper. Unless otherwise directed in writing by the authorizing agent, cremated remains shall be shipped only by a method which includes an internal tracking system and which provides a receipt signed by the person accepting delivery of such remains.

Source: Laws 2003, LB 95, § 27.

71-1382 Cremated remains; final disposition.

(1) For purposes of the Cremation of Human Remains Act, the delivery of the cremated remains to the authorizing agent or his or her representative shall constitute final disposition. If, after a period of sixty days after the date of cremation, the authorizing agent or his or her representative has not directed or otherwise arranged for the final disposition of the cremated remains or claimed the cremated remains for final disposition as provided in this section, the crematory authority or the funeral establishment in possession of the cremated remains may dispose of the cremated remains after making a reason-

able attempt to contact the authorizing agent or his or her representative. This method of disposition may be used by any crematory authority or funeral establishment to dispose of all cremated remains in the possession of a crematory authority or funeral establishment on or after August 31, 2003.

(2) Cremated remains shall be delivered or released by the crematory authority to the representative specified by the authorizing agent on the cremation authorization form. The owner of the crematory authority or his or her representative and the party receiving the cremated remains shall sign a cremated remains receipt form. The form shall include the name of the deceased, the date, time, and place of receipt of the cremated remains, and the signatures of the owner of the crematory or his or her representative and the authorizing agent or his or her representative. If the cremated remains are shipped, a form used by the shipper under subsection (4) of section 71-1381 may be used in lieu of a completed cremated remains receipt form if the shipper's form contains the information required for a cremated remains receipt form. Both the party delivering such remains and the party receiving such remains shall retain a copy of the cremated remains receipt form or shipper's form. Upon delivery, the cremated remains may be further transported within this state in any manner without a permit.

Source: Laws 2003, LB 95, § 28.

71-1383 Rules and regulations.

The department may adopt and promulgate rules and regulations to implement the Cremation of Human Remains Act, to include, but not be limited to, rules and regulations establishing conditions under which human remains of persons whose death was caused by a disease declared by the department to be infectious, contagious, communicable, or dangerous to the public health may be transported in this state to a crematory for the purpose of cremation, and minimum sanitation standards for all crematories.

Source: Laws 2003, LB 95, § 29.

71-1384 Crematory authority; bylaws.

A crematory authority may enact reasonable bylaws not inconsistent with the Cremation of Human Remains Act for the management and operation of a crematory operated by such authority. Nothing in this section shall prevent a crematory authority from enacting bylaws which contain more stringent requirements than those provided in the act.

Source: Laws 2003, LB 95, § 30.

71-1385 Act; how construed.

The Cremation of Human Remains Act shall be construed and interpreted as a comprehensive cremation law, and the provisions of the act shall take precedence over any existing laws or rules and regulations that govern human remains that do not specifically address cremation.

Source: Laws 2003, LB 95, § 31.

ARTICLE 14
MEDICALLY HANDICAPPED CHILDREN

Cross References

Assistance for delinquent, dependent, and medically handicapped children, see Chapter 43, article 5.

Education of children with disabilities, Special Education Act, see section 79-1110.

Section
71-1401. Repealed. Laws 2002, LB 93, § 27.
71-1402. Repealed. Laws 2002, LB 93, § 27.
71-1403. Repealed. Laws 2002, LB 93, § 27.
71-1404. Repealed. Laws 2002, LB 93, § 27.
71-1405. Medically handicapped child; birth; duty of attendant to report.
71-1406. Repealed. Laws 1982, LB 651, § 3.

71-1401 Repealed. Laws 2002, LB 93, § 27.

71-1402 Repealed. Laws 2002, LB 93, § 27.

71-1403 Repealed. Laws 2002, LB 93, § 27.

71-1404 Repealed. Laws 2002, LB 93, § 27.

71-1405 Medically handicapped child; birth; duty of attendant to report.

(1) Within thirty days after the date of the birth of any child born in this state with visible congenital deformities, the physician, certified nurse midwife, or other person in attendance upon such birth shall prepare and file with the Department of Health and Human Services a statement setting forth such visible congenital deformity. The form of such statement shall be prepared by the department and shall be a part of the birth report furnished by the department.

(2) For purposes of this section, congenital deformities include a cleft lip, cleft palate, hernia, congenital cataract, or disability resulting from congenital or acquired heart disease, or any congenital abnormality or orthopedic condition that can be cured or materially improved. The orthopedic condition or deformity includes any deformity or disease of childhood generally recognized by the medical profession, and it includes deformities resulting from burns.

Source: Laws 1937, c. 190, § 5, p. 755; Laws 1941, c. 139, 1, p. 549; C.S.Supp.,1941, § 71-3405; R.S.1943, § 71-1405; Laws 1996, LB 1044, § 563; Laws 1997, LB 307, § 169; Laws 2002, LB 93, § 6; Laws 2005, LB 256, § 35; Laws 2007, LB296, § 473.

Cross References

Birth defects, reports, see section 71-648.

71-1406 Repealed. Laws 1982, LB 651, § 3.

ARTICLE 15

HOUSING

Cross References

Building Construction Act, see section 71-6401.
Community Development Law, for all cities and villages, see section 18-2101.
Smoke detectors, required, see sections 81-5,132 to 81-5,146.

(a) HOUSING COOPERATION LAW

Section
71-1501. Repealed. Laws 1999, LB 105, § 103.
71-1502. Repealed. Laws 1999, LB 105, § 103.
71-1503. Repealed. Laws 1999, LB 105, § 103.
71-1504. Repealed. Laws 1999, LB 105, § 103.
71-1505. Repealed. Laws 1999, LB 105, § 103.

Section
71-1506. Repealed. Laws 1999, LB 105, § 103.
71-1507. Repealed. Laws 1999, LB 105, § 103.
71-1508. Repealed. Laws 1999, LB 105, § 103.
71-1509. Repealed. Laws 1999, LB 105, § 103.
71-1510. Repealed. Laws 1999, LB 105, § 104.
71-1511. Repealed. Laws 1999, LB 105, § 103.
71-1512. Repealed. Laws 1999, LB 105, § 103.
71-1513. Repealed. Laws 1947, c. 179, § 8.
71-1514. Repealed. Laws 1947, c. 179, § 8.
71-1515. Repealed. Laws 1947, c. 179, § 8.
71-1516. Repealed. Laws 1947, c. 179, § 8.
71-1517. Repealed. Laws 1947, c. 179, § 8.

(b) NEBRASKA HOUSING AUTHORITIES LAW

71-1518. Repealed. Laws 1999, LB 105, § 103.
71-1519. Repealed. Laws 1999, LB 105, § 103.
71-1520. Repealed. Laws 1999, LB 105, § 103.
71-1521. Repealed. Laws 1999, LB 105, § 103.
71-1522. Repealed. Laws 1999, LB 105, § 103.
71-1523. Repealed. Laws 1999, LB 105, § 103.
71-1524. Repealed. Laws 1999, LB 105, § 103.
71-1525. Repealed. Laws 1999, LB 105, § 103.
71-1526. Repealed. Laws 1999, LB 105, § 103.
71-1527. Repealed. Laws 1999, LB 105, § 103.
71-1528. Repealed. Laws 1999, LB 105, § 103.
71-1529. Repealed. Laws 1999, LB 105, § 103.
71-1530. Repealed. Laws 1999, LB 105, § 103.
71-1531. Repealed. Laws 1999, LB 105, § 103.
71-1532. Repealed. Laws 1999, LB 105, § 103.
71-1533. Repealed. Laws 1999, LB 105, § 103.
71-1534. Repealed. Laws 1999, LB 105, § 103.
71-1535. Repealed. Laws 1999, LB 105, § 103.
71-1536. Repealed. Laws 1999, LB 105, § 103.
71-1537. Repealed. Laws 1999, LB 105, § 103.
71-1538. Repealed. Laws 1999, LB 105, § 103.
71-1539. Repealed. Laws 1999, LB 105, § 103.
71-1540. Repealed. Laws 1999, LB 105, § 103.
71-1541. Repealed. Laws 1999, LB 105, § 103.
71-1542. Repealed. Laws 1999, LB 105, § 103.
71-1543. Repealed. Laws 1999, LB 105, § 103.
71-1544. Repealed. Laws 1999, LB 105, § 103.
71-1545. Repealed. Laws 1999, LB 105, § 103.
71-1546. Repealed. Laws 1999, LB 105, § 103.
71-1547. Repealed. Laws 1999, LB 105, § 103.
71-1548. Repealed. Laws 1999, LB 105, § 103.
71-1549. Repealed. Laws 1999, LB 105, § 103.
71-1550. Repealed. Laws 1999, LB 105, § 103.
71-1551. Repealed. Laws 1999, LB 105, § 103.
71-1552. Repealed. Laws 1999, LB 105, § 103.
71-1553. Repealed. Laws 1999, LB 105, § 103.
71-1554. Repealed. Laws 1999, LB 105, § 103.

(c) MODULAR HOUSING UNITS

71-1555. Act, how cited.
71-1556. Declaration of purpose.
71-1557. Terms, defined.
71-1558. Modular housing units; construction of and installation of plumbing, heating, and electrical systems; standards; manner adopted; when applicable.

Section
71-15,164. Enforcement of rights; remedies.
71-15,165. Claims and actions; restrictions.
71-15,166. Act; how construed.
71-15,167. Conflicting provisions; how construed.
71-15,168. Tort claims; other claims; procedure.

(a) HOUSING COOPERATION LAW

71-1501 Repealed. Laws 1999, LB 105, § 103.

71-1502 Repealed. Laws 1999, LB 105, § 103.

71-1503 Repealed. Laws 1999, LB 105, § 103.

71-1504 Repealed. Laws 1999, LB 105, § 103.

71-1505 Repealed. Laws 1999, LB 105, § 103.

71-1506 Repealed. Laws 1999, LB 105, § 103.

71-1507 Repealed. Laws 1999, LB 105, § 103.

71-1508 Repealed. Laws 1999, LB 105, § 103.

71-1509 Repealed. Laws 1999, LB 105, § 103.

71-1510 Repealed. Laws 1999, LB 105, § 104.

71-1511 Repealed. Laws 1999, LB 105, § 103.

71-1512 Repealed. Laws 1999, LB 105, § 103.

71-1513 Repealed. Laws 1947, c. 179, § 8.

71-1514 Repealed. Laws 1947, c. 179, § 8.

71-1515 Repealed. Laws 1947, c. 179, § 8.

71-1516 Repealed. Laws 1947, c. 179, § 8.

71-1517 Repealed. Laws 1947, c. 179, § 8.

(b) NEBRASKA HOUSING AUTHORITIES LAW

71-1518 Repealed. Laws 1999, LB 105, § 103.

71-1519 Repealed. Laws 1999, LB 105, § 103.

71-1520 Repealed. Laws 1999, LB 105, § 103.

71-1521 Repealed. Laws 1999, LB 105, § 103.

71-1522 Repealed. Laws 1999, LB 105, § 103.

71-1523 Repealed. Laws 1999, LB 105, § 103.

71-1524 Repealed. Laws 1999, LB 105, § 103.

71-1525 Repealed. Laws 1999, LB 105, § 103.

71-1526 Repealed. Laws 1999, LB 105, § 103.

71-1527 Repealed. Laws 1999, LB 105, § 103.

71-1528 Repealed. Laws 1999, LB 105, § 103.

71-1529 Repealed. Laws 1999, LB 105, § 103.

71-1530 Repealed. Laws 1999, LB 105, § 103.

71-1531 Repealed. Laws 1999, LB 105, § 103.

71-1532 Repealed. Laws 1999, LB 105, § 103.

71-1533 Repealed. Laws 1999, LB 105, § 103.

71-1534 Repealed. Laws 1999, LB 105, § 103.

71-1535 Repealed. Laws 1999, LB 105, § 103.

71-1536 Repealed. Laws 1999, LB 105, § 103.

71-1537 Repealed. Laws 1999, LB 105, § 103.

71-1538 Repealed. Laws 1999, LB 105, § 103.

71-1539 Repealed. Laws 1999, LB 105, § 103.

71-1540 Repealed. Laws 1999, LB 105, § 103.

71-1541 Repealed. Laws 1999, LB 105, § 103.

71-1542 Repealed. Laws 1999, LB 105, § 103.

71-1543 Repealed. Laws 1999, LB 105, § 103.

71-1544 Repealed. Laws 1999, LB 105, § 103.

71-1545 Repealed. Laws 1999, LB 105, § 103.

71-1546 Repealed. Laws 1999, LB 105, § 103.

71-1547 Repealed. Laws 1999, LB 105, § 103.

71-1548 Repealed. Laws 1999, LB 105, § 103.

71-1549 Repealed. Laws 1999, LB 105, § 103.

71-1550 Repealed. Laws 1999, LB 105, § 103.

71-1551 Repealed. Laws 1999, LB 105, § 103.

71-1552 Repealed. Laws 1999, LB 105, § 103.

71-1553 Repealed. Laws 1999, LB 105, § 103.

71-1554 Repealed. Laws 1999, LB 105, § 103.

(c) MODULAR HOUSING UNITS

71-1555 Act, how cited.

Sections 71-1555 to 71-1568.01 shall be known and may be cited as the Nebraska Uniform Standards for Modular Housing Units Act.

Source: Laws 1976, LB 248, § 1; Laws 1984, LB 822, § 1; Laws 1998, LB 1073, § 90.

71-1556 Declaration of purpose.

The Legislature finds and declares that uniformity in the manner of construction, assembly, and use of modular housing units and that of their systems, components, and appliances, including their plumbing, heating, and electrical systems, is extremely desirable in order that owners may not be burdened with differing requirements and in order to promote construction which will foster the health and safety of the numerous persons living in modular housing units.

Source: Laws 1976, LB 248, § 2; Laws 1984, LB 822, § 2.

71-1557 Terms, defined.

As used in the Nebraska Uniform Standards for Modular Housing Units Act, unless the context otherwise requires:

(1) Modular housing unit means any dwelling whose construction consists entirely of or the major portions of its construction consist of a unit or units, containing facilities for no more than one family, not fabricated on the final site for the dwelling unit, which units are movable or portable until placed on a permanent foundation and connected to utilities. Modular housing units shall be taxed as real estate;

(2) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the modular housing unit as determined by the commission to evidence compliance with state standards;

(3) Dealer means any person other than a manufacturer who sells, offers to sell, distributes, or leases modular housing units primarily to persons who in good faith purchase or lease a modular housing unit for purposes other than resale;

(4) Manufacturer means any person who manufactures or produces modular housing units;

(5) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing modular housing units; and

(6) Commission means the Public Service Commission.

Source: Laws 1976, LB 248, § 3; Laws 1984, LB 822, § 3; Laws 1985, LB 313, § 4; Laws 1993, LB 121, § 424; Laws 1994, LB 511, § 6; Laws 1996, LB 1044, § 564; Laws 1998, LB 1073, § 91; Laws 2008, LB797, § 6.

71-1558 Modular housing units; construction of and installation of plumbing, heating, and electrical systems; standards; manner adopted; when applicable.

(1) All construction of and all plumbing, heating, and electrical systems installed in modular housing units manufactured, sold, offered for sale, or

leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the standards of the state agency responsible for regulation of modular housing units as such standards existed on the date of manufacture.

(2) All construction of and all plumbing, heating, and electrical systems installed in modular housing units manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall be at least equal to the standards adopted and approved by the commission pursuant to its rules and regulations as such standards existed on the date of manufacture. The standards shall (a) protect the health and safety of persons living in modular housing units, (b) assure reciprocity with other states that have adopted standards which protect the health and safety of persons living in modular housing units the purpose of which is to make uniform the law of those states which adopt them, (c) allow variations from such uniform standards as will reduce unnecessary costs of construction or increase safety, durability, or efficiency, including energy efficiency, of the modular housing unit without jeopardizing such reciprocity, (d) assure changes in those uniform standards which reflect new technology making possible greater safety, efficiency, including energy efficiency, economy, or durability than earlier standards, and (e) allow for reduced energy and snow live load requirements for those modular housing units destined for out-of-state siting if the receiving jurisdiction has such reduced requirements. The commission shall adopt as standards relating to electrical systems in modular housing units those applicable standards adopted and amended by the State Electrical Board under section 81-2104.

(3) Whenever practical, the standards shall be stated in terms of required levels of performance so as to facilitate the prompt acceptance of new building materials and methods. If generally recognized standards of performance are not available, the standards shall provide for acceptance of materials and methods whose performance has been found by the commission on the basis of reliable test and evaluation data presented by the proponent to be substantially equal to those specified.

Source: Laws 1976, LB 248, § 4; Laws 1984, LB 822, § 4; Laws 1992, LB 1019, § 65; Laws 1998, LB 1073, § 92; Laws 2008, LB797, § 7.

71-1559 Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Modular Housing Units Cash Fund; created; use; investment.

(1) Every modular housing unit, except those constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state more than six months after July 10, 1976, and before May 1, 1998, shall comply with the seal requirements of the state agency responsible for regulation of modular housing units as such requirements existed on the date of manufacture.

(2) Every modular housing unit, except those constructed or manufactured by any school district or community college area as part of a buildings trade or other instructional program offered by such district or area, manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the construction and the structural, plumbing, heating, and electrical systems of such modular housing unit have

been installed in compliance with its standards applicable at the time of manufacture. Each manufacturer of such modular housing units, except those constructed or manufactured by such school district or community college area, shall submit its plans to the commission for the purposes of inspection. The commission shall establish a compliance assurance program consisting of an application form and a compliance assurance manual. Such manual shall identify and list all procedures which the manufacturer and the inspection agency propose to implement to assure that the finished modular housing unit conforms to the approved building system and the applicable codes adopted by the commission. The compliance assurance program requirements shall apply to all inspection agencies, whether commission or authorized third party, and shall define duties and responsibilities in the process of inspecting, monitoring, and issuing seals for modular housing units. The commission shall issue the seal only after ascertaining that the manufacturer is in full compliance with the compliance assurance program through inspections at the plant by the commission or authorized third-party inspection agency. Such inspections shall be of an unannounced frequency such that the required level of code compliance performance is implemented and maintained throughout all areas of plant and site operations that affect regulatory aspects of the construction. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of violation of the conditions of issuance.

(3) Modular housing units constructed or manufactured by any school district or community college area as a part of a buildings trade or other instructional program offered by such district or area shall be inspected by the local inspection authority or, upon request of the district or area, by the commission. If the commission inspects a unit and finds that it is in compliance, the commission shall issue a seal certifying that the construction and the structural, plumbing, heating, and electrical systems of such unit have been installed in compliance with the standards applicable at the time of manufacture.

(4) The commission shall charge a seal fee of not less than one hundred and not more than one thousand dollars per modular housing unit, as determined annually by the commission after published notice and a hearing, for seals issued by the commission under subsection (2) or (3) of this section.

(5) Inspection fees shall be paid for all inspections by the commission of manufacturing plants located outside of the State of Nebraska. Such fees shall consist of a reimbursement by the manufacturer of actual travel and inspection expenses only and shall be paid prior to any issuance of seals.

(6) All fees collected under the Nebraska Uniform Standards for Modular Housing Units Act shall be remitted to the State Treasurer for credit to the Modular Housing Units Cash Fund which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the act. Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Modular Housing Units Cash 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.

Source: Laws 1976, LB 248, § 5; Laws 1978, LB 812, § 1; Laws 1981, LB 218, § 1; Laws 1983, LB 617, § 20; Laws 1984, LB 822, § 5;

Laws 1991, LB 703, § 34; Laws 1992, LB 1019, § 66; Laws 1996, LB 1044, § 565; Laws 1998, LB 1073, § 93; Laws 2001, LB 247, § 1; Laws 2003, LB 241, § 1; Laws 2008, LB797, § 8.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-1560 Modular housing unit; dealer; prohibited acts; exceptions.

Except as provided in section 71-1561, no dealer shall sell, offer for sale, or lease in this state any new modular housing unit manufactured (1) more than six months after July 10, 1976, and before May 1, 1998, unless such modular housing unit meets or exceeds the standards established by the state agency responsible for regulation of modular housing units as such standards existed on the date of manufacture with respect to construction thereof and the installation of plumbing, heating, and electrical systems or (2) on or after May 1, 1998, unless such modular housing unit meets or exceeds the standards established by the commission with respect to construction thereof and the installation of plumbing, heating, and electrical systems.

Source: Laws 1976, LB 248, § 6; Laws 1984, LB 822, § 6; Laws 1998, LB 1073, § 94.

71-1561 Modular housing units; plumbing, heating, electrical, or construction codes; reciprocity; when; prohibited acts; agreements authorized.

If any other state has plumbing, heating, electrical, or construction codes for modular housing units at least equal to those established by the commission pursuant to the Nebraska Uniform Standards for Modular Housing Units Act, the commission, upon determining that such standards are being enforced by such other state, shall place such other state on a reciprocity list which shall be available to any interested person. Any modular housing unit which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A modular housing unit manufactured more than six months after July 10, 1976, which does not bear the seal issued by this state or by a state which has been placed on the reciprocity list shall not be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor transported or delivered into any other state or jurisdiction.

The commission may enter into agreements with the federal government, any federal agency, or any other state, state agency, interstate agency, compact, or local jurisdiction to perform inspections pursuant to the federal government's or the agency's, state's, compact's, or jurisdiction's standards relating to modular housing units.

Source: Laws 1976, LB 248, § 7; Laws 1984, LB 822, § 7; Laws 1992, LB 1019, § 67; Laws 1998, LB 1073, § 95.

71-1562 Modular housing unit; local codes or standards; compliance not required; exception; site development, defined.

No agency or political subdivision of the state or a municipality shall require compliance with local codes or standards for the construction of or the installation of structural, plumbing, heating, or electrical systems in a modular housing unit which are different from those established by the commission

pursuant to the Nebraska Uniform Standards for Modular Housing Units Act. An agency or political subdivision of this state or a municipality may prescribe reasonable and necessary requirements of the site development for modular housing units in accordance with local standards. Site development is defined for the purposes of such act as those local development requirements including, but not limited to, foundations, site utility requirements and their connections to the modular housing units, zoning and subdivision regulations, and fire control provisions.

Source: Laws 1976, LB 248, § 8; Laws 1984, LB 822, § 8; Laws 1998, LB 1073, § 96.

71-1563 Modular housing unit; violation; penalty.

(1) Any person who manufactures, sells, offers for sale, or leases in this state any modular housing unit which does not bear the seal required by the provisions of the Nebraska Uniform Standards for Modular Housing Units Act shall be guilty of a Class IV misdemeanor.

(2) The commission may, in accordance with the laws governing injunctions and other processes, maintain an action in the name of the state against any person who manufactures, sells, offers for sale, or leases in this state any modular housing unit which does not bear the seal required by the provisions of such act.

(3) The commission may administratively fine pursuant to section 75-156 any person who violates the act or any rule or regulation adopted and promulgated under the act.

Source: Laws 1976, LB 248, § 9; Laws 1977, LB 41, § 60; Laws 1984, LB 822, § 9; Laws 1998, LB 1073, § 97; Laws 2008, LB797, § 9.

71-1564 Commission; administer act; rules and regulations; powers; enumerated; charge for services.

(1) The commission is hereby charged with the administration of the provisions of the Nebraska Uniform Standards for Modular Housing Units Act. The commission may adopt, amend, alter, or repeal general rules and regulations of procedure for carrying out and administering the provisions of such act in regard to (a) the issuance of seals, (b) the submission of plans and specifications of modular housing units, (c) the obtaining of statistical data respecting the manufacture and sale of modular housing units, and (d) the prescribing of means, methods, and practices to make effective such provisions. In adopting such rules and regulations, the commission may require that plans and specifications of modular housing units submitted to the commission be prepared and submitted only by a Nebraska architect or professional engineer.

(2) A person intending to manufacture, sell, offer for sale, or lease a modular housing unit in the State of Nebraska shall submit plans, specifications, and a compliance assurance program in accordance with the act and shall be charged for engineering services of the commission provided for performing the review of such initial submittal at a rate of not less than fifteen dollars per hour and not more than sixty dollars per hour based upon sixty hours of review time as determined annually by the commission after published notice and a hearing.

Source: Laws 1976, LB 248, § 10; Laws 1984, LB 822, § 10; Laws 1992, LB 1019, § 68; Laws 1997, LB 622, § 100; Laws 1998, LB 1073, § 98; Laws 2008, LB797, § 10.

71-1565 Repealed. Laws 2002, LB 93, § 27.

71-1566 Modular housing units; place manufactured, sold, or leased; open to inspection by commission.

The commission through its authorized representatives may enter any place or establishment where modular housing units are manufactured, sold, offered for sale, or leased for the purpose of inspecting such modular housing units or parts thereof in order to ascertain whether the requirements of the Nebraska Uniform Standards for Modular Housing Units Act and the rules, regulations, and standards adopted by the commission have been complied with. If the commission appoints qualified nongovernmental inspectors or inspection agencies as its authorized representatives to carry out such inspections, the commission shall at all times exercise supervisory control over such inspectors or agencies to insure effective and uniform enforcement of its standards. No person may interfere with, obstruct, or hinder an authorized representative of the commission in the performance of such an inspection.

Source: Laws 1976, LB 248, § 12; Laws 1984, LB 822, § 12; Laws 1998, LB 1073, § 100.

71-1567 Seal; denied or suspended; hearing; appeal.

(1) The commission shall refuse to issue a seal to a manufacturer for any modular housing unit not found to be in compliance with its standards governing the construction of or the structural, plumbing, heating, or electrical systems for modular housing units or for which fees have not been paid. Except in case of failure to pay the required fees, any such manufacturer may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(2) The issuance of seals may be suspended as to any manufacturer who is convicted of violating section 71-1563 or as to any manufacturer who violates any other provision of the Nebraska Uniform Standards for Modular Housing Units Act or any rule, regulation, commission order, or standard adopted pursuant thereto, and issuance of the seals shall not be resumed until such manufacturer submits sufficient proof that the conditions which caused the violation have been remedied. Any such manufacturer may request a hearing before the commission on the issue of such suspension. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 248, § 13; Laws 1984, LB 822, § 13; Laws 1988, LB 352, § 121; Laws 1998, LB 1073, § 101; Laws 2008, LB797, § 11.

Cross References

Administrative Procedure Act, see section 84-920.

71-1568 Repealed. Laws 2001, LB 247, § 3.

71-1568.01 Existing rules, regulations, orders, suits, and proceedings; effect of transfer.

All rules, regulations, and orders of the Department of Health and Human Services Regulation and Licensure or its predecessor agency adopted prior to May 1, 1998, in connection with the powers, duties, and functions transferred to the Public Service Commission under the Nebraska Uniform Standards for Modular Housing Units Act, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to May 1, 1998, or which could have been commenced prior to that date, by or against such department or agency, or the director or employee thereof in such director's or employee's official capacity or in relation to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from such department or agency to the commission.

On and after May 1, 1998, unless otherwise specified, whenever any provision of law refers to such department or agency in connection with duties and functions transferred to the commission, the law shall be construed as referring to the commission.

Any costs incurred by the department and associated with the transfer of powers, duties, and functions to the commission under the act shall be borne by the commission.

Source: Laws 1998, LB 1073, § 102.

(d) PLUMBING

71-1569 Scald prevention device; required; when.

(1) Except as provided in subsection (2) of this section, all bathtubs and showers installed in buildings which contain more than one dwelling unit after August 30, 1987, shall be equipped with either a pressure balancing or thermostatic-mixing scald prevention device which is designed and installed to prevent (a) sudden unanticipated changes in the temperature of the water delivered and (b) the temperature of the water delivered from exceeding one hundred fifteen degrees Fahrenheit.

(2) Subsection (1) of this section shall not apply to showers or bathtubs installed in modular housing units as defined in section 71-1557, manufactured homes as defined in section 71-4603, or recreational vehicles as defined in section 71-4603.

Source: Laws 1987, LB 264, § 1.

71-1570 Scald prevention device; inspection.

Persons employed by political subdivisions to inspect plumbing fixtures shall inspect showers and bathtubs for compliance with section 71-1569.

Source: Laws 1987, LB 264, § 2.

71-1571 Scald prevention device; violation; penalty.

Anyone who installs four or more showers or bathtubs, in a single building, in violation of section 71-1569 shall be guilty of a Class V misdemeanor.

Source: Laws 1987, LB 264, § 3.

(e) NEBRASKA HOUSING AGENCY ACT

71-1572 Act, how cited.

Sections 71-1572 to 71-15,168 shall be known and may be cited as the Nebraska Housing Agency Act.

Source: Laws 1999, LB 105, § 1.

71-1573 Legislative findings.

The Legislature declares that:

(1) There exists within this state a shortage of residential housing that is decent, safe, and sanitary, situated in safe, livable neighborhoods, and affordable to persons of low and moderate income;

(2) Many persons and families throughout this state occupy inadequate, overcrowded, unsafe, or unsanitary residential housing because they are unable to locate and secure suitable housing at a price that they can reasonably afford. This circumstance has resulted in undue concentrations of impoverished populations in certain areas, increased rates of crime, deterioration in human health, and other family and social dysfunction, thereby seriously and adversely affecting the public health, safety, and welfare of persons residing in this state;

(3) In addition to the lack of suitable, affordable housing, there persists in numerous areas of this state conditions of economic distress accompanied by physical deterioration of public facilities and commercial and residential infrastructure;

(4) It is the goal and policy of this state that all its residents shall have access to decent, safe, sanitary, and affordable housing in safe and livable neighborhoods and it is the policy of this state to assure the availability, for rental or sale, of decent, safe, and sanitary housing that is affordable to all persons residing in this state;

(5) It is further the goal and policy of this state that, to the maximum extent feasible, persons and families benefiting from activities authorized under the Nebraska Housing Agency Act be encouraged to become economically self-sufficient;

(6) Achieving permanent improvement in the living standards of persons of low and moderate income may require, in addition to providing enhanced housing opportunities, the delivery of social, educational, and other supportive services and the operation of programs to develop self-sufficiency and to provide economic and employment opportunities and other benefits for persons assisted under the act;

(7) Persons of low and moderate income possess inadequate access to sources of equity and financing for the purchase and ownership of housing at rates and upon terms reasonably affordable to such persons;

(8) The adverse conditions described in this section cannot be remedied, nor can the goals and policies of this section be successfully carried out, through the ordinary functioning of private enterprise alone. These objectives may be attainable by diligent efforts of public agencies acting both alone and cooperatively with private sector entities and enterprises. The actions of public agencies so taken are, therefor, not competitive with private enterprise;

(9) The replanning and reconstruction of areas in which housing is unsafe or unsanitary or in which neighborhoods are unlivable; the provision of decent,

safe, and sanitary housing that is affordable to persons of low and moderate income, including the development, leasing, or sale thereof; and the provision of supportive services and programs benefiting persons and families receiving housing assistance under the act are public uses and purposes and essential governmental functions for which public funds may be spent and private property acquired. The character of any expenditures of public funds contemplated under the act as necessary and proper public expenditures for essential government functions is not altered because such expenditures may be made to, or in connection with, the activities of private sector entities or enterprises, whether nonprofit or for-profit in nature;

(10) The amount of funding for decent, safe, and sanitary housing that is affordable to persons of low and moderate income and for associated services to benefit such persons has not kept pace either with the growing demand for such housing and services or with the needs of local housing agencies to operate and maintain their facilities and programs. Since local housing agencies do not possess the power to tax, it is necessary to ensure other adequate funding sources for their activities. Accordingly, this state must provide to its local housing agencies sufficient power to adequately address the housing needs of persons of low and moderate income within this state and to operate related programs with funding derived from public and private sources as well as the federal government. In this regard it is further found that:

(a) Carrying out the purposes of the act may necessitate agreements with private sector entities and with other public entities. It is the policy of this state to encourage such public-private and intergovernmental cooperation;

(b) The purposes of the act will best be carried out by affording to local housing agencies of this state the maximum amount of flexibility, responsibility, and discretion. Therefor, in carrying out the purposes of the act, such agencies shall be presumed to possess necessary powers and legal prerogatives which will enable them to carry out their purposes;

(c) Adequately serving persons who are eligible for assistance under the act may be possible only if the income of local housing agencies is supplemented by income derived from providing housing to persons who are not eligible for such assistance; and

(d) Improved sources of financing must be made available to local housing agencies and by local housing agencies to the private sector of the economy to enable such agencies and private enterprise to increase the production of new housing and to conserve and preserve the supply of existing housing that is affordable for rental or sale to persons of low and moderate income;

(11) This state and its public agencies should be involved to a significant degree in the provision of decent, safe, sanitary, and affordable housing within safe, livable neighborhoods for its residents. It is the policy of this state to cooperate and to encourage all of its public agencies to cooperate with local housing agencies in order to facilitate, to the maximum extent feasible, the planning, development, and operation of decent, safe, and sanitary housing that is affordable to persons of low and moderate income;

(12) Adverse social conditions and crime problems, including drug-related crime problems, exist within this state and in some local housing agency developments. All reasonable and practicable steps should be taken to mitigate adverse social conditions and to lessen the effects of drug and crime problems on residents of local housing agency developments. Local housing agencies

should possess reasonable power and authority to establish and implement policies and to take all reasonable actions appropriate to mitigate adverse social conditions and to eliminate drug and crime problems in their developments; and

(13) While it is the goal of this state to provide access to decent, safe, sanitary, and affordable housing to all of its residents, persons accepting assistance under the act shall, by such acceptance thereof, recognize their responsibilities to the local housing agencies providing such assistance and to other persons living in their vicinity. Accordingly, local housing agencies should be permitted to impose and enforce occupancy standards and requirements that are typical of those applicable in standard rental agreements.

Source: Laws 1999, LB 105, § 2.

71-1574 Act; purposes.

The purposes of the Nebraska Housing Agency Act are:

(1) To remedy the shortage of decent, safe, and sanitary housing affordable to persons of low and moderate income, to provide opportunities to secure such housing to all such persons, to preserve existing supplies of such housing, and to create, administer, and operate programs to increase and maintain access to decent, safe, and sanitary rental housing and home ownership upon terms affordable to such persons;

(2) To encourage the development, redevelopment, rehabilitation, and preservation of safe, livable neighborhoods containing housing that is affordable to persons of low and moderate income, including mixed-income developments, and to reduce where feasible high residential concentrations of impoverished persons;

(3) In connection with the provision of affordable housing and related activities authorized under the act, to eliminate or ameliorate conditions of blight and physical deterioration in public facilities and the residential infrastructure;

(4) To provide housing, rental, and other assistance to persons of low and moderate income and assistance to properties and entities in accordance with the provisions of the act and, subject to standards and procedures adopted by the local housing agency, to authorize the provision by local housing agencies of supportive services and programs of every kind and description to advance the social, educational, and economic well-being and the economic and social self-sufficiency of persons receiving housing assistance under the act so as to create wholesome living environments, eliminate long-term poverty, encourage gainful employment, develop social and economic self-sufficiency, including living independently of housing assistance, and enhance personal responsibility on the part of such persons;

(5) To increase intergovernmental cooperation and the use of consortia and intergovernmental partnerships for the development of affordable housing and suitable neighborhoods;

(6) To encourage the use of entrepreneurial methods and approaches and to stimulate and increase private sector initiatives and joint public-private sector initiatives by local housing agencies in carrying out the purposes and provisions of the act;

(7) To increase the availability, from both public and private sector sources, of financing for the purchase of dwellings and the financing for home improvements, repairs, and rehabilitation at rates and upon terms that are affordable to persons of low or moderate income and to increase the availability of sources of equity and other financing for the development and operation by local housing agencies and private sector entities of decent, safe, and sanitary rental housing that is affordable to persons of low and moderate income; and

(8) In carrying out the purposes described in this section, to vest in local housing agencies reasonable responsibility, authority, and discretion.

Source: Laws 1999, LB 105, § 3.

71-1575 Terms, defined.

For purposes of the Nebraska Housing Agency Act:

(1) Affiliate means any corporation, entity, partnership, venture, syndicate, or arrangement in which a local housing agency participates by holding an ownership interest or participating in its governance, including both controlled and noncontrolled affiliates;

(2) Affordable housing means dwelling units that may be rented or purchased, as the case may be, by persons of eligible income and qualifying tenants, with or without government assistance;

(3) Agreement means a contract or other legal relations with another party, whether public or private;

(4) Area of operation means the geographical area within which a local housing agency may own or operate housing developments as described in section 71-1588;

(5) City means an incorporated city or village;

(6) Commissioner means a person serving on the governing board of a local housing agency, including any person identified under prior law as a member of a housing authority;

(7) Community facilities means real and personal property suitable for recreational, educational, health, or welfare purposes, including, but not limited to, buildings, equipment, and parks and other spaces or structures;

(8) Controlled affiliate means any affiliate of a local housing agency (a) in which commissioners, officers, employees, and agents of such agency constitute a majority of the governing body of such entity or (b) in which such agency holds a majority of the ownership interests;

(9) Development or housing development means and includes all dwellings and associated appurtenances, including real and personal property, and all other facilities and improvements of every kind and description which a local housing agency may own or operate or in which it may hold an interest under the provisions of the act; all land upon which such dwellings, appurtenances, and facilities are situated; all work and activities undertaken by a local housing agency or others relating to the creation of such property and all tangible and intangible personal property relating thereto, including all leases, licenses, agreements, and other instruments; and all rights and obligations arising thereunder establishing or confirming ownership, title, or right of use or possession in or to any such property by a local housing agency;

(10) Establishing a housing agency means taking all actions required under sections 71-1576 to 71-1587 to be taken by the governing body of a city or county or, in the case of a regional housing agency, by the governing bodies of all political subdivisions participating therein, for a housing agency to conduct business and to exercise its powers. In the case of a housing agency or housing authority existing on January 1, 2000, established means that such agency has been authorized to conduct business and exercise its powers in accordance with prior law;

(11) Family means a single person or a number of persons that may, but need not, include children, that a local housing agency accepts for occupancy of a dwelling, or to which such agency offers or provides other assistance, as particularly defined in the eligibility and occupancy standards adopted by the agency;

(12) Guest means any person, not a resident of such development, who is present within a development, or any person, not a resident in such dwelling, who is present within a dwelling in a development, as an invitee of or otherwise with the acquiescence or consent of a resident of such development or dwelling, as the case may be;

(13) Hold an interest means ownership, control of, or participation in an arrangement with respect to a development by a local housing agency or any affiliate thereof;

(14) Household means a family as defined in subdivision (11) of this section;

(15) Housing agency or agency means and includes both a local housing agency established pursuant to sections 71-1576 to 71-1580 and a regional housing agency established pursuant to sections 71-1581 to 71-1587. Reference in any prior or other law to housing authority is deemed to refer to housing agency. Wherever the context requires or permits, housing agency or agency includes controlled affiliates of a housing agency;

(16) Local housing agency or agency means a public body, corporate and politic, previously established or to be established by a city or a county pursuant to the authority provided in the act, exercising necessary and essential governmental functions for the purposes stated in the act in matters of state-wide concern, although its operations are local in nature. A local housing agency shall be a political subdivision of this state, independent from the city or county which established or establishes it or which may appoint some or all of its commissioners. Any reference in the act to a local housing agency includes a housing agency or a regional housing agency, unless the context clearly otherwise requires. The term local housing agency also includes any housing authority established under prior law;

(17) Mixed-finance development means a development that is financed both by funding derived from the private sector and funding provided by the government that is permitted to be used for the development of affordable housing;

(18) Mixed-income development means a housing development intended to be, and which in fact is, occupied both by persons of eligible income and by other persons, and if such other persons are living in a development constructed or acquired and substantially occupied after January 1, 2000, the incomes of such other persons at initial occupancy shall not exceed one hundred percent of the median income in the county in which the development is located;

(19) Noncontrolled affiliate means an affiliate in which a local housing agency participates that is not a controlled affiliate;

(20) Person includes a family;

(21) Persons of eligible income means:

(a) With respect to state or federally funded activities or developments, individuals or families who meet the applicable income requirements of the state or federal program involved, if any such state or federal income requirements are applicable, and, if none are so applicable, then individuals or families who meet the requirements of subdivision (b) of this subdivision; and

(b) With respect to activities and developments other than those to which subdivision (a) of this subdivision is applicable, individuals or families who, in the determination of the local housing agency, lack sufficient income or assets, taking into account all resources available to such individuals or families from whatever source derived or reasonably derivable, to enable them, without undue hardship or governmental financial assistance, to purchase or rent, as the case may be, decent, safe, and sanitary dwellings of adequate size, except that the income of such families shall not exceed eighty percent of the area median income for families of like size;

(22) Public agency means and includes any: (a) County, city, village, or township; school, drainage, tax, improvement, or other district; local housing agency; department, division, or political subdivision of this state or another state; housing agency, housing finance agency, or housing trust of this state or another state; and other agency, bureau, office, authority, or instrumentality of this state or another state; (b) board, agency, commission, division, or other instrumentality of a city or county; and (c) board, commission, agency, department, or other instrumentality of the United States, or any political subdivision or governmental unit thereof;

(23) Qualifying tenants means persons described in subdivision (21)(b) of this section and individuals and families whose income does not exceed one hundred twenty-five percent of the maximum income standard applicable under subdivision (21)(b) of this section;

(24) Regional housing agency means a public body, corporate and politic, and a governmental subdivision of this state, formed by two or more cities, two or more counties, or a combination of cities and counties, pursuant to the authority provided in sections 71-1581 to 71-1587, exercising necessary and essential governmental functions for the purposes stated in the act in matters of statewide concern, although its operations are local or regional in nature. It is a political subdivision of this state, independent from political subdivisions of this state which established it or which may appoint some or all of its commissioners;

(25) Representative means a commissioner, officer, employee, or agent of a local housing agency; and

(26) Resident means a person residing in a development of a housing agency pursuant to an agreement with such agency.

Source: Laws 1999, LB 105, § 4.

71-1576 Authority established under prior law; existence and actions; how treated.

Any local housing authority established under any prior Nebraska law relating to housing authorities and in existence on January 1, 2000, shall have continued existence as a housing agency under the Nebraska Housing Agency Act and shall thereafter conduct its operations consistent with the act. All property, rights in land, buildings, records, and equipment and any funds, money, revenue, receipts, or assets of an authority shall belong to the agency as successor. All obligations, debts, commitments, and liabilities of an authority shall become obligations, debts, commitments, and liabilities of the successor agency. Any resolution by an authority and any action taken by the authority prior to January 1, 2000, with regard to any project or program which is to be completed within or to be conducted for a twelve-month period following January 1, 2000, and which resolution or action is lawful under Nebraska law as it exists prior to January 1, 2000, shall be a lawful resolution or action of the successor agency and binding upon such successor agency and enforceable by or against such agency notwithstanding that such resolution or action is inconsistent with, not authorized, or prohibited under the provisions of the act. All commissioners of such agency and all officers, legal counsel, technical experts, directors, and other appointees or employees of such agency holding office or employment by virtue of any such prior law on January 1, 2000, shall be deemed to have been appointed or employed under the act.

Source: Laws 1999, LB 105, § 5.

71-1577 Local housing agency; created; when.

In each city and county of this state which has not previously established a housing agency or authority, there is hereby created a local housing agency. Such agency shall not be deemed to be established under the Nebraska Housing Agency Act, nor shall it be authorized to conduct any business or exercise any of its powers, unless and until the governing body of the city or county declares by resolution or ordinance that a need exists for such a local housing agency to function in such city or county and finds that there exists a shortage of decent, safe, and sanitary housing in such city or county that is available and affordable to all residents regardless of income.

Source: Laws 1999, LB 105, § 6.

71-1578 Local housing agency; resolution or ordinance; effect.

In order for a city or county to establish a local housing agency which may conduct business and exercise its powers, the governing body of such city or county desiring to establish such agency shall adopt a resolution or ordinance declaring that there is a need for a local housing agency in such city or county because there exists a shortage of decent, safe, and sanitary housing in such city or county that is affordable to all residents thereof, regardless of income. No further action or findings shall be necessary. Upon the adoption of such resolution or ordinance, the local housing agency shall be established and shall have perpetual existence unless dissolved in accordance with law.

Source: Laws 1999, LB 105, § 7.

71-1579 Local housing agency; name.

Each local housing agency established pursuant to the Nebraska Housing Agency Act shall adopt, within or together with the resolution or ordinance required under section 71-1578, a name for all legal and operating purposes.

The name so adopted shall include a reference to the geographic locus of the agency and such other name or identifier as the governing body establishing the agency shall determine. A local housing agency established under prior law may adopt a name consistent with this section by resolution or ordinance adopted by at least two-thirds of such agency's entire board of commissioners and approved by the governing body of the city or county establishing such agency.

Source: Laws 1999, LB 105, § 8.

71-1580 Local housing agency; evidence of establishment.

A duly certified copy of the resolution or ordinance establishing a local housing agency shall, in any proceeding in which such evidence may be required, be conclusive evidence that such agency has been properly established and is authorized to transact business and exercise its powers under the Nebraska Housing Agency Act.

Source: Laws 1999, LB 105, § 9.

71-1581 Regional housing agency; resolution or ordinance to establish.

Any two or more cities, two or more counties, or any combination of cities and counties may, by resolution or ordinance of their separate governing bodies, establish a regional housing agency by adopting a joint resolution or ordinance declaring that there is a need for a regional housing agency to provide decent, safe, and sanitary housing that is affordable to persons of low and moderate income residing in a multijurisdictional area and that this need would be more efficiently served by the establishment of a regional housing agency.

Source: Laws 1999, LB 105, § 10.

71-1582 Regional housing agency; resolution or ordinance; effect.

Upon the adoption of a resolution or ordinance, as provided in section 71-1581, by two or more cities or counties, a regional housing agency shall be established, and except as otherwise provided in the Nebraska Housing Agency Act, such regional housing agency shall have perpetual existence unless dissolved in accordance with law.

Source: Laws 1999, LB 105, § 11.

71-1583 Regional housing agency; name.

Each regional housing agency established pursuant to the Nebraska Housing Agency Act shall adopt, within or together with the resolution or ordinance required under section 71-1581, a name for all legal and operating purposes. The name so adopted shall include a reference to the geographic locus of the agency and such other name or identifier as the governing bodies establishing the agency shall determine. A regional housing agency established under prior law may adopt a name consistent with this section by resolution or ordinance adopted by at least two-thirds of such agency's entire board of commissioners and approved by the governing bodies of all political subdivisions establishing such agency.

Source: Laws 1999, LB 105, § 12.

71-1584 Regional housing agency; evidence of establishment.

A duly certified copy of the resolution or ordinance establishing a regional housing agency shall, in any proceeding in which such evidence may be required, be conclusive evidence that such agency has been properly established and is authorized to transact business and exercise its powers under the Nebraska Housing Agency Act.

Source: Laws 1999, LB 105, § 13.

71-1585 Regional housing agency; additional members; procedure.

After a regional housing agency has been established, any additional city or county may elect to participate as a member of such regional housing agency upon adoption of a resolution or ordinance to such effect containing, in substance, the findings provided in section 71-1581, if a majority of the existing commissioners of such regional housing agency and all participating political subdivisions, by action of their respective governing bodies, consent to such additional member or members.

Source: Laws 1999, LB 105, § 14.

71-1586 Regional housing agency; withdrawal; conditions; effect.

Any participating city or county may withdraw from participation in the regional housing agency by resolution or ordinance of its governing body. Any withdrawal from participation shall be subject to, and may occur only pursuant to, the following conditions:

(1) The regional housing agency has no bonds, notes, or other obligations outstanding or adequate provision for payment of such bonds, notes, or other obligations, by escrow or otherwise, has been made. Past performance without breach or default of an obligation secured only by one or more developments or the income thereof shall be deemed to be adequate provision;

(2) The withdrawing city or county has made adequate provision for the performance of all of its outstanding obligations and responsibilities as a participant in the regional housing agency;

(3) The withdrawing city or county has given six months' written notice to the regional housing agency and all other cities and counties participating therein; and

(4) The commissioner or commissioners appointed by the withdrawing city or county shall be deemed to have resigned as of the date upon which the withdrawal is effective. Vacancies on the board of commissioners created by withdrawal of a city or county shall be filled in such manner as the cities and counties remaining as participants shall agree.

Notwithstanding the withdrawal of any participating city or county, the legal title to and operating responsibility for any development located outside the area of operation of the regional housing agency remaining after such withdrawal has occurred shall continue to be vested in the regional housing agency unless a different arrangement is made.

Source: Laws 1999, LB 105, § 15.

71-1587 Regional housing agency; become local housing agency or dissolve; when.

If only one city or county remains as a participant in any regional housing agency, such regional housing agency shall become the local housing agency of the remaining city or county at the discretion of its governing body, or such regional housing agency shall be dissolved and its assets and liabilities transferred to another existing housing agency or to a city or county or other public agency in the manner provided for dissolution of a local housing agency under sections 71-15,108 to 71-15,111.

Source: Laws 1999, LB 105, § 16.

71-1588 Area of operation; effect on jurisdiction.

(1) The area of operation of a local housing agency shall be, depending upon the classification of the political subdivision establishing the agency, one of the following:

(a) In the case of a local housing agency established by a city, the agency's area of operation shall be the city and the area within ten miles from the territorial boundaries thereof. For purposes of this subdivision, home county means the county in which the city establishing the local housing agency is situated. Depending upon the geographical location of the city, an area of operation may include portions of one or more counties. It may also include areas lying within the territorial boundaries of cities outside the city establishing the local housing agency. In order to resolve territorial conflicts, the following rules shall apply:

(i) In the case of the local housing agency's home county, it may operate outside of the area described in subdivision (a) of this subsection in the unincorporated areas of the home county without the need for the county's consent unless the home county has established its own local housing agency. If the home county has established a local housing agency, then the city's local housing agency may so operate outside the area described in this subdivision only with the consent of the county board;

(ii) In the case of incorporated areas of the home county, the local housing agency may only operate within the territorial boundaries thereof by consent of the other city and its local housing agency, if any;

(iii) In the case of unincorporated portions of counties other than the local housing agency's home county, it may operate only with the consent of the county board, regardless of whether the other county has established a local housing agency;

(iv) In the case of incorporated areas within other counties, it may operate only with the consent of the governing body of any city incorporating such areas and, if the other city has also established its own local housing agency, also with the consent of the other local housing agency; and

(v) Notwithstanding any other provision of this section, a local housing agency may, subject to the limitations stated in subdivision (28) of section 71-15,113, provide rental assistance to persons residing outside the agency's area of operation as defined in this section;

(b) In the case of a local housing agency established by a county, the agency's area of operation shall be all of the county except that portion which lies within the territorial boundaries of any city in which a local housing agency has been established;

(c) In the case of a regional housing agency, the agency's area of operation shall be an area equivalent to the total areas of operation which the local housing agencies, if created separately by political subdivisions establishing the regional housing agency, would have when aggregated. The area of operation of a regional housing agency shall not include any area which lies within the territorial boundaries of any city or county in which a local housing agency has been established and which city or county is not a participant in the regional housing agency. The local housing agency of the city or county and the governing body of the city or county may consent to the operation of one or more developments by the regional housing agency within the city's or county's territorial boundaries; and

(d) Whether due to changes in the boundaries of cities or counties which have established local housing agencies, or the establishment of new local housing agencies, or for any other reason, territories may exist that include the area of operation of two or more local housing agencies. Such areas shall be areas of concurrent jurisdiction. No local housing agency whose area of operation includes an area of concurrent jurisdiction shall construct, acquire, or develop any new housing development within the area of concurrent jurisdiction except upon sixty days' prior written notice to all other local housing agencies existing within such area of concurrent jurisdiction. The notice shall specify the location, size, and general nature of the proposed new development. Any local housing agency receiving the notice shall have thirty days to send written objections thereto to the local housing agency sending the notice and proposing the new development. If written objections are timely made, the local housing agency proposing the new development shall not proceed unless and until both agencies have made a good faith effort to resolve their differences and, failing such resolution, the proposing local housing agency shall submit the matter to the governing body of the city or county in which the proposed new development is planned to be located. The governing body, after allowing both local housing agencies to be heard, shall decide whether the new development shall be constructed, acquired, or developed by the local housing agency proposing such action.

(2) Any housing development established by a housing agency pursuant to law shall continue to be maintained and operated by the housing agency so establishing the development or its designee unless the development is conveyed to another housing agency or to a city, county, or other public agency or is otherwise disposed of in accordance with law.

(3) Notwithstanding the area of operation as provided in this section, all local housing agencies shall have the jurisdiction and authority to cooperate and contract with all other local housing agencies and other public agencies within this state and any public agencies of any other state, with the federal government, and with any person or entity, public or private, and wherever located, in order to carry out the purposes of the Nebraska Housing Agency Act. Such cooperation may include, but shall not be limited to, activities and operations conducted with the agreement of any public agency. The area of operation of a local housing agency shall be deemed to include any other area or areas within any city or county, regardless of location, with respect to which the city or county within whose boundaries such area or areas lie agrees to allow the local housing agency to operate.

Source: Laws 1999, LB 105, § 17.

71-1589 Debts and liability; responsibility.

Except to the extent such city or county or this state may expressly elect to undertake such liability, neither any city or county with respect to which a local housing agency is established, nor any city or county participating in a regional housing agency, nor the state, nor any other public agency of this state shall be responsible for the debts or liabilities of any local housing agency or regional housing agency.

Source: Laws 1999, LB 105, § 18.

71-1590 Taxation of property; Indian housing authorities; payments in lieu of taxes.

(1) The real and personal property of a local housing agency and any wholly owned controlled affiliate thereof used solely (a) for the administrative offices of the housing agency or wholly owned controlled affiliate thereof, (b) to provide housing for persons of eligible income and qualifying tenants, and (c) for appurtenances related to such housing shall be exempt from all taxes and special assessments of any city, any county, the state, or any public agency thereof, including without limitation any special taxing district or similar political subdivision. All other real and personal property of the housing agency or wholly owned controlled affiliate thereof shall be deemed to not be used for a public purpose for purposes of section 77-202 and shall be taxable as provided in sections 77-201 and 77-202.11. Property owned jointly by a housing agency or its wholly owned controlled affiliates with other nongovernmental persons or entities shall be exempt from such taxes and assessments to the extent of the ownership interest which the housing agency and its wholly owned controlled affiliates hold in the property and to the extent the property is used solely to provide housing for persons of eligible income and qualifying tenants. Nothing in this section shall be deemed to preclude a housing agency and its wholly owned controlled affiliates from entering into an agreement for the payment of all or any portion of any special assessments which might otherwise be assessed except for the exemption created by this section.

(2) A housing agency may agree to make payments in lieu of all taxes or special assessments to the county within whose territorial jurisdiction any development of such housing agency or its controlled affiliates is located, for improvements, services, and facilities furnished by the city, county, or other public agencies, for the benefit of such development. Nothing contained in this section shall be deemed to require such an agreement by a local housing agency, and in no event shall the amounts payable by the housing agency exceed the amounts which, except for the exemption provided in this section, would otherwise be payable under regular taxes and special assessments for similar properties referred to in subsection (1) of this section. All payments in lieu of taxes made by any such housing agency shall be distributed by the county to all public agencies in such proportion that each public agency shall receive from the total payment the same proportion as its property tax rate bears to the total property tax which would be levied by each public agency against property of the housing agency if the same were not exempt from taxation.

(3) The property of Indian housing authorities created under Indian law shall be exempt from all taxes and special assessments of the state or any city, village, or public agency thereof. In lieu of such taxes or special assessments,

an Indian housing authority may agree to make payments to any city, village, or public agency for improvements, services, or facilities furnished by such city, village, or public agency for the benefit of a housing project owned by the housing authority, but in no event shall such payments exceed the estimated cost to such city, village, or public agency of the improvements, services, or facilities to be so furnished. All payments made by any such housing authority in lieu of taxes, whether such payments are contractually stipulated or gratuitous voluntary payments, shall be distributed among the cities, villages, or public agencies within which the housing project is located, in such proportion that each city, village, or public agency shall receive from the total payment the same proportion as its ad valorem tax rate bears to the total ad valorem tax rate which would be levied by each city, village, or public agency against the properties of the Indian housing authority if the same were not exempt from taxation. For purposes of this section, (a) Indian housing authority means an entity that is authorized by federal law to engage or assist in the development or operation of low-income housing for Indians and which is established by the exercise of the power of self-government of an Indian tribe and (b) Indian law means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States Secretary of the Interior.

Source: Laws 1999, LB 105, § 19; Laws 2000, LB 1107A, § 1.

71-1591 Property; exempt from judicial process.

Except to the extent a local housing agency or its controlled affiliates may otherwise expressly agree, all real and personal property of a local housing agency and its controlled affiliates shall be exempt from execution, levy, and sale for the payment of debt or otherwise pursuant to any judicial or other process.

Source: Laws 1999, LB 105, § 20.

71-1592 Agency representatives; exempt from licensing requirements; when.

All representatives of a local housing agency, acting within the scope of carrying out the business and conducting the affairs of a local housing agency, shall be exempt from all licensing requirements imposed by any law with respect to the sale, rental, or management of real property or the improvement or development thereof, including requirements imposing any fee or charge.

Source: Laws 1999, LB 105, § 21.

71-1593 Applicability of Administrative Procedure Act and procurement, operation, and disposition of property provisions.

The following provisions of law, and any regulations relating thereto, shall not apply to a local housing agency unless the legislation imposing such requirements is expressly and specifically applicable to local housing agencies or the local housing agency expressly elects to be governed by such legislation or regulations:

(1) The Administrative Procedure Act; and

(2) Any law, resolution, ordinance, or regulation governing or otherwise applicable to the procurement of goods and services, or to the acquisition,

operation, or disposition of property by public agencies of this state, including any requirements for delivery of payment or performance bonds by contractors.

Source: Laws 1999, LB 105, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

71-1594 Local housing agency; commissioners; appointment.

When the governing body of any city or county, as the case may be, has determined by resolution or ordinance as set forth in section 71-1578 that it is expedient to establish a local housing agency: (1) In the case of cities, the chief elected official of such city shall appoint at least five and not more than seven adult persons; and (2) in the case of counties, the county board shall appoint at least five and not more than seven adult persons, and all such persons shall be residents of the area of operation of the agency. If the selection of a resident commissioner is required under section 71-15,104, then at least one such person shall be a resident commissioner selected as provided in such section. Such persons so appointed shall constitute the governing body of the local housing agency and shall be called commissioners.

Source: Laws 1999, LB 105, § 23.

71-1595 Commissioners; powers; quorum; executive committee.

(1) The powers of each local housing agency shall be vested in its commissioners in office. A majority of the commissioners shall constitute a quorum of the agency for the purpose of conducting its business and exercising its powers and for all other purposes. Except for any matter with respect to which the resolution or ordinance creating the agency or its bylaws requires a higher number or proportion of votes, action may be taken by the agency upon the vote of a majority of the commissioners present and voting.

(2) Housing agencies that have twelve or more commissioners may, by resolution or bylaw, establish an executive committee of at least five commissioners. The committee shall have such powers over the management or operation of such housing agency as the commissioners of such agency shall specify and declare in the resolution establishing the executive committee.

Source: Laws 1999, LB 105, § 24.

71-1596 Commissioners; appointment; procedure.

When commissioners are appointed or reappointed by the chief elected official of a city or county, such appointments or reappointments shall be referred to the governing body of such city or county for confirmation or denial by such governing body, and such governing body shall confirm or deny any such appointment or reappointment.

Source: Laws 1999, LB 105, § 25.

71-1597 Regional housing agency; commissioners; appointment.

When the governing bodies of two or more political subdivisions have determined by resolution or ordinance pursuant to section 71-1581 to establish and participate in a regional housing agency, the chief elected officials of such political subdivisions or, if no such official exists for a participating political subdivision, then the governing body thereof, shall appoint adult persons who

shall be residents of the area of operation of the regional housing agency. Such persons so appointed shall constitute the governing body of the regional housing agency and shall be called commissioners. The number of commissioners who shall be appointed by each participating political subdivision shall be as agreed upon by the participating political subdivisions.

Source: Laws 1999, LB 105, § 26.

71-1598 Commissioners; terms.

In the case of local housing agencies, the commissioners who are first appointed shall be designated to serve for terms of one, two, three, four, and five years, respectively, from the date of their appointment, but thereafter commissioners shall be appointed for terms of five years. In the case of housing agencies when the appointing authority has elected to have more than five commissioners as provided in section 71-1594, or has elected to add one or two commissioners to a presently existing housing agency, the sixth commissioner who is first appointed shall be designated to serve for a term of four years, and the seventh commissioner who is first appointed shall be designated to serve for a term of five years, from the date of his or her appointment, but thereafter the commissioners shall be appointed for terms of five years.

Source: Laws 1999, LB 105, § 27.

71-1599 Commissioners; vacancies.

All vacancies shall be filled for the unexpired terms. A vacancy shall be filled by the same authority and in the same manner as the previous commissioner whose position has become vacant was appointed.

Source: Laws 1999, LB 105, § 28.

71-15,100 Certificate of appointment or reappointment.

A certificate of the appointment or reappointment of any commissioner shall be filed with the secretary or clerk of the governing body making or confirming the appointment or reappointment, and such certificate shall be conclusive evidence of the proper appointment of such commissioner.

Source: Laws 1999, LB 105, § 29.

71-15,101 Commissioner; qualifications; requirements.

Every commissioner shall be a resident of the area of operation of the housing agency which he or she has been appointed to serve. However, if after appointment a commissioner ceases to reside in the local housing agency's area of operation, his or her term of office shall automatically terminate and a successor shall be appointed to fill such vacancy in the manner provided in sections 71-1594 to 71-15,105. Any commissioner who ceases to reside within the area of operation of the local housing agency in which such commissioner serves shall immediately so inform the board of commissioners of the agency and the appointing authority of his or her change in residence. No person who has been convicted of a felony shall be eligible for appointment or service as a commissioner.

Source: Laws 1999, LB 105, § 30.

71-15,102 City of the metropolitan class or county; commissioner; requirements.

(1) In the case of a city of the metropolitan class, at least one commissioner shall be a member of a racial minority.

(2) In the case of a county, not more than three members of a housing agency shall be residents of the same incorporated community within the county.

Source: Laws 1999, LB 105, § 31.

71-15,103 Commissioner; city representative; required; when.

The governing body of any city in which a housing agency has been or may be created may appoint one of its members to serve as one of the five commissioners of such housing agency for such term as the governing body may determine. Notwithstanding any other provision of the Nebraska Housing Agency Act, it shall not be considered a conflict of interest if such person so appointed as a commissioner votes on any matter involving the city. In the event that the governing body of the city intends that a commissioner's appointment is made with the intention that such commissioner represent the city, then his or her certificate of appointment shall so state. In the event that any such commissioner so appointed and designated shall cease to serve as a member of the governing body of a city, then his or her term of office shall automatically terminate and a successor shall be appointed to fill the vacancy in the manner provided in sections 71-1594 to 71-15,105.

Source: Laws 1999, LB 105, § 32.

71-15,104 Resident commissioner; selection; procedure.

(1) Each new housing agency created under the Nebraska Housing Agency Act, and within one hundred twenty days after January 1, 2000, each existing housing agency, shall include among the commissioners constituting the governing body of each local housing agency at least one commissioner who shall be known as a resident commissioner. For purposes of this section, resident commissioner means a member of the governing board of a local housing agency whose eligibility for membership is based upon such person's status as a recipient of direct assistance from the agency except as otherwise provided in this section.

(2) Within sixty days after January 1, 2000, or within thirty days after any vacancy in the office of a resident commissioner, every local housing agency shall notify any resident advisory board or other resident organization and all adult persons directly assisted by such agency to the effect that the position of resident commissioner is open and that if any such person is interested in being considered as a candidate for the position, such person should notify the local housing agency, in writing, within thirty days of the person's willingness to be considered and to serve in the position.

(3) The resident commissioner shall be selected, either by an election or by appointment, as follows:

(a) The housing agency may hold an election, allowing each adult direct recipient of its assistance to vote by secret written ballot, at such time and place, or through the mail, as such agency may choose, all to be conducted within thirty days after the receipt of names of candidates as provided in

subsection (2) of this section. The candidate receiving the most votes shall serve as resident commissioner.

(b) In the event that the housing agency decides not to hold an election, the names of all persons interested who have notified the housing agency of their interest in so serving shall be forwarded to the mayor or to the county board, as the case may be, and the resident commissioner shall be appointed from the list of names, as provided in section 71-1594, subject to confirmation as provided in section 71-1596. In the case of a regional housing agency, the regional board of commissioners shall make such an appointment from among the persons interested in such position.

(c) In the event that no qualified person has submitted to the local housing agency his or her name as being interested as a candidate for the position, then the mayor, county board, or regional housing agency, as the case may be, shall fill the position from among all adult persons receiving direct assistance from the agency subject to confirmation, in the case of cities and counties, pursuant to section 71-1596. If a local housing agency owns less than three hundred low-income housing units (which, for purposes of this subdivision, does not include units of housing occupied by persons assisted under any rental assistance program) and the housing agency has received no notification of interest in serving as a resident commissioner as provided in this section, no resident commissioner shall be required to be selected.

Source: Laws 1999, LB 105, § 33.

71-15,105 Commissioner; removal; procedure.

(1) A commissioner of a local housing agency may be removed for neglect of duty, misconduct in office, or conviction of any felony by the chief elected official of the city or county appointing the commissioner, or if no chief elected official exists, then by the governing body. A commissioner of a regional housing agency may be removed for any of such grounds by the governing body of the city or county that originally appointed the commissioner.

(2) The chief elected official or the governing body, as the case may be, which seeks to remove a commissioner shall send a notice of removal to such commissioner, which notice shall set forth the charges against him or her. Unless within ten days from the receipt of such notice the commissioner files with the clerk or secretary of the city's or county's governing body a request for a hearing before the governing body, the commissioner shall be deemed removed from office. If a request for hearing is so filed, the governing body of the city or county, as the case may be, shall hold a hearing not sooner than ten days after the date a hearing is requested, at which hearing the commissioner shall have the right to appear in person or by counsel and the governing body shall determine whether the removal shall be upheld. If the removal is not upheld by the governing body, the commissioner shall continue to hold his or her office.

(3) All actions taken by a board of commissioners shall be presumed valid unless otherwise shown by clear and convincing evidence.

Source: Laws 1999, LB 105, § 34.

71-15,106 Officers; executive director; employees.

The commissioners of each housing agency shall elect a chairperson and vice-chairperson from among the commissioners and shall have power to employ an executive director who shall serve as ex officio secretary of the local housing agency. The agency may also employ legal counsel or engage the attorney of the city or county served by the agency for such legal services as the agency may require unless such employment or engagement will result in an ethical or legal violation. The agency may employ accountants, appraisers, technical experts, and such other officers, agents, and employees as the agency may require and shall determine their qualifications, duties, compensation, and terms of office. A local housing agency may delegate to one or more of its agents or employees such powers and duties as it may deem proper.

Source: Laws 1999, LB 105, § 35.

71-15,107 Commissioner; expenses.

A commissioner shall receive no compensation for his or her services but shall be entitled to reimbursement for necessary expenses, including travel expenses, incurred in connection with the discharge of his or her duties on the same basis as provided in sections 81-1174 to 81-1177.

Source: Laws 1999, LB 105, § 36.

71-15,108 Local housing agency; dissolution; conditions.

Any local housing agency may by written resolution elect to dissolve, except that no such dissolution or any transfer of property pursuant to dissolution shall occur unless the following conditions are met:

(1) The governing body of the city or county which established the local housing agency so dissolving has consented thereto;

(2) The dissolving agency has designated another local housing agency or another city, county, or public agency of this state, which may be the city or county for which the agency was formed, as the transferee of its assets and liabilities in dissolution;

(3) The local housing agency, city, county, or other public agency receiving such property or assets and the political subdivision which established it consent thereto by resolution or ordinance; and

(4) All obligees of bonds or other evidences of indebtedness of such transferring or dissolving agency or the trustees for such obligees or the federal government if the bonds or other obligations are secured by any contract right pursuant to a contract between the transferring agency and the federal government have consented thereto in writing or as otherwise provided in the contracts. No such transfer shall in any way diminish or impair the obligations of any transferring agency.

Source: Laws 1999, LB 105, § 37.

71-15,109 Local housing agency; dissolution; transfer of rights, property, and liability.

Within a reasonable time subsequent to approval by all necessary parties of a local housing agency's resolution to dissolve, the agency shall transfer its assets and liabilities to the transferee designated in the resolution. Upon the transfer of any of the agency's property, the receiving local housing agency, city, county, or other public agency shall have all right, title, and interest in and to such

property and all duties and obligations arising out of the transfer of such property as the transferring agency had. Upon dissolution and transfer, all rights, contracts, agreements, obligations, and property, real and personal, of such transferring agency shall be in the name of, and vest in, such receiving local housing agency, city, county, or other public agency and all obligations of such transferring local housing agency shall be the obligations of such receiving local housing agency, city, county, or other public agency. All rights and remedies of any person against such transferring local housing agency may be asserted, enforced, and prosecuted against such receiving local housing agency, city, county, or other public agency to the same extent as they might have been asserted, enforced, and prosecuted against such transferring local housing agency.

Source: Laws 1999, LB 105, § 38.

71-15,110 Local housing agency; dissolution; effect on area of operation.

After any dissolution and transfer, notwithstanding anything contained in section 71-1588, the area of operation of the receiving local housing agency shall include, nonexclusively, the area of operation of the transferring local housing agency.

Source: Laws 1999, LB 105, § 39.

71-15,111 Regional housing agency; dissolution; procedure.

A regional housing agency desiring to dissolve may do so in the same manner as provided in sections 71-15,108 and 71-15,109, except that consent of all participating cities and counties shall be required and the transfer of property and assets of the regional housing agency upon dissolution may be effected either to a single transferee or to multiple transferees, as the agency shall determine, subject to approval by the participating political subdivisions.

Source: Laws 1999, LB 105, § 40.

71-15,112 Local housing agency; general powers.

(1) A local housing agency shall possess all powers necessary, convenient, or desirable in carrying out the purposes of the Nebraska Housing Agency Act, exercising any power provided in the act, and engaging in any activity related to furthering the purposes of the act. Such powers shall include, but shall expressly not be limited to, the powers enumerated in this section and section 71-15,113 or stated elsewhere in the act or in other applicable law.

(2) The powers enumerated in the act may be exercised singly or in any combination. The enumeration of any power shall not require, expressly or by implication, that any local housing agency is required to exercise such power.

Source: Laws 1999, LB 105, § 41.

71-15,113 Local housing agency; powers enumerated.

In addition to any other express, constructive, or implied powers existing under applicable law, a local housing agency shall have the following powers, which may be exercised singly or in any combination, the enumeration of which shall not be construed to limit the powers of any local housing agency to the powers so enumerated:

(1) To have perpetual existence unless terminated by proper authority as provided by law;

(2) To sue and, subject to the limitations, privileges, and immunities provided by applicable law, be sued;

(3) To adopt a seal and to alter such seal from time to time;

(4) To adopt, amend, repeal, and restate bylaws;

(5) To adopt, promulgate, and enforce rules and regulations related to carrying out the purposes of the local housing agency and exercising its powers and to amend or repeal such rules and regulations from time to time;

(6) To enter into, execute, and perform contracts, instruments, and agreements of every kind and description within or without its area of operation except where otherwise expressly provided in furtherance of the purposes of the Nebraska Housing Agency Act and in connection with the exercise of any of its powers;

(7) To issue bonds and other debt instruments as provided in sections 71-15,114 to 71-15,121 and to secure the repayment of such bonds and debt instruments as provided in subdivision (24) of this section;

(8) Subject to the limitations elsewhere provided in the act, to guarantee any indebtedness or performance of any controlled affiliates or other public bodies of this state. The housing agency shall not guarantee the indebtedness or performance of any other party, except that the housing agency may create a special limited fund for the purposes provided in section 71-15,131;

(9) To enter into and perform interagency and intergovernmental agreements of every kind and description; and to act in consortium with, as agent or manager for, or pursuant to agreement or contract with other local housing agencies and any and all state, federal, and local public agencies to carry out the purposes of the act and to exercise any of its powers;

(10) To form and operate nonprofit corporations and other affiliates of every kind and description, which may be wholly or partially owned or controlled, for carrying out the purposes of the act and in connection with the exercise of any of the powers of a local housing agency;

(11) To enter into agreements of every kind and description in furtherance of the purposes of the act and in connection with the exercise of any of the powers of a local housing agency. Consistent with the limitations upon their powers set forth in sections 71-15,122 to 71-15,129, local housing agencies may participate in agreements with persons and for-profit entities whose purpose is solely that of pecuniary gain, as well as with nonprofit entities and persons who seek no pecuniary gain. The participation of a local housing agency in any arrangement with other persons or entities, including for-profit persons and entities, shall not cause any activity engaged in by the agency to be characterized as proprietary nor deprive the agency of any privilege or immunity otherwise existing under law;

(12) Pursuant to approval of the local housing agency's board of commissioners, acting through one or more of its commissioners or other designees, to conduct examinations and investigations with respect to any matter relating to the purposes of the act and to make available to public agencies and officials and the public all findings, conclusions, and recommendations resulting from such examinations and investigations; to subpoena and compel the attendance of witnesses and the production of documents, books, records, papers, electron-

ic and other data, and things; to issue commissions for the examination of witnesses who are outside this state, are unable to attend a hearing, or are excused from such attendance and to issue commissions for the examination of documents, books, records, papers, electronic and other data, and things outside this state; and to administer oaths and receive sworn or unsworn testimony or other proofs at public or nonpublic hearings;

(13) To invest or cause to be invested any funds held as reserves or sinking funds and any sums not required for immediate disbursement in connection with the operations of the agency, its developments, and its programs in property or securities in any manner allowable by law with respect to funds of this state or any public agency of this state, except that if any funds are pledged as security for a debt and the debt or security instrument specifies the permitted investments, such debt or security instrument provision shall control the permitted investments of such funds; to cooperate with this state or any public agency of this state with respect to investing the housing agency's funds; to enter into agreements and contracts with respect to the investment of its funds upon such terms and conditions as the agency deems reasonable and appropriate; and to purchase the agency's own bonds or other securities at such price as the agency shall in its discretion determine to be acceptable, except that no funds of an agency shall be placed in investments which the agency believes at the time of investment are highly speculative or involve a high degree of foreseeable risk;

(14) To conduct studies, assessments, and analyses of living conditions and affordable housing and community development and redevelopment needs and the means and methods through which unsatisfactory living conditions may be improved and affordable housing and community development and redevelopment needs may be met; to participate in the planning processes conducted by units of local government having jurisdiction over the agency's area of operation and to make recommendations with respect to the provision of decent, safe, and sanitary dwelling accommodations to persons of eligible income and the improvement of the social and economic conditions affecting such persons; to evaluate the supply and adequacy of financing available for the development and rental of affordable housing and for the purchase of decent, safe, and sanitary dwelling accommodations by persons of eligible income; and to identify the means and methods through which adequate sources of financing for such purposes may be developed and maintained;

(15) To plan, prepare, carry out, develop, construct, acquire, improve, reconstruct, renovate, rehabilitate, enlarge, reduce, alter, manage, own, lease, and operate housing, housing projects or developments, or any portions of housing projects or developments;

(16) To finance an agency's developments, operations, and other activities in such manner, utilizing such public or private source or sources of revenue, and employing such financing methods or techniques as the agency deems appropriate; to combine revenue derived from different sources, including equity investments and borrowings, in any combination and proportion as the agency deems appropriate; and to create and to enter into arrangements concerning mixed-finance developments;

(17) To maintain, repair, and replace all housing developments, any portions thereof, and any facilities and improvements contained therein or associated therewith;

(18) Subject only to the limitations contained in sections 71-15,122 to 71-15,129, to lease or rent any dwellings, facilities, or other real or personal property owned, controlled, or possessed by the agency, or with respect to which the agency has contractual rights permitting such lease or rental, for such terms, upon such conditions and lease terms, and in exchange for such rentals as the agency may from time to time in its discretion determine; to establish rents in such manner and in such amounts as the agency may deem appropriate, including, but not limited to, rents based upon family income, determined with such adjustments and exclusions as the agency deems appropriate, minimum rents, flat rents, graduated rents, rent ranges, and maximum rents, any of which may vary among the agency's developments; and to establish any other standards and conditions relating to rentals that the agency may deem appropriate;

(19) To acquire title, long-term and short-term leasehold interests, possessory rights, options upon, cooperative interests in, or any other interest in or relating to land, dwellings, facilities, or any other real or personal property by purchase, gift, grant, bequest, devise, lease, contract, or any other manner or arrangement; to acquire any such property or any interest therein through the exercise of the power of eminent domain as provided in subdivision (39) of this section; to take over or lease and manage any housing development or undertaking in which a local government or the state or federal government has an interest; and to transfer, donate, sell, lease, exchange, convey, assign, or otherwise dispose of any of its property or any interest therein to any person, organization, or entity, either public or private, nonprofit or for-profit; and in such regard:

(a) A local housing agency may sell or lease any real or personal property, or any interest therein, with or without public bidding, as the agency in its sole discretion may deem appropriate. Any acquisition or disposition of property or any interest therein may occur upon such terms and conditions and in exchange for such prices, or without consideration, as the agency shall deem appropriate, if such actions are taken in furtherance of the purposes of the act and subject to the limitations contained in sections 71-15,122 to 71-15,129; and

(b) At and subsequent to an acquisition of occupied property, a local housing agency may permit existing tenants therein to remain in occupancy upon such terms and conditions and for such periods as the agency shall deem appropriate, notwithstanding that such tenants do not qualify as persons of eligible income;

(20) To develop, acquire, own, lease, and operate properties and facilities that are nonresidential in character which are used (a) for the agency's office, administrative, management, or maintenance purposes or (b) for educational, governmental, or other public purposes by the agency or others;

(21) To develop, acquire, own, or lease community facilities and to provide such facilities to any public agency or to any person, agency, institution, or organization, public or private, for recreational, educational, health, or welfare purposes for the benefit and use of the local housing agency, for occupants of its dwelling accommodations, persons of eligible income, or elderly or handicapped persons, or for any combination of the persons listed in this subdivision, and which facilities may also serve the general public and the provision of such community facilities may be with or without charge therefor as in the local housing agency's discretion shall be deemed advisable to promote the public

purposes of the act; to operate or manage community facilities itself, or as agent for any public agency, or for any person, institution, or organization, public or private; and to receive compensation therefor, if any, as the parties may agree;

(22) To carry out plans, programs, contracts, and agreements of every kind and description and to provide grants, guarantees, and other financial assistance to public or private persons or entities, whether nonprofit or for-profit, in order to rehabilitate, maintain, procure, and preserve existing affordable housing stocks in safe, decent, and sanitary condition and to ensure that they remain affordable to persons of eligible income; in connection therewith, to impose or agree to such terms and conditions concerning the term of affordability and other matters as the local housing agency shall deem appropriate;

(23) Subject to the limitations contained in sections 71-15,122 to 71-15,129, to establish and apply such criteria and requirements relating to eligibility for any assistance administered or provided by the agency as the agency shall from time to time determine to be necessary, appropriate, or desirable, including, without limitation, criteria and requirements relating to income, work, or employment, child care, education, job training, and personal or family self-sufficiency; in addition to establishing eligibility, to utilize such criteria and requirements for determining the amount and duration of any assistance to be provided to a beneficiary of such assistance; to establish such exclusions from income for purposes of determining eligibility as the agency shall deem appropriate; and to adopt and administer lawful preferences which may include preferences for working persons and families;

(24) To mortgage, encumber, pledge, convey by trust deed or deed to secure debt, assign, or otherwise grant or consent to a lien or other security interest in, any real or personal property, or any interest therein, owned or held by the agency or in which the agency may hold an interest. Any and all such actions may be taken to provide security for the repayment of borrowed funds, or to secure any guarantee of such repayment or any other performance by the agency, or to secure any payment, guarantee, or performance of any controlled affiliate of the agency in furtherance of the purposes of the act. Any such action shall be upon such terms and conditions as the agency shall in its discretion from time to time determine. The terms and conditions of any mortgage or other instrument granting or consenting to a security interest in property of a local housing agency may include any and all provisions that are deemed necessary by the agency. Such terms and conditions may, among other things, contain a power of sale or right of foreclosure in the event of nonpayment or other default thereunder. All actions taken by a local housing agency authorized in this section shall be consistent with the requirements of section 71-15,130 and shall comply with the requirements of section 71-15,129, where such requirements are applicable;

(25) Subject to the limitations contained in section 71-15,130:

(a) With respect to qualifying tenants:

(i) To make grants or subsidy payments to such persons;

(ii) To act as a guarantor, borrower, fiduciary, or partner in programs which provide financing to such persons;

(iii) To make loans for the purpose of assisting such persons to become homeowners or economically self-sufficient when such persons are not other-

wise qualified, or need such assistance to become qualified, to borrow from private financial institutions;

(iv) To purchase loans made in connection with or encumbering housing for such persons; and

(v) To engage in mortgage rate buy-downs to enhance the availability of mortgage financing that is affordable to qualifying tenants;

(b) To make loans, including acquisition, development, construction, and rehabilitation loans, long-term mortgage loans, and guarantees, to or for the benefit of (i) affiliates of the housing agency or (ii) persons, firms, partnerships, associations, joint ventures, or corporations, public or private, whether non-profit or for-profit, in conjunction with loans provided by private financial institutions, for purposes of developing and constructing housing for persons of eligible income, and for mixed-income housing developments;

(c) For the benefit of qualifying tenants, to enter into and perform contracts, agreements, and arrangements of every kind and description with banks, thrift institutions, credit unions, mortgage bankers, and other lenders to enhance the supply of:

(i) Mortgage financing affordable to such persons; and

(ii) Financing for the production of rental and fee-ownership housing for occupancy for such persons;

(d) To enter into commitments relating to any action authorized under this subdivision;

(e) To charge such fees and impose such repayment terms and other terms and conditions concerning loans, mortgages, guarantees, mortgage subsidies, and other forms of assistance provided by the agency as the agency shall from time to time determine to be necessary or appropriate;

(f) To not lend its credit or otherwise act as a guarantor or surety for the indebtedness or performance of any other person or entity, other than its own controlled affiliates and any other public body of this state, unless the housing agency creates a special limited fund for such purpose as provided in section 71-15,131; and

(g) To not make loans directly, or indirectly through a controlled affiliate, except as provided in subdivision (25) of this section;

(26) To forgive, compromise, or forebear from collecting or enforcing, wholly, partially, temporarily, or permanently, any debt or obligation owed to the local housing agency;

(27) To develop, acquire, own, hold, lease, rent, and operate mixed-income developments, subject to the limitations contained in section 71-15,124;

(28) To administer rental and relocation assistance programs of every kind and description on its own behalf or for others within its area of operation and, to the extent such agency determines such administration to be feasible, in any area elsewhere in this state (a) with respect to which a local housing agency has not been established or (b) with the consent of any local housing agency established to serve the area in which such assistance would be administered; and in connection with the administration of such assistance, to make payments relating to relocations and rent subsidy payments to persons of eligible income or to others, including landlords, on behalf of persons of eligible income. Rental assistance programs administered by a local housing agency

may be tenant-based, in which event the assistance is provided to or for the benefit of the tenant, or such programs may be development-based, in which event the assistance is connected to particular real property;

(29) To purchase and maintain in force bonds and insurance of such types and for such purposes as the agency deems appropriate; to pay premiums and charges for all bonds and policies of insurance purchased by the agency, which bonds and policies of insurance benefiting or insuring the agency shall be in such amounts, contain such terms and conditions, provide for such deductibles, be in such form, and be issued by such companies as the agency shall deem appropriate; and to self-insure and to form and participate in consortia, insurance pools, and other organizations owned or operated by housing agencies for the purpose of insuring such agencies, which consortia, pools, or organizations may include units of government or public agencies other than housing agencies. An agency may purchase and maintain insurance covering the liability of any commissioner, officer, employee, or agent of the agency arising in connection with the agency's business or affairs;

(30) To indemnify any commissioner, officer, or employee of the agency as provided in sections 71-15,143 and 71-15,144;

(31) To provide directly or to contract for, arrange, or cooperate with any person or entity, public or private, including any other public agency, and to utilize its property to provide services or make financial or other contributions of every kind and description to enhance the social and economic well-being of residents of the agency's housing developments and other persons of eligible income; to create and operate accounts for the benefit of persons and families participating in activities and programs for the enhancement of individual and family economic self-sufficiency; and to award scholarships and to conduct or make provision for educational and training programs of every kind and description. Except as otherwise provided in the act, the agency may establish and collect fees or seek reimbursement of costs in connection with the delivery of programs and services;

(32) To borrow money or accept grants and other forms of assistance, financial and otherwise, from the local, state, or federal government in connection with any activity or program furthering the purposes of the act; to take all actions necessary to agree to and fully comply with all requirements and conditions of any state or federal program, grant, loan, or program providing services or assistance to the agency, its programs, its properties and housing developments, and the residents of such housing developments; and to perform all responsibilities and obligations of the agency under any contract or agreement with state or federal authorities and imposed by applicable state or federal law and regulation with respect to such state or federal assistance. Without limiting such provisions, a housing agency may:

(a) Take over, lease, or manage any development or undertaking constructed or owned by the state, or any public agency thereof, or the federal government;

(b) Participate in any plan or program of the state, or any public agency thereof, or the federal government, which provides revenue that may be used for carrying out the purposes of the act, including without limitation any program involving the issuance of bonds, special fees or taxes, or tax credits;

(c) Operate and administer any program providing rental assistance for itself or on behalf of others; and

(d) Comply with such conditions and enter into such mortgages, trust indentures, leases, agreements, or arrangements as may be necessary, convenient, or desirable for the purposes of this subdivision.

It is the purpose and intent of the act to authorize every housing agency to do all things necessary or desirable to secure the financial aid or cooperation of the state and federal governments and their public agencies in the development, maintenance, operation, or disposition of any housing development or other activity undertaken by such housing agency to carry out the purposes of the act;

(33) To borrow money and accept grants and other forms of assistance, financial and otherwise, from private persons or entities in furtherance of the purposes of the act; except as otherwise provided under the act, to agree to and comply with all otherwise lawful requirements and conditions attached to the provision of such assistance; to enter into contracts and agreements of every kind and description with private persons and entities, nonprofit or for-profit, to acquire, create, manage, or operate housing developments including, without limitation, mixed-income developments and housing developments benefiting qualifying tenants, to supply services to the residents of such developments, and otherwise to engage in activities furthering the purposes of the act; and to undertake and perform all responsibilities and obligations of the agency under such arrangements as the agency determines to be necessary or desirable in connection therewith, if the same is not expressly prohibited by the provisions of the act;

(34) To operate and manage housing developments owned or controlled by other housing agencies or public agencies, or other persons or entities, whether private or public and whether nonprofit or for-profit, if the agency determines that such action will further the purposes of the act; to permit and provide for the operation or management of any development in which the agency holds an interest by a person or entity other than the agency, whether public or private and whether nonprofit or for-profit; to administer any program of, or provide services or assistance on behalf of, another housing agency or other public agency; to permit and provide for the management or administration of any of the agency's programs, assistance, or services by another housing agency or other public agency, or by any other person or entity, whether public or private and whether nonprofit or for-profit; and to enter into and perform contracts and agreements relating to any such management or administration upon such terms and conditions and in exchange for such compensation, if any, as the agency deems appropriate;

(35) To construct and operate facilities and programs and to provide services of every kind and description, directly or by contract or agreement with others, for the maintenance of safety and security and the protection of persons and property at or near the agency's developments; and to make, impose, and enforce rules and regulations for such purposes;

(36) To assist in the formation and operation of resident organizations, including resident councils, resident management corporations, and other nonprofit entities controlled and operated by residents of the agency's developments; to donate or loan money to such resident organizations in such amounts and upon such terms and conditions as the agency deems appropriate; to enter into and perform contracts, agreements, and arrangements with resident organizations for the management of housing developments and other facilities and properties and for the administration of programs, assistance, or services,

and for other activities, all with respect to such matters and upon such terms and conditions as the agency may from time to time deem appropriate; and to enter into partnerships, joint ventures, associations, or other arrangements with resident organizations in furtherance of the purposes of the act. Such activities may include the formation and operation of business enterprises that provide employment and other benefits to residents of the agency's housing developments and others as elsewhere permitted under the act;

(37) To develop, acquire, own, renovate, lease, and operate facilities specifically intended to house and otherwise assist homeless persons, including, without limitation, shelters and transitional housing; and to provide other assistance and services to homeless persons. Such housing and other assistance may be provided in such manner, upon such conditions, and for such duration as the local housing agency shall deem appropriate;

(38) By itself or in cooperation with others, including participation in a group or groups, to form, administer, operate, and purchase funds or plans, including, but not limited to, health care, health insurance, retirement or pension, and other plans for the benefit of employees of the local housing agency and their families;

(39) To acquire real property through the exercise of the power of eminent domain in accordance with Chapter 76, article 7. Such power shall only be exercised by the public housing agency and not any affiliate thereof, and property acquired by the exercise of eminent domain shall be used solely for the purpose of providing housing which is wholly owned by the agency or its wholly owned controlled affiliates. Public property may be so acquired only with the consent of the public agency which owns such property. An agency may acquire property through the exercise of the power of eminent domain notwithstanding that, subsequent to such acquisition but not sooner than five years thereafter, the agency may, if it determines such action to be in furtherance of the purposes of the act, convey the property so acquired, or any interest therein, to others, including private nonprofit or for-profit entities;

(40) To expend public funds in any manner related to the exercise of the powers granted to a housing agency under the act and otherwise existing under other applicable law;

(41) To join and participate in organizations and associations and to pay the costs, fees, and dues necessary to initiate and maintain such memberships and to participate in the activities of such organizations or associations;

(42) To grant, donate, or contribute funds, property, or services to others and to enter into arrangements involving the same in such manner and amount as the agency may deem appropriate if the agency determines that such action will benefit residents or other persons of eligible income or will otherwise further the purposes of the act. A housing agency may not make any grant, donation, or contribution to any candidate for political office, any campaign committee or other organization advocating the election of a political candidate, or any political action committee or other organization whose principal activity involves political action or advocacy; and

(43) To establish special or limited funds or reserves as security for or to facilitate or implement any of the powers specified in the act.

Source: Laws 1999, LB 105, § 42.

71-15,114 Housing agency; borrow money and issue bonds; liability.

(1) A housing agency may borrow money, incur indebtedness, and issue bonds, notes, or other instruments from time to time in its discretion upon such terms and conditions as it shall deem necessary or desirable for any purpose permitted under the Nebraska Housing Agency Act, including paying or retiring debt previously incurred by it. This section, without reference to other statutes of the state, shall constitute full and complete authority for the authorization, issuance, delivery, and sale of bonds, notes, or other instruments under the act, and such authorization, issuance, delivery, and sale by the housing agency shall not be subject to any conditions, restrictions, or limitations imposed by any other law. For purposes of the act, obligations of a housing agency shall include all bonds, notes, or other instruments that are evidences of indebtedness. Such obligations may also include, but not be limited to, borrowings in anticipation of the receipt of proceeds from the sale of bonds, notes, or other instruments.

(2) Neither the commissioners of a housing agency nor any person executing the bonds shall be liable personally on any bonds, notes, or other instruments by reason of the issuance thereof.

(3) The obligations of a housing agency, including any bonds, notes, or other evidences of indebtedness, shall not be a debt of the city, the county, the state, or any public agency thereof, and the obligations shall so state on their face. Except as the state, a city, a county, or any other public agency shall otherwise expressly agree, and further except as the obligations of a housing agency, duly authorized by such agreement, shall specifically and directly otherwise provide, neither the state nor any city, county, or public agency other than the housing agency issuing the bonds shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of such issuing housing agency pledged to the payment thereof or any guarantor or insurer thereof.

(4) The obligations of a housing agency shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction.

Source: Laws 1999, LB 105, § 43.

71-15,115 Housing agency; obligations; issuance and sale.

(1) Obligations of a housing agency shall be authorized by a resolution adopted by a vote of a majority of the board of commissioners.

(2) The obligations of an agency, including bonds, notes, and other evidences of indebtedness, may be issued in one or more series and shall bear such dates, mature at such times, bear interest at such fixed or variable rate or rates, be in such denominations, be in such form, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments and at such places, and be subject to such terms of redemption, with or without premium, as such resolution, its trust indenture, or mortgage may provide.

(3) The obligations of an agency, including bonds, notes, and other evidences of indebtedness, may be sold at public or private negotiated sale, without any public advertisement, at par, or at any discount or premium, as the resolution authorizing them provides. A housing agency issuing obligations may enter into

such agreements and arrangements with third parties for the marketing of its obligations as it shall deem appropriate.

Source: Laws 1999, LB 105, § 44.

71-15,116 Obligations; validity and enforceability.

(1) In case any of the representatives of the housing agency whose signatures appear on any obligations cease to be commissioners, officers, or agents of the issuing agency before the delivery of such obligations, the signatures shall nevertheless be valid and sufficient for all purposes, the same as if the representatives had remained in office until delivery. Any law to the contrary notwithstanding, obligations issued pursuant to the Nebraska Housing Agency Act are fully negotiable unless otherwise provided in the resolution authorizing the same.

(2) No suit, action, or proceeding involving the validity or enforceability of any obligation of a housing agency may be commenced after delivery of the obligation. In any suit, action, or proceeding involving the validity or enforceability of any obligation of a housing agency or the security therefor, any such obligation reciting in substance that it has been issued by the housing agency to aid in financing a development or activity furthering the purposes of the act is conclusively deemed to have been issued in accordance with the act, and any development financed thereby and with respect to which such recitation is made shall be conclusively deemed to have been planned, located, and constructed in accordance with the act.

Source: Laws 1999, LB 105, § 45.

71-15,117 Issuance of obligations or incurring debt; housing agency; powers.

In connection with the issuance of obligations or the incurring of debt and in order to secure the payment of such obligations or debt, a housing agency may:

(1) Pledge all or any part of its gross or net rents, fees, or revenue to which its right then exists or thereafter comes into existence;

(2) Mortgage its real or personal property, then owned or thereafter acquired;

(3) Covenant and agree against pledging all or any part of its returns, fees, and revenue, or against mortgaging all or any part of its real or personal property to which its right or title then exists or may thereafter come into existence, or against permitting or suffering any lien on such revenue or property;

(4) Covenant and agree with respect to limitations on its right to sell, lease, or otherwise dispose of any development or any part thereof;

(5) Covenant and agree as to what other or additional debts or obligations may be incurred by it;

(6) Covenant and agree as to the obligations to be issued and as to the issuance of such obligations and as to the use and disposition of the proceeds thereof;

(7) Provide for the replacement of lost, destroyed, or mutilated obligations;

(8) Covenant and agree against extending the time for the payment of its obligations or interest thereon;

(9) Redeem the obligations and covenant for their redemption and provide the terms and conditions thereof;

(10) Covenant and agree, subject to the limitations of the Nebraska Housing Agency Act, as to the rents and fees to be charged in the operation of a development or developments, the amount to be raised each year or other period of time by rents, fees, and other revenue, and as to the use and disposition to be made thereof;

(11) Create or authorize the creation of special funds for money held for construction or operating costs, debt service, reserves, or other purposes, and covenant as to the use and disposition of the money held in such funds;

(12) Prescribe the procedure, if any, by which the terms of any contract with holders of obligations may be amended or abrogated, the minimum required amount of obligations that must be held by holders consenting to an amendment or abrogation in order to authorize the same, and the manner in which such consent may be given;

(13) Covenant and agree as to the use, maintenance, and replacement of its real and personal property, the insurance to be carried thereon, and the use and disposition of insurance money;

(14) Covenant and agree as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;

(15) Covenant, agree, and prescribe as to events of default and terms and conditions upon which any or all of its obligations become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(16) Vest in a trustee or trustees or the holders of obligations or any proportion of them the right to enforce the payment of the obligations or any covenants securing or relating to the obligations;

(17) Vest in a trustee or trustees the right, in the event of a default by the agency, to take possession of and use, operate, and manage any housing development or part thereof, to collect the rents and revenue arising therefrom, and to dispose of such money in accordance with the agreement of the housing agency with the trustees;

(18) Provide for the powers and duties of a trustee or trustees and to limit their liabilities;

(19) Provide the terms and conditions upon which the trustee or trustees or the holders of obligations or any proportion of them may enforce any covenant or rights securing or relating to the obligations;

(20) Purchase letters of credit, bond insurance, or any other credit enhancement device that would establish or increase marketability of its obligations;

(21) Pay its obligations with income, revenue, or loan repayments of the development financed with the proceeds of such obligations, or with such proceeds together with a grant from the federal government, the state, or any public agency thereof, in aid of such development;

(22) Exercise all or any part or combination of the powers granted in this section;

(23) Make covenants and agreements other than and in addition to the covenants expressly authorized in this section, of like or different character; and

(24) Make any covenants and agreements and do any acts and things necessary or convenient or desirable in order to secure its obligations, or, in the

absolute discretion of the agency, to assure the marketability of its obligations, although the covenants, acts, or things are not enumerated in this section.

Source: Laws 1999, LB 105, § 46.

71-15,118 Obligee; rights.

An obligee of a housing agency, in addition to all other rights conferred on the obligee, subject only to any contractual restrictions binding upon the obligee, may:

(1) By mandamus or other action or proceeding for legal or equitable remedies, compel the housing agency and its representatives to perform each and every term, provision, and covenant contained in any contract of the housing agency with or for the benefit of such obligee, and require the carrying out of all covenants and agreements of the housing agency and the fulfillment of all duties imposed upon the housing agency by the Nebraska Housing Agency Act; and

(2) By action or proceeding, enjoin any acts or things which may be unlawful or which violate any rights of the obligee.

Source: Laws 1999, LB 105, § 47.

71-15,119 Obligee; powers conferred.

A housing agency, by its resolution, trust indenture, mortgage, lease, or other contract, may in its discretion elect to confer upon any obligee holding or representing a specified amount in bonds or other instruments or holding a lease such rights as the housing agency determines are necessary or desirable in order to generate revenue or which it otherwise deems to be in its best interests and in furtherance of its purposes. Such rights, which shall be exercisable upon the happening of an event of default as defined in such resolution or instrument, are cumulative of all rights otherwise conferred and may, in the agency's discretion, include any one or more of the following rights, which shall be enforceable by suit, action, or proceeding in any court of competent jurisdiction:

(1) The right to cause possession of any housing development or any part thereof to be surrendered to an obligee;

(2) The right to obtain the appointment of a receiver for any housing development or part thereof and of the rents and profits therefrom. If a receiver is appointed, the receiver may enter and take possession of the housing development or any part thereof and operate and maintain it and collect and receive all fees, rents, revenue, or other charges thereafter arising therefrom and shall keep such money in separate accounts and apply them in accordance with the obligations of the housing agency as the court directs; and

(3) The right to require the housing agency to account as if it were the trustee of an express trust.

Source: Laws 1999, LB 105, § 48.

71-15,120 Investments in obligations authorized.

The state and all public agencies therein, all banks, bankers, trust companies, savings banks and institutions, investment companies, insurance companies, insurance associations, and other persons carrying on a banking or insurance business, and all executors, administrators, guardians, trustees, and other

fiduciaries may legally invest any money or funds belonging to them or within their control in any obligations issued by a housing agency, and such obligations shall be authorized security for all public deposits. It is the purpose of the Nebraska Housing Agency Act to authorize any of such persons to use any funds owned or controlled by them, including, but not limited to, sinking, insurance, investment, retirement, compensation, pension, and trust funds and funds held on deposit for the purchase of any such obligations. Nothing contained in the act shall be construed as relieving any person, firm, or corporation from any duty or exercising reasonable care in selecting securities. The provisions of the act shall apply notwithstanding any restrictions on investments contained in other laws.

Source: Laws 1999, LB 105, § 49.

71-15,121 Tax status of bonds and other obligations.

(1) All bonds, notes, certificates, and other instruments evidencing indebtedness of a housing agency or any controlled affiliate thereof are deemed to be issued for an essential public and governmental purpose and shall be free of taxation of any kind by this state and its public agencies unless the agency issuing such bonds, notes, certificates, or other instruments shall elect that they be taxable. Any such election shall apply only to the specific issue of bonds, notes, certificates, or other instruments with respect to which such election is expressly made.

(2) All bonds, notes, certificates, and other instruments evidencing indebtedness or conveying equity participations issued by a local housing agency or any controlled affiliate thereof are deemed to be issued for an essential governmental purpose.

(3) A local housing agency may issue bonds, notes, certificates, or other instruments evidencing indebtedness on behalf of others to carry out any purpose authorized by the Nebraska Housing Agency Act.

Source: Laws 1999, LB 105, § 50.

71-15,122 Revenue; how treated.

The operation of housing developments and the other activities permitted to be undertaken by a local housing agency under the Nebraska Housing Agency Act, and all income, fees, or revenue derived or generated therefrom and belonging to such local housing agency, are for public uses and purposes, are not used or held for profit, and are governmental functions of state concern. No income, fees, or revenue received by a local housing agency, from whatever source, shall be used as a source of revenue for any city or county establishing the local housing agency or for any other public agency, nor shall any net income, fees, or net revenue be considered profit, but all of the same shall be utilized in the furtherance of the maintenance and enhancement of an adequate supply of decent, safe, and sanitary housing that is affordable to persons of eligible income and for other purposes contemplated by the act.

Source: Laws 1999, LB 105, § 51.

71-15,123 Establishment of rental rates.

A local housing agency shall conduct its affairs in accordance with sound financial and business practices, taking into account the nature of its activities

and intended purpose. The agency shall operate its housing developments in a manner calculated to enable the agency to fix rentals for dwelling accommodations for persons of eligible income at low rates consistent with its acting in a fiscally responsible manner and providing affordable, decent, safe, and sanitary dwelling accommodations for such persons. In this regard, a local housing agency may, in connection with establishing rents charged to persons of eligible income, take into account the sums necessary:

(1) To pay when due all indebtedness of the agency;

(2) To pay all administrative and other costs of operating the agency's developments and programs of assistance;

(3) To pay the administrative and other costs of the maintenance, rehabilitation, renovation, repair, and replacement of the agency's developments and other property;

(4) To otherwise carry out its purposes under the Nebraska Housing Agency Act, including acquiring or creating additional housing developments and acquiring or improving property for other purposes authorized under the act, including community facilities, mixed-income developments, and all other facilities and developments authorized under the act;

(5) To pay the costs of insurance, including the costs of claims, liabilities, losses, and other expenses incurred in connection with any self-insurance program;

(6) To provide funds for all required payments in lieu of taxes;

(7) To make all payments required under and otherwise fully perform the agency's obligations under any contract, agreement, or arrangement entered into by the agency, including without limitation those required in connection with any partnership or joint venture entered into by the agency;

(8) To perform the terms of any commitment or guarantee issued or given by the agency;

(9) To provide a reasonable return on the value of the property so as to enable the housing agency to continue to fulfill its duties, including, but not limited to, the acquisition of additional housing developments, land acquisition, and the acquisition or construction of buildings, equipment, facilities, or other real or personal property for public purposes, including parks or other recreational, educational, welfare, or community facilities within its area of operation;

(10) To accommodate economic factors which affect the financial stability and solvency of the agency's developments and programs;

(11) To pay the cost of actions occasioned by natural disasters and other emergencies; and

(12) To create and maintain operating and capital reserves that are reasonable and adequate to ensure the agency's ability to make all payments referred to in this section and any other matter with respect to which the agency, in its discretion reasonably exercised, determines that the creation and maintenance of a reserve is appropriate. Nothing in this section shall be construed to limit the amount which a housing agency may charge for nondwelling facilities or for dwelling facilities that are not rented to persons of eligible income.

Source: Laws 1999, LB 105, § 52.

71-15,124 Mixed-income developments; restrictions; requirements.

(1) With respect to any mixed-income development that is constructed or acquired after January 1, 2000, and is solely owned by a local housing agency, not more than sixty percent of the dwelling units in such development shall be occupied by persons who are not persons of eligible income, and no person occupying such a development shall have an income at initial occupancy which exceeds one hundred percent of the median income in the county in which the development is located. This authority is granted only if the agency has made a determination that such housing is an appropriate component for providing safe and sanitary housing for persons of eligible income.

(2) With respect to any mixed-income development that is not solely owned by a local housing agency, the proportion of the development that is intended to be affordable to persons of eligible income shall be equal to or greater than the proportion of financial resources for the development which are provided by the local housing agency. The proportion shall be determined in accordance with such reasonable method as shall be adopted by the agency. The proportion may be based upon a proportion of dwelling units, bedrooms, square footage, or any other criteria deemed reasonable and appropriate by the local housing agency. The determination of such proportion shall take into account any special benefits accruing to an agency by virtue of its status as such, including, among other things (a) the capital value of all subsidies and other assistance provided by the agency or by other public sources on behalf of the agency, (b) tax exemptions available because of the agency's participation, and (c) interest savings attributable to tax-exempt financing or to below market interest rates that are available because of the participation of the local housing agency or the presence in the development of dwelling units to be occupied by persons of eligible income.

(3) A local housing agency may determine the period during which any unit shall be designated for occupancy only by persons of eligible income. Dwelling units in a mixed-income development that are designated for occupancy by persons of eligible income need not be particular units that are permanently so designated, and the physical location of the units so designated may change from time to time.

Source: Laws 1999, LB 105, § 53.

71-15,125 Income, surplus, and payments; use.

All income, surplus, and payments received by a local housing agency, or to which such agency shall become entitled, shall be used for carrying out the purposes of the Nebraska Housing Agency Act.

Source: Laws 1999, LB 105, § 54.

71-15,126 Policies and procedures; standards.

A local housing agency shall not apply its policies, rules, procedures, criteria, requirements, and exclusions with respect to eligibility of applicants, granting assistance, or enforcing standards relating to occupancy or continuance of assistance in an arbitrary or capricious manner.

Source: Laws 1999, LB 105, § 55.

71-15,127 Discretionary powers; how construed.

Nothing contained in the Nebraska Housing Agency Act shall create, expressly or by implication, any right, claim, or cause of action in favor of anyone in connection with any failure of a housing agency to exercise any one or more of its discretionary powers.

Source: Laws 1999, LB 105, § 56.

71-15,128 Noncontrolled affiliates; treatment.

Noncontrolled affiliates of housing agencies shall not, by virtue of their affiliation with such local housing agencies, become subject to the laws of this state applicable to public agencies and their governing bodies, including, but not limited to, laws pertaining to public disclosure of records, open meetings, minimum wage rates applicable to government contracts and employees, procurement of goods and services, and laws relating to public employees.

Source: Laws 1999, LB 105, § 57.

71-15,129 Financing; limitations.

No guaranty, other recourse obligation, mortgage, or security instrument, or other recourse instrument, given or entered into by a housing agency in connection with financing the acquisition, creation, modernization, rehabilitation, or replacement of a development which exposes to foreclosure, loss, or levy any property of the housing agency other than the development being acquired, created, modernized, rehabilitated, or replaced with the proceeds of such financing, shall be given or entered into unless the agency's board of commissioners has specifically approved such action by resolution which finds that such action:

(1) Is necessary and essential to acquiring the financing with respect to which such recourse instrument is given or entered into;

(2) Will not unreasonably expose to loss or foreclosure property of the agency other than the development for which such financing will be used;

(3) Is prudent and sound as required under section 71-15,130; and

(4) Is commercially reasonable, taking into account the characteristics of the transaction in which such recourse instrument would be given and its relative benefits and potential costs to the agency.

Source: Laws 1999, LB 105, § 58.

71-15,130 Financial affairs; how conducted.

Local housing agencies shall conduct their financial affairs in a prudent and sound manner.

Source: Laws 1999, LB 105, § 59.

71-15,131 Special limited fund; authorized; restrictions on use.

Neither a housing agency nor any controlled affiliate shall lend its credit to or guarantee or be a surety for the indebtedness or performance of any noncontrolled affiliate or third party, or any other individual or entity other than another public agency of the state, except as provided in this section. The housing agency or any controlled affiliate may establish a special limited fund which shall be segregated from all other funds, assets, and properties of the housing agency or any controlled affiliate and shall be deposited separately

from all other deposits of the housing agency or any controlled affiliate. The special limited fund may be funded only from the rents and revenue of the housing agency or any controlled affiliate or from contributions, grants, or donations from other public or private sources which have been designated for such purpose. Any loan of credit, guarantee, or suretyship to any individual or entity other than another public body of this state shall be limited to the amount of the special limited fund, and neither the general credit nor any other asset or property of the housing agency, any controlled affiliate, the state, or any other public agency of the state shall be liable whatsoever for any such loan of credit, guarantee, or suretyship. Any such loan of credit, guarantee, or suretyship shall only be used for the purposes of expanding the availability of affordable housing to persons of eligible income in accordance with the provisions of the Nebraska Housing Agency Act. No such loan of credit, guarantee, or suretyship shall be valid unless in writing, which writing shall state on its face the limitations contained in this section, including the nonliability of the state and all other public agencies, and the loan of credit, guarantee, or suretyship shall be also subject to such other rules and regulations as the housing agency shall prescribe.

Source: Laws 1999, LB 105, § 60.

71-15,132 Dwelling units; occupancy eligibility.

Except as otherwise provided in the Nebraska Housing Agency Act with respect to mixed-income developments or except as otherwise permitted by law, dwelling units in a local housing agency's developments shall be rented only to households consisting of persons of eligible income at the time of their initial occupancy of such units. Notwithstanding any other provision of law, a local housing agency may allow police officers, elected officials, and maintenance and management employees not otherwise eligible for residence to reside in dwelling units in the housing agency's developments.

Source: Laws 1999, LB 105, § 61.

71-15,133 Plan for selection of applicants.

Each housing agency shall adopt and promulgate fair and equitable policies establishing a plan for selection of applicants. The plan shall include standards for eligibility, procedures for prompt notification of eligibility or disqualification, and procedures for maintaining a waiting list of eligible applicants for whom vacancies are not immediately available. Eligible applicants shall be offered available vacancies as provided in such policies. Such policies and plans may, but shall not be required to, include the following:

(1) A local housing agency may deny a lease, right of occupancy, or any other assistance to any person, including the family or household of such person, if it determines that such person or any member of such person's household (a) has committed any fraud or made any material misrepresentation or omission in connection with any application for assistance or (b) has committed any fraud or made any material misrepresentation or omission in connection with any previous application for any public assistance or in connection with any determination or redetermination of eligibility;

(2) Preferences to give priority to persons displaced by public or private action, to families of veterans and servicemen and servicewomen, to families whose members are gainfully employed, to citizens of the United States or the

state, to disabled persons or elderly persons, and such other preferences, as well as priorities within each preference category, as the local housing agency deems appropriate;

(3) Occupancy standards that provide for offering available units only to families of appropriate size and such other standards relating to occupancy and tenant conduct as the local housing agency deems appropriate; and

(4) Without limiting subdivisions (1) through (3) of this section, the local housing agency may further limit the offering of available units to families of appropriate qualifications in order to comply with state or federal law or regulations or contractual agreements with governmental agencies pursuant to such law or regulations.

Nothing contained in this section shall prevent a housing agency from suspending processing of applications of persons of eligible income unlikely to be offered units within a reasonable time after initial application as determined by the agency or from requiring annual renewal of applications.

Source: Laws 1999, LB 105, § 62.

71-15,134 Discrimination prohibited.

Nothing contained in the Nebraska Housing Agency Act shall limit the ability of any local housing agency to establish and apply different criteria or requirements with respect to admissions and occupancy, to utilize different methods of establishing and charging rents, or to impose different occupancy standards (1) for different developments or portions thereof or (2) with respect to recipients of assistance in any program designed or intended to differentiate between individual recipients on the basis of their circumstances, actions, or characteristics, except that a housing agency shall not discriminate on the basis of race, national origin, or religion.

Source: Laws 1999, LB 105, § 63.

71-15,135 Current occupants; how treated.

Households which are already in occupancy or are receiving assistance but which become ineligible for occupancy or other assistance by reason of income may continue their occupancy or receipt of other assistance at the discretion of the local housing agency for such period, upon such terms and conditions, and, in the case of continued occupancy, in exchange for such rent, but not less than any applicable minimum rent, as the agency shall determine to be appropriate.

Source: Laws 1999, LB 105, § 64.

71-15,136 Lease; terms and conditions.

The local housing agency may require that each household occupying a dwelling unit enter into a lease containing such terms and conditions and for such duration as the agency reasonably deems appropriate. No tenant or lessee of, or recipient of assistance from, a local housing agency shall have any right to the renewal of any lease, tenancy, right of occupancy, or assistance, except as expressly agreed by the agency. All members of the household who are permitted to reside in a dwelling unit must be identified in any lease of a dwelling.

Source: Laws 1999, LB 105, § 65.

71-15,137 Change in household; effect.

In the event of a change in the composition of a tenant household, the local housing agency shall have the authority to determine which member or members of the household are entitled to continued occupancy for the unexpired lease term or periodic tenancy. A local housing agency may adopt such reasonable rules and procedures governing such determinations as it deems appropriate.

Source: Laws 1999, LB 105, § 66.

71-15,138 Termination of tenancy; conditions.

Except as provided in the Nebraska Housing Agency Act, the landlord-tenant relationship, and the termination thereof, is governed by state law applicable to privately owned residential property. Without limiting such provision, a local housing agency may terminate the tenancy of a household or a resident or terminate any other assistance provided by such agency for:

(1) The commission of any fraud or any material misrepresentation or omission on the part of any recipient of assistance or member of a resident household in connection with any application for assistance or any determination or redetermination of eligibility therefor, or in connection with any investigation or determination of the local housing agency regarding compliance by the household with the terms of any lease or the agency's rules and regulations; or

(2) Any other violation of one or more provisions of any lease or agreement with the local housing agency to which a recipient of assistance or a resident is a party or any of the agency's rules or regulations duly promulgated.

Source: Laws 1999, LB 105, § 67.

71-15,139 Termination of tenancy; procedure; recovery of possession of premises; when.

(1) A housing agency may adopt and promulgate reasonable rules and regulations consistent with federal and state laws, rules, and regulations and the purposes of the Nebraska Housing Agency Act concerning the termination of tenancy. Any resident so terminated shall be sent a written notice of termination setting out the reasons for such termination, and any resident served with a notice shall be given the opportunity to contest the termination in an appropriate hearing by the housing agency. A resident may contest the termination in any suit filed by the housing agency in any court for recovery of possession of the premises.

(2) Such notice may provide that if the resident fails to (a) pay his or her rent or comply with any covenant or condition of his or her lease or the rules and regulations of such housing agency, (b) cure a violation or default thereof as specified in such notice, or (c) follow the procedure for a hearing as set forth in the notice, all within the time or times set forth in such notice, the tenancy shall then be automatically terminated and no other notice or notices need be given of such termination or the intent to terminate the tenancy, and upon such termination, and without any notice other than as provided for in this section, a housing agency may file suit against any resident for recovery of possession of the premises and may recover the same as provided by law.

(3) A housing agency may, after three days' written notice of termination and without an administrative hearing, file suit and have judgment against any resident for recovery of possession of the premises if the resident, any member of the resident's household, any guest, or any other person who is under the resident's control or who is present upon the premises with the resident's consent, engages in any drug-related or violent criminal activity on the premises, or engages in any activity that threatens the health, safety, or peaceful enjoyment of other residents or housing agency employees. Such activity shall include, but not be limited to, any of the following activities of the resident, or the activities of any other person on the premises with the consent of the resident: (a) Physical assault or the threat of physical assault; (b) illegal use of a firearm or other weapon or the threat to use an illegal firearm or other weapon; or (c) possession of a controlled substance by the resident or any other person on the premises with the consent of the resident if the resident knew or should have known of the possession by such other person of a controlled substance, unless such controlled substance was obtained directly from or pursuant to a medical order issued by a practitioner authorized to prescribe as defined in section 28-401 while acting in the course of his or her professional practice.

Source: Laws 1999, LB 105, § 68; Laws 2001, LB 398, § 68.

71-15,140 Personal property; rules and regulations.

A housing agency may adopt and promulgate reasonable rules and regulations consistent with the purposes of the Nebraska Housing Agency Act concerning personal property of residents and other persons located in a development of the agency, and if such personal property is not removed from a dwelling unit at the time of the termination of the lease, at the time of vacation or abandonment of the dwelling unit, or at the time of the death of any resident, an agency may remove the same and store such property in a secure location at the resident's risk and expense. If possession of such personal property is not taken by the resident or other person authorized by law to take possession within forty-five days after such termination, vacation, or abandonment and if any storage removal charges remain unpaid, then the housing agency may, at its option, dispose of the personal property in any manner which the authority deems fit. In no case shall any employee or relative of an employee of the housing agency take ownership of such property. No resident or other person shall have any cause of action against the housing agency for such removal or disposition of such personal property.

Source: Laws 1999, LB 105, § 69.

71-15,141 Report; false report; penalty; audits.

(1) Within six months after the end of each fiscal year, each local housing agency shall prepare a report summarizing such agency's activities for the year then ended. The report shall contain financial statements depicting the financial condition of the agency, its assets and liabilities, including contingent liabilities, and the results of its operations for the year then ended. The report shall be approved by the agency's board of commissioners and signed by its chairperson.

(2) The annual report of a local housing agency shall be a public record that is available for inspection and copying by members of the general public at the

offices of the local housing agency. A local housing agency shall also file its annual report with the city or county clerk promptly upon completion thereof. Regional housing agencies shall file annual reports with the appropriate officials of all participating political subdivisions.

(3) Any employee or member of the board of commissioners of a local housing agency who approves, signs, or files an annual report of an agency knowing it is materially false or misleading shall be guilty of a Class II misdemeanor.

(4) The financial statements contained in annual reports of local housing agencies with gross revenue of two hundred fifty thousand dollars or more shall be audited annually. The financial statements of agencies with gross revenue of less than two hundred fifty thousand dollars shall be audited at least biennially. A copy of each audit report shall be filed with the Auditor of Public Accounts within nine months after the end of each fiscal year in which such agency is required to file an audit report or in which an audit report of such agency is prepared. Each local housing agency audit shall be conducted in accordance with generally accepted accounting principles, except that if the agency is a recipient of federal assistance, the audit shall be conducted in accordance with any accounting principles required by the federal government.

Source: Laws 1999, LB 105, § 70; Laws 2003, LB 150, § 1.

71-15,142 Plan for location and boundaries; approval required; federal plans; filing required.

(1) Before any local housing agency shall construct any new development for housing purposes, it shall submit to the governing body of the city or county creating such agency, as the case may be, or to the governing body of the political subdivision which has zoning jurisdiction for the site or sites of such new development, in the case of regional housing agencies, a plan indicating the general location or locations and boundaries of the proposed site or sites for any such development, which plans shall be subject to the approval of such governing body, and such governing body may, in its discretion, submit such plan to the planning department, if any, of the city or county, as the case may be, for that department's comments and recommendations.

(2) Each local housing agency shall file with the governing body of the city or county creating such agency a copy of the five-year plan and annual plan required by section 511 of the federal Quality Housing and Work Responsibility Act of 1998. The plans shall be filed with the governing body within thirty days after the date the plan is filed with the federal Department of Housing and Urban Development.

Source: Laws 1999, LB 105, § 71.

71-15,143 Local housing agency representative; liability.

No representative of a local housing agency shall personally be civilly or criminally liable with respect to any matter or act not directly committed or authorized by such person.

Source: Laws 1999, LB 105, § 72.

71-15,144 Housing agency representative; indemnification.

If any legal action is brought against any representative of any housing agency, whether such person is a volunteer or partly paid or fully paid, based upon the negligent error or omission of such person while in the performance of his or her lawful duties, the housing agency shall defend him or her against such action, and if final judgment is rendered against such person, the housing agency shall pay the judgment in his or her behalf and shall have no right to restitution from such person. A housing agency shall have the right to purchase insurance to indemnify itself in advance against the possibility of such loss under this section, and the insurance company shall have no right of subrogation against the person. This section shall not be construed to permit a housing agency to pay a judgment obtained against the person as a result of illegal acts committed by such person.

Source: Laws 1999, LB 105, § 73.

71-15,145 Effect of local planning, zoning, sanitary, and building laws.

(1) Except as otherwise provided in this section, all developments are subject to the planning, zoning, sanitary, and building laws applicable to the locality in which the development is located.

(2) In order to facilitate development, redevelopment, and other activities in furtherance of the purposes of the Nebraska Housing Agency Act by local housing agencies and their affiliates, a city or county may grant exceptions to the requirements of (a) zoning ordinances and other laws, resolutions, ordinances, and regulations regulating the use, development, and improvement of land or buildings, (b) laws, resolutions, ordinances, and regulations pertaining to historic buildings and structures, and (c) redevelopment plans, comprehensive plans, and other plans governing city or county land use. Any such exceptions shall not compromise essential health and safety standards. The provisions of this section shall be cumulative of, and not in limitation of, any existing laws, resolutions, ordinances, and regulations that permit variances, special exceptions, and other relief from applicable requirements relating to development and improvement of real property.

(3) With respect to matters relating to the purposes of the act, each city or county or regional planning body of the state may, in its planning processes, take into account the recommendations of local housing agencies formed by such city or county, or by the cities and counties affected by the actions of such regional planning body.

Source: Laws 1999, LB 105, § 74.

71-15,146 Records; exempt from disclosure.

Notwithstanding the provision of any other law with respect to the availability of public records for inspection, the following records of a housing agency are exempt from disclosure:

(1) All records in the individual file of a resident, former resident, or applicant for public housing;

(2) All records in the individual file of a resident, former resident, or applicant for public housing in the possession of any landlord or individual providing a dwelling that is in any manner administered by a housing agency;

(3) All lists that identify residents, former residents, and applicants, except that statistical compilations are not exempt unless, by identification of location,

family size, employment, or similar information, a resident, former resident, or applicant may be identified;

(4) The addresses of any dwellings that are assisted, either directly by the action of the housing agency or as a result of the resident's selection, except that statistical compilations are not exempt unless some or all of them may be specifically identified by address as a result of such compilation;

(5) The home address or personal telephone number of any resident, former resident, or applicant;

(6) Communications within a housing agency or between a housing agency and other public agencies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action;

(7) Any information in the possession of the agency concerning the criminal history or other background information pertaining to any tenant or applicant for assistance;

(8) Information submitted to a housing agency in confidence and not otherwise required by law to be submitted, if such information should reasonably be considered confidential and the housing agency has obligated itself in good faith not to disclose the information; and

(9) Any other material or information that is otherwise exempt from disclosure under applicable law.

Source: Laws 1999, LB 105, § 75.

71-15,147 Records; disclosure permitted; when.

A housing agency may provide any of the records described in section 71-15,146 to:

(1) Any recipient to whom disclosure is authorized pursuant to consent by all adult individuals identified in the record which is to be so disclosed;

(2) Such parties as the housing agency deems necessary when the agency determines that the disclosure is essential to the preservation of life, health, or safety;

(3) Anyone as required by a court order;

(4) A landlord or prospective landlord for purposes of enabling the landlord to determine an applicant's suitability for initial tenancy or to determine the suitability for continued tenancy of a person receiving assistance from the agency who is already in occupancy, if such information is pertinent to such suitability determination;

(5) Any applicant, tenant, or recipient of assistance to whom such information relates, or such person's designee or legal representative; or

(6) Any city, county, state, or federal public agency as required by law or agreement.

Source: Laws 1999, LB 105, § 76.

71-15,148 Individual files; examination permitted.

Any applicant or recipient of assistance from a housing agency may examine his or her individual file or files at reasonable times and intervals.

Source: Laws 1999, LB 105, § 77.

71-15,149 Conflict of interest; terms, defined.

For purposes of sections 71-15,149 to 71-15,157:

(1) Housing agency official means any representative of a housing agency or any director, officer, or employee of a resident management corporation or other resident organization who exercises authority or carries out responsibilities in connection with the housing agency's developments or any local government official who exercises authority or carries out responsibilities in connection with the housing agency's developments, including any member of such person's immediate family, any business entity or organization in which such person holds an interest, and any business partner of such person; and

(2) Immediate family includes spouses, children, siblings, and parents and includes stepparents or stepchildren, in-laws, and half sisters or half brothers.

Source: Laws 1999, LB 105, § 78.

71-15,150 Conflict of interest; prohibited acts.

(1) Except as otherwise permitted under the provisions of sections 71-15,149 to 71-15,157, no housing agency official shall own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity that would:

(a) Be or appear to be in conflict with such official's duties relating to the housing agency served by or subject to the authority of such official;

(b) Secure or appear to secure unwarranted privileges or advantages for such official or others; or

(c) Prejudice or appear to prejudice such official's independence of judgment in the exercise of his or her official duties relating to the housing agency served by or subject to the authority of such official.

(2) No housing agency official shall act in an official capacity in any matter in which such official has a direct or indirect financial or personal involvement. The ownership of less than five percent of the outstanding shares of a corporation shall not constitute an interest within the meaning of this section. No housing agency official shall use his or her public office or employment to secure financial gain to such official.

(3) Except as otherwise permitted by the provisions of sections 71-15,149 to 71-15,157, a housing agency shall not, with respect to any housing agency official, during his or her tenure or for a period of one year thereafter, either:

(a) Award or agree to award any contract to such housing agency official or other local government official;

(b) Purchase or agree to purchase any real property from such housing agency official or other local government official, or sell or agree to sell any real property to such housing agency official or other local government official;

(c) Permit any housing agency official to represent, appear, or negotiate on behalf of any other party before the housing agency's board of commissioners or with its other officials or employees;

(d) Employ any commissioner for compensation or otherwise;

(e) Employ any local government official, or any member of such official's immediate family, if such official's duties involve the exercise of authority relating to the housing agency; or

(f) Employ for compensation any member of the immediate family of a housing agency official, if such employment creates the relationship of direct supervisor or subordinate between family members or otherwise creates a real or apparent conflict of interest.

Source: Laws 1999, LB 105, § 79.

71-15,151 Conflict of interest; disclosure required; when.

If (1) a housing agency official becomes involved in an activity or, through inheritance or other involuntary cause or circumstance, acquires an interest that violates any provision of sections 71-15,149 to 71-15,157 or (2) a local government official, after becoming employed by the agency, is requested to act in an official capacity with respect to a matter affecting his or her duties as an employee of the local housing agency, such housing agency or local government official shall immediately and fully disclose in writing to the housing agency's board of commissioners the circumstances giving rise to the conflict of interest. In the case of a local government official, such disclosure shall also be made to the local government served by such official. Upon receipt of any disclosure of actual or potential conflict of interest, a housing agency shall promptly cause such disclosure to be entered in the minutes of the housing agency.

Source: Laws 1999, LB 105, § 80.

71-15,152 Housing agency official; recusal; when.

A housing agency official shall recuse himself or herself from any vote, decision, or other action and shall not directly or indirectly participate in any action or proceeding which involves an actual or potential conflict of interest as described in sections 71-15,149 to 71-15,157, including, but not limited to, any matter:

(1) With respect to which disclosure is required under section 71-15,151;

(2) Involving assistance to, the employment of, or otherwise relating to the personal status of a member of such housing agency official's immediate family;

(3) In which the agency seeks to confer or bestow a special privilege or benefit upon such housing agency official;

(4) Involving an action by the board of commissioners concerning a waiver of any provision of sections 71-15,149 to 71-15,157, which waiver would affect such housing agency official; or

(5) Involving any other action or circumstance prohibited under sections 71-15,149 to 71-15,157 or which otherwise gives rise to a real or apparent conflict of interest.

Source: Laws 1999, LB 105, § 81.

71-15,153 Housing agency official; gifts; prohibited acts.

A housing agency official shall not solicit or accept any gift, gratuity, favor, loan, contribution, service, employment, promise of future employment, or other thing of value from any present or prospective employee of the housing agency, any present or prospective contractor, subcontractor, developer, broker, real estate agent, or any other person or organization in connection with the programs, benefits, or business of the housing agency. This section shall not prohibit the acceptance of gifts from relatives or gifts of nominal value which are not given with the intent to influence a housing agency official in the

conduct of his or her official duties. Housing agencies may establish standards for determining whether or not a gift is of nominal value.

Source: Laws 1999, LB 105, § 82.

71-15,154 Housing agency official; improper use of information.

No housing agency official shall use any information not generally available to the public which he or she acquires in the course of his or her public service for the purpose of securing financial gain for such official or others.

Source: Laws 1999, LB 105, § 83.

71-15,155 Misconduct in office.

Material violation of any provision of sections 71-15,149 to 71-15,157 by a housing agency official shall, unless as otherwise provided in section 71-15,157, constitute misconduct in office.

Source: Laws 1999, LB 105, § 84.

71-15,156 Conflict of interest; rules authorized.

A local housing agency may adopt rules implementing sections 71-15,149 to 71-15,157. Such rules may include the provision for such disciplinary actions in the event of violation of sections 71-15,149 to 71-15,157 as the housing agency's board of commissioners may deem appropriate.

Source: Laws 1999, LB 105, § 85.

71-15,157 Conflict of interest; sections; how construed.

(1) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit a housing agency of a city of the second class or of a village from purchasing or otherwise acquiring any goods or services from a provider of such goods or services owned in whole or in part by a housing agency official if (a) the provider is the sole source for the goods or services within the area of operation of the housing agency, (b) the cost of the goods or services does not exceed five hundred dollars in any one instance, and (c) the provider has not received more than two thousand five hundred dollars from the housing agency in any one calendar year.

(2) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit a housing agency from entering into and performing contracts, agreements, and arrangements with any nonprofit entity or any affiliate, whether for-profit or nonprofit in character, notwithstanding that some or all of the housing agency's representatives or public officials or legislators who exercise functions or responsibilities with respect to a housing agency's developments also serve as directors or in other policymaking positions in such nonprofit entity or affiliate. Such service by housing agency representatives, public officials, or legislators is expressly permitted under the Nebraska Housing Agency Act.

(3) The provisions of sections 71-15,149 to 71-15,157 shall not apply to any general depositary agreement entered into with a bank or other financial institution regulated by the federal government or to utility service for which rates are fixed by a state or local agency. The provisions of sections 71-15,149 to 71-15,157 shall not apply to prohibit any present or former tenant commissioner from acting upon housing agency business affecting residents unless such business directly involves a resident organization with respect to which

such commissioner occupies a policymaking position or serves as a member of the governing board.

(4) Nothing contained in sections 71-15,149 to 71-15,157 shall prohibit service as a commissioner by the chief elected official or any member of the governing body of any city, county, or other public agency which is served by a housing agency.

Source: Laws 1999, LB 105, § 86.

71-15,158 Property and personnel; policies, rules, and procedures; bidding requirements.

(1) Local housing agencies shall adopt policies, rules, and procedures governing the procurement of goods or services, the sale or disposition of agency property, and the management of agency personnel. Such policies, rules, and procedures shall apply to all controlled affiliates of a local housing agency unless the agency, by resolution of its board of commissioners, elects otherwise.

(2) To the extent that federal funds are involved in any procurement by a local housing agency and public bidding or other procedures and conditions are required as a condition of the acceptance of federal financial assistance, a local housing agency shall follow such federal procedures and other conditions in such procurement.

(3) Contracts or awards for housing developments which the local housing agency proposes to construct or cause to be constructed, if the estimated cost is fifty thousand dollars or more, shall be entered into or awarded only after public bidding as provided in this section. This section shall not apply to the procurement of any professional services such as that of an architect, engineer, or legal counsel.

(4) For the construction of new housing developments, the local housing agency, in its discretion, may publish a request for proposals, including a general plan for the purposes and ends to be accomplished by the new development, including, but not limited to, the total number of units desired, any units that are to be specifically designed for the elderly or the handicapped, the unit size, and any other details which the local housing agency deems appropriate for inclusion within the proposed new development or any facilities that are pertinent thereto.

(5) The local housing agency shall advertise for public bids or proposals once a week for two consecutive weeks in a newspaper of general circulation in its area of operation. After sealed bids or proposals are received, the contract shall be awarded to the lowest and best bidder or, if the local housing agency has elected to proceed under subsection (4) of this section, in favor of the proposal that is most commensurate with the published objectives of the local housing agency and is most suitable for the purposes of the Nebraska Housing Agency Act, except that a local housing agency, if it deems it to be in its best interests or necessary or desirable to effectuate the purposes of the act or economy and efficiency in the construction and operation of such housing development, may either reject all bids or proposals and readvertise or elect not to proceed with the development.

(6) The local housing agency may adopt and promulgate rules and regulations governing the qualifications of bidders, the submission of combined bids by two or more contractors, the award and execution of the contract, security,

if any, the execution and performance of the contract, the requirements for making a proposal, and any other matters which the local housing agency deems appropriate.

(7) The local housing agency may, in its discretion, insert a provision in any contract that additional work may be done or materials or supplies furnished or that work or materials may be omitted for the purpose of completing the contract in accordance with any changes, omissions, or additions in the specifications of any such contract. Nothing in this section shall be construed to limit the power of the local housing agency to carry out a project or development or any part thereof directly by the officers, agencies, and employees of the agency or by any public agency or to purchase or to acquire goods, services, materials, equipment, or property by or through any other local housing agency as provided in section 71-15,160 or by any other public agency provided in section 71-15,161. The local housing agency may, in its discretion, insert a provision in any contract regarding labor, including wage rates, safety, and equal employment opportunities, that the local housing agency deems necessary or desirable or as may be required by law.

Source: Laws 1999, LB 105, § 87.

71-15,159 Local housing agency; joint exercise of powers authorized.

In addition to the cooperative action by public agencies through the formation and operation of regional housing agencies authorized under sections 71-1581 to 71-1587, any power, privilege, or authority exercised or capable of being exercised by a local housing agency of this state may be exercised and enjoyed jointly with any other housing agency or other public agency of this state having such power, privilege, or authority and jointly with any public agency of any other state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise or enjoyment.

Source: Laws 1999, LB 105, § 88.

71-15,160 Local housing agency; joint or cooperative powers enumerated.

(1) Any two or more local housing agencies may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes, or other obligations, and giving security therefor, or for planning, undertaking, owning, constructing, operating, or contracting with respect to a housing development or developments located within the area of operation of any one or more of the cooperating agencies. For such purpose an agency may, by resolution, authorize any other local housing agency or agencies so joining and cooperating with it to act on its behalf with respect to any or all of its powers as its agent or otherwise in the name of the agency or agencies so joining and cooperating or in its own name. Any such cooperation which involves fiscal matters, ownership of any real property, or the assumption of the functions of one local housing agency by another local housing agency shall be by written contract, agreement, or arrangement entered into by such cooperating agencies.

(2) Any local housing agency may, by resolution, authorize another local housing agency to exercise its powers within the authorizing agency's area of operation at the same time that the authorizing agency is exercising the same powers.

(3) Any local housing agency may by agreement sell, lease, or otherwise provide any other local housing agency with any goods, supplies, materials, services, equipment, or property upon such terms and for such compensation as the parties shall determine and the same may be purchased, leased, or otherwise acquired without advertisement, appraisal, or public bidding.

(4) Local housing agencies may form, join, and participate in associations, cooperatives, or other entities for the purpose of purchasing goods, supplies, materials, equipment, and services, including, but not limited to, insurance, at prices or rates that may not otherwise be available to individual local housing agencies, and all such purchases and sales may be done without advertisement, appraisal, or public bidding.

Source: Laws 1999, LB 105, § 89.

71-15,161 Public agency; powers.

For the purpose of aiding and cooperating with local housing agencies in the planning, undertaking, construction, or operation of developments providing decent, safe, and sanitary housing that is affordable to persons of eligible income, and otherwise to assist local housing agencies in carrying out any other activities that are authorized under or in furtherance of the purposes of the Nebraska Housing Agency Act, any public agency may, with or without consideration:

(1) Dedicate, sell, convey, or lease any of its property to a local housing agency;

(2) Cause parks, playgrounds, recreational, community, educational, water, sewer, or drainage facilities, or any other works which it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing developments;

(3) Furnish, dedicate, close, pave, install, grade, regrade, plan, or replan streets, roads, roadways, alleys, sidewalks, parking lots, or other places which it is otherwise empowered to undertake;

(4) Plan, replan, zone, or rezone any property over which it has such authority and make exemptions from building regulations, standards, resolutions, and ordinances;

(5) Enter into contracts, agreements, or arrangements which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a local housing agency or the federal government respecting action to be taken by such public agency pursuant to any of the powers granted by the act;

(6) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction, or operation of such housing developments;

(7) Purchase or legally invest in any of the bonds, notes, obligations, or other securities of a local housing agency and exercise all of the rights of any holder of such bonds or other instruments;

(8) In connection with any public improvements made by a public agency in exercising the powers granted in this section, incur the entire expense thereof. Any sale, conveyance, lease, agreement, or arrangement provided for in this section may be made by a public agency without appraisal, public notice, advertisement, or public bidding;

(9) Make donations, grants, or loans to such local housing agency as it shall deem necessary or desirable to promote decent, safe, and sanitary housing that is affordable to persons of eligible income in this state;

(10) Enter into agreements with a local housing agency for payments to it in lieu of taxes as authorized in subsection (2) of section 71-1590;

(11) Agree or arrange that a local housing agency shall manage, operate, administer, or assist in any of the activities authorized in subdivisions (1) through (10) of this section or any program of the public agency or for which the public agency receives funds, from either a federal or state governmental source, or from any other source, whether public or private, for the purpose of providing decent, safe, and sanitary housing affordable to persons of eligible income, to provide shelter, with or without other services, to homeless persons, to remove or rehabilitate unsafe or unsound dwelling structures, or for carrying out any other purpose of the act. Such agreements and arrangements may provide such compensation to a local housing agency for its services as the parties shall determine;

(12) Purchase or lease any goods, services, materials, equipment, or property from a local housing agency for any governmental or proprietary purpose for which the public agency is authorized by law to so acquire, on such terms and for such consideration as the parties shall determine, without advertisement, appraisal, or public bidding;

(13) Allow local housing agencies to purchase or acquire goods, services, materials, equipment, or property through its purchasing agency; and

(14) Upon its own initiative and without the approval of any other public agency or governing body, waive or reduce any charge or fee, including, but not limited to, any charge or fee relating to any permit, license, approval, or environmental or other impact fee, any contribution for capital improvements, and any charge or fee for any service or benefit provided by the public agency.

Source: Laws 1999, LB 105, § 90.

71-15,162 State and public agencies; powers.

The state and all public agencies of this state are authorized to appropriate, lend credit, and make donations to local housing agencies and to agree to make such appropriations, loans, or donations upon such lawful terms and conditions as they shall from time to time deem appropriate.

Source: Laws 1999, LB 105, § 91.

71-15,163 Screening of applicants; powers of public agencies.

(1) Notwithstanding any other provision of law, all public agencies of this state, including state, city, and county law enforcement agencies, shall cooperate with local housing agencies by providing, promptly upon request, information concerning the general background, including, but not limited to, the criminal history, of applicants for assistance or recipients of assistance from local housing agencies. Any such information shall be used by local housing agencies solely for the purpose of screening applicants for suitability for tenancy or for determining continued suitability for assistance or tenancy and shall not be disclosed except in a proceeding challenging a decision by an agency to deny or terminate benefits.

(2) Any person who applies for or accepts assistance provided by a local housing agency shall, by virtue of such application for or acceptance of such assistance, be deemed to have consented to the disclosure of information by public agencies as required by this section.

Source: Laws 1999, LB 105, § 92.

71-15,164 Enforcement of rights; remedies.

(1) All rights of local housing agencies existing under law or under any contract, agreement, or arrangement with any party, including this state or any public agency thereof, shall be enforceable by action brought in the courts of this state.

(2) In connection with enforcement of any right referred to in this section, a local housing agency shall be entitled to relief which may include, without limitation, the award of monetary damages, specific performance, and mandamus and other injunctive relief.

Source: Laws 1999, LB 105, § 93.

71-15,165 Claims and actions; restrictions.

No person or entity not expressly named as a party to a contract entered into by a housing agency shall have any right of action, by virtue of the status of such person or entity as a third-party beneficiary of such contract, or otherwise based upon such contract. Any claim or action in violation of this section shall be absolutely null and void.

Source: Laws 1999, LB 105, § 94.

71-15,166 Act; how construed.

The Nebraska Housing Agency Act shall be construed liberally to effect the charitable and public purposes thereof. The enumeration of specific powers, authorities, or activities in the act shall not operate to restrict the scope of any general grant of power or authority or any description of activities contained in the act or to exclude other powers, authorities, or activities reasonably comprehended in such general grant which are reasonably related to carrying out the purposes of the act.

It is the purpose and intent of the act that the powers of local housing agencies be construed to afford to every agency reasonable responsibility, authority, and flexibility in carrying out the provisions of the act and to maximize the involvement of private sector entities, in cooperation with local housing agencies, in the production and operation of affordable housing. The use of the disjunctive word ''or'' shall be construed to mean ''and'' and the conjunctive word ''and'' shall be construed to mean ''or'' where such construction will result in a broader interpretation of a power. Limitations upon the powers, authorities, and activities of local agencies contained in the act shall be strictly construed.

Source: Laws 1999, LB 105, § 95.

71-15,167 Conflicting provisions; how construed.

To the extent that any provision of the Nebraska Housing Agency Act shall conflict with any provision of law not contained in the act, the act shall prevail with respect to local housing agencies. It is the intention of the Legislature that,

with respect to any subject matter covered by the act, the provisions of the act shall preempt all other laws of this state with respect to the formation, powers, and operation of local housing agencies and the requirements of law applicable thereto.

Source: Laws 1999, LB 105, § 96.

71-15,168 Tort claims; other claims; procedure.

(1) All tort claims against a housing agency shall be governed by the Political Subdivisions Tort Claims Act.

(2) Every person who has any claim against a housing agency, other than a tort claim under subsection (1) of this section, shall file the same, in writing, with the executive director or other person who may be acting as the secretary of such agency. If the claim is in contract, the claim shall state the services provided or articles furnished, as the case may be, and shall show the amount charged and claimed due and unpaid, allowing all just credits. The procedures set forth in this section shall not be applicable to any claim against any agency if the agency advises the claimant in writing that the liability of the agency for such claim, if any, is covered by insurance in whole or in part.

(3) If the claimant is dissatisfied with the disposition of his or her claim, or in the event that such claim is not paid or otherwise satisfied within ninety days after such claim has been filed as provided in this section, the claimant shall request, in writing, a hearing on his or her claim before the board of commissioners of the agency. Such request shall be filed with the chairperson of the agency and shall be made within six months after the filing of the claim as provided by this section. The claimant shall be notified of the time and place of the hearing, and he or she shall have the opportunity to present evidence concerning his or her claim to the board of commissioners. The board of commissioners shall hold such hearing and shall allow, disallow, or otherwise dispose of the claim, as the case may be, with written notice to the claimant, all within six months after the filing of a written request for hearing as provided in this subsection.

(4) This section shall not apply to claims, actions, or proceedings by obligees on bonds of an agency or to claims, actions, or proceedings on notes, guarantees, or other evidences of indebtedness.

(5) The representatives of a housing agency shall not be personally liable as such on its contracts or for torts not committed or directly authorized by them.

Source: Laws 1999, LB 105, § 97.

Cross References

Political Subdivisions Tort Claims Act, see section 13-901.

A tort claim against a housing agency is subject to the Political Subdivisions Tort Claims Act regardless of whether it is covered by liability insurance. Harris v. Omaha Housing Auth., 269 Neb. 981, 698 N.W.2d 58 (2005).

ARTICLE 16
LOCAL HEALTH SERVICES

Cross References

County medical facilities, bonds, see section 23-3501 et seq.
Delegated dispensing permit, public health clinics, see sections 38-2881 to 38-2889.
Disease prevention, see section 71-501 et seq.
Health Care Facility Licensure Act, see section 71-401.
Hospital Authorities Act, see section 23-3579.

Hospital districts, see section 23-3573 et seq.
Nebraska Budget Act, see section 13-501.
Nebraska Local Hospital District Act, see section 23-3528.
Tuberculosis Detection and Prevention Act, see section 71-3601.01.
Vital Statistics Act, see section 71-601.

(a) HEALTH DISTRICTS IN COUNTIES HAVING A POPULATION OF MORE THAN 200,000

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

(a) HEALTH DISTRICTS IN COUNTIES HAVING A POPULATION OF MORE THAN 200,000

71-1601 Public health; counties over 200,000; regulation by single governmental subdivision.

The people in any county having a population of more than two hundred thousand inhabitants may consolidate in the hands of one governmental subdivision the regulation of public health and the remedial care and treatment of the indigent sick people, instead of having each of the several governmental subdivisions, that may be existing therein, separately perform such functions; and they may declare that the regulation of public health as well as the remedial care and treatment of the indigent sick people are for the general welfare of all the people of the state.

Source: Laws 1939, c. 92, § 1, p. 398; C.S.Supp.,1941, § 71-3601; R.S. 1943, § 71-1601.

Cross References

County medical facilities, see section 23-3501 et seq.

71-1602 Health district; territorial limits; how designated.

The territory within and coextensive with any county having a population of two hundred thousand inhabitants or more may become, as hereinafter provided, a health district and shall be legally described as Nebraska Health District No. . . . . .

Source: Laws 1939, c. 92, § 2, p. 398; C.S.Supp.,1941, § 71-3602; R.S. 1943, § 71-1602.

71-1603 Health district; powers.

Each health district formed pursuant to sections 71-1601 to 71-1625 shall be a body corporate. It may sue and be sued, purchase, own, hold and lease real and personal property reasonably adapted for use in performing its functions. In addition to all powers expressly herein conferred, such district shall possess such additional powers as may be reasonably necessary for it to efficiently and economically perform the purposes for which it has been created.

Source: Laws 1939, c. 92, § 3, p. 398; C.S.Supp.,1941, § 71-3603; R.S. 1943, § 71-1603.

71-1604 Health district; creation; petition; election.

In the event qualified voters, within any county having a population of more than two hundred thousand inhabitants, equal in number to ten percent or

more of those voting for the office of Governor at the last preceding election, present to the board of such county a petition praying for the establishment of a health district within and coextensive with such county, it shall be the duty of such county board to submit the question to a vote of the people. Such question may be submitted at either a special election or a general election but must be submitted within ninety days from the filing with the board of the petition herein described. In the event of litigation, either to prevent submission of the question to the people or to compel the county board to call an election, the court hearing the question shall fix the date of the election, if it decides an election shall be held, and said date so fixed shall not be more than ninety days after such court order becomes final.

Source: Laws 1939, c. 92, § 4, p. 398; C.S.Supp.,1941, § 71-3604; R.S. 1943, § 71-1604.

71-1605 Health district; election; laws applicable.

Such election shall be called and conducted as now provided by law for special elections. The ballot shall provide for a vote for or against the proposed health district. The notice of election shall contain a brief description, in not more than two hundred words, of the proposed changes, specifying that the existing property be turned over to the health district by the creation thereof.

Source: Laws 1939, c. 92, § 5, p. 399; C.S.Supp.,1941, § 71-3605; R.S. 1943, § 71-1605.

71-1606 Health district; election; Governor's proclamation; filing.

Upon the canvass of the election returns, the election officials shall certify the returns to the Governor. If a majority of the votes cast shall have been in favor of establishing the proposed health district, then the Governor shall issue a proclamation to that effect. The health districts shall be numbered consecutively by the Governor. The proclamation of the Governor declaring that the health district has been established shall contain a description of the real estate transferred, and a copy shall be filed by the board he creates with the register of deeds in the county.

Source: Laws 1939, c. 92, § 6, p. 399; C.S.Supp.,1941, § 71-3606; R.S. 1943, § 71-1606.

71-1607 Health district; board of health; members; term; vacancy.

The business of each health district shall be managed by a board of five citizens. The term of office of the board members, except as herein otherwise provided, shall begin and end as provided by law for county officers. The first board shall be chosen at the election in which the health district is created. Any resident citizen may file as a candidate for the proposed board any time between the filing of the petition for the establishment of the board and ten days prior to the election thereon. The election officers shall canvass the votes for candidates at the same time the vote is canvassed for the creation of the district, and shall certify to the Governor the five individuals receiving the highest number of votes. At the same time the Governor proclaims the establishment of the health district, he shall proclaim said individuals as the governing board thereof. The term of the two individuals receiving the least votes shall end following the first general county election thereafter; the term of the two individuals receiving the next higher votes shall end following the

second general county election thereafter; and the term of the individual receiving the highest vote shall end following the third general county election thereafter. A successor shall be elected for each member for a term of six years. Such successor shall be nominated and elected in the same manner as county officers on the nonpolitical ballot are chosen. Each board member shall continue in office until his successor is elected and qualified. Each member of the board shall qualify by filing an acceptance with the county clerk of the county in which he or she resides. In case of vacancy for any cause, a majority of the remaining members shall select a successor for the term, or the remainder of the term.

Source: Laws 1939, c. 92, § 6, p. 399; C.S.Supp.,1941, § 71-3606; R.S. 1943, § 71-1607.

71-1608 Health district; political subdivision deemed fully compensated; when.

Each governmental subdivision shall be deemed fully compensated for all real or personal property, possession of which has been turned over to the health district, and for all expense incurred in the organization of the health district, by the assumption and performance by the health district of the duties and obligations of such governmental subdivision in regard to public health and the remedial care and treatment of the indigent sick people.

Source: Laws 1939, c. 92, § 7, p. 400; C.S.Supp.,1941, § 71-3607; R.S. 1943, § 71-1608.

71-1609 Board of health; meetings; officers; compensation.

The board of health shall arrange for a permanent meeting place and hold at least one regular meeting each month. The board shall elect a president and vice president annually, and may also elect from outside their membership, a secretary and such other officers and employees as they may deem necessary for the administration of the affairs of the district, with such salary as the board shall direct. The members of the board shall be reimbursed for their necessary expense in performing their duties.

Source: Laws 1939, c. 92, § 8, p. 400; C.S.Supp.,1941, § 71-3608; R.S. 1943, § 71-1609.

71-1610 Health district; treasurer; duties; bond.

The county treasurer of the county coextensive with such district shall be ex officio treasurer of the health district. He shall attend all meetings of the board when required to do so, shall prepare and submit in writing a monthly report of the state of its finances, and shall pay out its money only upon a warrant signed by the president, or in his absence by the vice president, and countersigned by the secretary. He shall give bond, payable to the health district, in the amount of one hundred thousand dollars. Such bond shall be signed by one or more surety companies of recognized responsibility and authorized to do business in this state. The cost of the bond shall be paid by the health district.

Source: Laws 1939, c. 92, § 9, p. 401; C.S.Supp.,1941, § 71-3609; R.S. 1943, § 71-1610.

71-1611 Board of health; estimate of expenses; budget; tax authorized.

The board of each health district organized pursuant to sections 71-1601 to 71-1625 shall annually during the month of January fix the amount of money for the proposed budget statement as may be deemed sufficient and necessary to conduct the affairs of the district during the ensuing fiscal year. After the adoption of the budget statement, the board of such health district shall certify the amount of tax to be levied upon all the taxable property of the district as is provided in the adopted budget statement to be received from taxation. The county board is directed, authorized, and required to levy and collect such amount of tax in the same manner as other taxes are levied and collected, except that the aggregate health district tax shall not exceed in any one year four and five-tenths cents on each one hundred dollars upon the taxable value of all the taxable property in such district.

Source: Laws 1939, c. 92, § 10, p. 401; C.S.Supp.,1941, § 71-3610; R.S.1943, § 71-1611; Laws 1953, c. 287, § 67, p. 969; Laws 1969, c. 145, § 40, p. 697; Laws 1979, LB 187, § 184; Laws 1992, LB 719A, § 158.

71-1612 Board of health; powers and duties.

The board of health shall have and exercise, subject to the statutes, the executive power and authority and shall assume the responsibility concerning public health and remedial care and treatment of the indigent sick people, now or hereafter vested by statutes or regulations in each and every governmental subdivision within the health district, and shall have the title, control and management of the property owned by such governmental subdivisions and used exclusively for such health activities. All the functions now performed by any physician, except the coroner's physician and the insanity board's physician, or nurse employed by any governmental subdivision within the district, and any and all inspectors of foods, drinks, and the sanitary condition of property, vest in the health district which may be created by the provisions of sections 71-1601 to 71-1625. The management and control of all hospitals, buildings and personal property used exclusively in the medical care and treatment of the indigent sick people, and the segregation of those persons afflicted with infectious and contagious diseases, shall be in the said health district. The health district shall have the power and it shall be its duty to adopt measures for the control and eradication of preventable or communicable diseases, the inculcation of modern scientific methods of hygiene and sanitation, and the education of the public in matters relating to public health.

Source: Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1612.

71-1613 Violations; penalty.

Any person who shall violate any of the provisions of sections 71-1601 to 71-1625, or any rule or regulation made by the district health board, under the authority of said sections, shall be deemed guilty of a Class IV misdemeanor.

Source: Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1613; Laws 1977, LB 39, § 160.

71-1614 Health service obtained by ineligible person; reimbursement.

In the event remedial treatment or care is obtained by an individual who is in fact not indigent, or by an individual indigent where the primary legal responsi-

bility rests upon a third party financially able to render such treatment or care, the health district shall have a right to recover the fair value of the treatment and care so rendered.

Source: Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1614.

71-1615 Special health service; duty of district to provide; cost; how paid.

In the event any political subdivision within the health district desires special remedial care or treatment for the members of such political subdivisions not given by the health district to all inhabitants of said district, it shall be the duty of the health district to furnish such service, and such governmental subdivision shall pay the health district for the cost of such special treatment or care so rendered.

Source: Laws 1939, c. 92, § 11, p. 401; C.S.Supp.,1941, § 71-3611; R.S.1943, § 71-1615.

71-1616 Board of Health; department or division; director; qualifications; powers and duties.

District health boards of each health district shall organize a department or division, with a director to administer the public health work and a district remedial care department or division. The director shall be a graduate of a recognized school of medicine, qualified by training and experience in public health work, and shall devote full time to his position. The director may be empowered to act for the board in public health matters and to supervise the division of remedial care and treatment of the indigent sick people.

Source: Laws 1939, c. 92, § 12, p. 402; C.S.Supp.,1941, § 71-3612; R.S.1943, § 71-1616.

71-1617 Rules and regulations; standards.

In formulating rules, regulations, or other orders for the establishment of a health district or the carrying out of the purpose of sections 71-1601 to 71-1625 or for the management or control of any property which may come under the care or management of the board, the board and the director selected pursuant to section 71-1616 shall conform at least to the minimum requirements, rules, and regulations of the Department of Health and Human Services and the principles of public health and sanitation and the remedial care and treatment of the indigent sick people recognized by the medical profession.

Source: Laws 1939, c. 92, § 13, p. 403; C.S.Supp.,1941, § 71-3613; R.S.1943, § 71-1617; Laws 1996, LB 1044, § 567; Laws 2007, LB296, § 474.

71-1618 Health district; property of county; possession; when.

Any health district, organized pursuant to the provisions of sections 71-1601 to 71-1625, shall not actually take possession of the properties provided for until the first day of the fiscal year of the county in which it is organized during which a tax levy has actually been made for the support of such district.

Source: Laws 1939, c. 92, § 14, p. 403; C.S.Supp.,1941, § 71-3614; R.S.1943, § 71-1618.

71-1619 Foods, drinks, properties; inspection; fees.

Any health district, organized pursuant to the provisions of sections 71-1601 to 71-1625 in providing for the inspection of foods, drinks and properties within the district, may impose upon the owners or possessors of such food, drinks or properties, a reasonable fee to cover the cost of such district of all inspection necessary to reasonably safeguard the public health.

Source: Laws 1939, c. 92, § 15, p. 403; C.S.Supp.,1941, § 71-3615; R.S.1943, § 71-1619.

71-1620 Preexisting health regulations; effect.

All measures that have been enacted by any governmental subdivision to effect any of the functions conferred upon a health district by sections 71-1601 to 71-1625 shall remain in full force and effect until a measure covering the same subject matter shall have been adopted by the board of the health district. Upon the adoption of such a measure, preexisting regulations shall become and be inoperative until dissolution of the health district.

Source: Laws 1939, c. 92, § 16, p. 403; C.S.Supp.,1941, § 71-3616; R.S.1943, § 71-1620.

71-1621 Epidemics or disasters; tax limitation inapplicable.

The limitation provided by section 71-1611 as to the amount of levy which may be certified to the county board, shall not apply to emergency expenditures and obligations to abate or control an extreme outbreak or epidemic of disease or the occurrence of some disaster affecting the public health in the health district. The existence of such an emergency may be conclusively established by joint resolutions declaring such an emergency by the county board and the health board, or by the Governor of the state and the health board.

Source: Laws 1939, c. 92, § 17, p. 403; C.S.Supp.,1941, § 71-3617; R.S.1943, § 71-1621.

71-1622 Health district; bonds; optional payment; interest.

Any health district organized pursuant to sections 71-1601 to 71-1625 may not borrow money and issue bonds therefor unless the issuance of the bonds has been submitted to the vote of the people of the district at a regular or special election and has been approved by a majority of the electors voting on the proposition, or an emergency has been declared, as provided in section 71-1621, and their issuance has been approved by the county board, in addition to the health board. In the event either of these two conditions has been met and bonds are issued, they shall not run for longer than fifteen years, shall bear interest, and shall provide for optional payment in whole or in part on or after five years from the date of issuance thereof.

Source: Laws 1939, c. 92, § 18, p. 404; C.S.Supp.,1941, § 71-3618; R.S.1943, § 71-1622; Laws 1947, c. 15, § 18, p. 93; Laws 1969, c. 51, § 119, p. 346.

71-1623 Health district; additional powers.

Sections 71-1601 to 71-1625 shall vest in each health district the powers heretofore granted to other governmental subdivisions by all acts covering the same subject matter, and particularly by the pertinent parts of subdivisions (3)

and (28) of section 14-102 and sections 14-101, 14-103, 14-219, 14-501, 15-201, 15-235, 15-236, 15-237, 16-201, 16-231, 16-238, 16-239, 16-308, 17-114, 17-121, 17-122, 17-207, 17-208, 18-1901, 19-501, 23-104, 23-105, 68-104, 68-114, 71-501, 71-503, and 79-526. It is not intended to repeal nor to amend any of the statutes listed in this section or any portion of them, but to suspend the exercise of the powers therein granted during the period that a health district is actually functioning so far as any governmental subdivision is concerned that may be within the county containing such health district.

Source: Laws 1939, c. 92, § 19, p. 404; C.S.Supp.,1941, § 71-3619; R.S.1943, § 71-1623; Laws 1996, LB 900, § 1057.

71-1624 Health district; dissolution; property; reversion.

Upon the dissolution of any health district, real or personal property in its possession, originally obtained from any governmental subdivision, shall revert to such governmental subdivision. All other property shall revert to the county in which such health district has existed.

Source: Laws 1939, c. 92, § 20, p. 404; C.S.Supp.,1941, § 71-3620; R.S.1943, § 71-1624.

71-1625 Governmental subdivision, defined.

The term governmental subdivision as used in sections 71-1601 to 71-1624 shall be defined to mean any county, city, village, school district, metropolitan utilities district, or any other subdivision of the state, which receives any revenue raised by taxation.

Source: Laws 1939, c. 92, § 22, p. 405; C.S.Supp.,1941, § 71-3622; R.S.1943, § 71-1625.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

71-1626 Terms, defined.

For purposes of sections 71-1626 to 71-1636:

(1) Core public health functions means assessment, policy development, and assurance designed to protect and improve the health of persons within a geographically defined community by (a) emphasizing services to prevent illness, disease, and disability, (b) promoting effective coordination and use of community resources, and (c) extending health services into the community, including public health nursing, disease prevention and control, public health education, and environmental health services;

(2) County, district, or city-county health department means a governmental entity approved by the Department of Health and Human Services as a local full-time public health service which (a) utilizes local, state, federal, and other funds or any combination thereof, (b) employs qualified public health medical, nursing, environmental health, health education, and other essential personnel who work under the direction and supervision of a full-time qualified medical director or of a full-time qualified lay administrator and are assisted at least part time by at least one medical consultant who shall be a licensed physician, and (c) is operated in conformity with the rules, regulations, and policies of the Department of Health and Human Services. The medical director or lay administrator shall be called the health director; and

(3) Local public health department means a county, district, or city-county health department.

Source: Laws 1943, c. 152, § 1, p. 554; R.S.1943, § 71-1626; Laws 1972, LB 1497, § 1; Laws 1994, LB 1223, § 34; Laws 1996, LB 1044, § 568; Laws 2001, LB 692, § 2; Laws 2004, LB 1005, § 62; Laws 2007, LB296, § 475.

71-1626.01 Legislative intent.

It is the intent of the Legislature that all persons residing in the State of Nebraska have access to public health services. It is the intent of the Legislature that local public health departments be established statewide and work collaboratively with local providers and community organizations in order to assure the full range of public health services as prescribed by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. The Legislature declares that each local public health department should be able to carry out core public health functions. Core public health functions include assessment and policy development, prevention of illness and disease, and assurance of services including public health nursing, health education, and environmental health services.

Source: Laws 2001, LB 692, § 4.

71-1627 Local public health department; health director; other personnel.

A local public health department shall have a health director at its head who is required to give his or her entire time to the duties of the office and such other necessary qualified full or part-time health officers, environmental health specialists, public health nurses, health educators, and clerical assistants as may be necessary to carry on the activities pertinent to the health department.

Source: Laws 1943, c. 152, § 2, p. 554; R.S.1943, § 71-1627; Laws 1972, LB 1497, § 2; Laws 1994, LB 1223, § 35; Laws 2001, LB 692, § 3.

71-1628 County board; powers.

The county board of any county may (1) make an agreement with the Department of Health and Human Services relative to the expenditure of local, state, federal, and other funds or any combination thereof, available for public health in such county; (2) after notice and public hearing, establish and maintain a single full-time local health department for such county and any other counties which combine for that purpose and, pursuant to such combination or agreement, such counties may cooperate with one another and the Department of Health and Human Services and may contribute to a joint fund in carrying out the purpose and intent of sections 71-1626 to 71-1636. The duration and nature of such agreement shall be evidenced by the resolutions of the county boards of such counties, and such agreement shall be submitted to and approved by the Department of Health and Human Services; or (3) cooperate with any city in the establishment and maintenance of a city-county health department as provided in section 71-1630. The duration and nature of such an agreement shall be evidenced by resolutions of the city council of the city and the county board participating, and such agreement shall be submitted to and approved by the Department of Health and Human Services. A city-county health department shall be administered as provided in the agreement

between the county and the city and shall be considered a state-approved, local, full-time public health service.

Source: Laws 1943, c. 152, § 3, p. 554; R.S.1943, § 71-1628; Laws 1949, c. 206, § 1(1), p. 591; Laws 1972, LB 1497, § 3; Laws 1994, LB 1223, § 36; Laws 1996, LB 1044, § 569; Laws 1997, LB 185, § 1; Laws 2007, LB296, § 476.

71-1628.01 County or district health department; termination; procedure.

A county or district health department established under sections 71-1626 to 71-1636 may be terminated, following a public hearing, by a majority vote of the county board members for any county having a health department or of the majority of county boards having a district health department. A city-county health department may be terminated as provided by the agreement between the county and the city.

Source: Laws 1943, c. 152, § 3, p. 554; R.S.1943, § 71-1628; Laws 1949, c. 206, § 1(2), p. 593; Laws 1994, LB 1223, § 37; Laws 1997, LB 185, § 2.

71-1628.02 Repealed. Laws 2003, LB 412, § 12.

71-1628.03 Repealed. Laws 2003, LB 412, § 12.

71-1628.04 Core public health functions; contract authorized.

(1) Each local public health department shall carry out the core public health functions within its geographically defined community.

(2) Each local public health department shall include the essential elements in carrying out the core public health functions to the extent applicable within its geographically defined community and to the extent funds are available. The essential elements include, but are not limited to, (a) monitoring health status to identify community health problems, (b) diagnosing and investigating health problems and health hazards in the community, (c) informing, educating, and empowering people about health issues, (d) mobilizing community partnerships to identify and solve health problems, (e) developing policies and rules that support individual and community health efforts, (f) enforcing laws, rules, and regulations that protect public health and the environment and ensure safety, (g) linking people to needed medical and mental health services and assuring the provision of health care when not otherwise available, (h) assuring a competent workforce within the health care industry and the public health departments, (i) evaluating effectiveness, accessibility, and quality of services within the health care industry and the public health departments, and (j) researching to gain new insights and innovative solutions to health problems.

(3) Any department or agency of the State of Nebraska may contract with a local public health department for the performance of public health administration or other functions at the discretion of and under the direction of such state department or agency.

Source: Laws 2001, LB 692, § 7; Laws 2004, LB 1005, § 63.

71-1628.05 Report.

Each local public health department shall prepare an annual report regarding the core public health functions carried out by the department in the prior

fiscal year. The report shall be submitted to the Department of Health and Human Services by October 1. The Department of Health and Human Services shall compile the reports and submit the results to the Health and Human Services Committee of the Legislature by December 1.

Source: Laws 2001, LB 692, § 8; Laws 2005, LB 301, § 35; Laws 2007, LB296, § 477.

71-1628.06 Core public health functions; personnel.

The Department of Health and Human Services shall employ two full-time persons with expertise in the public health field to provide technical expertise in carrying out core public health functions and essential elements and coordinate the dissemination of materials to the local public health departments.

Source: Laws 2001, LB 692, § 9; Laws 2005, LB 301, § 36; Laws 2007, LB296, § 478.

71-1628.07 Satellite office of minority health; duties.

(1) The Department of Health and Human Services shall establish a satellite office of minority health in each congressional district to coordinate and administer state policy relating to minority health. Each office shall implement a minority health initiative in counties with a minority population of at least five percent of the total population of the county as determined by the most recent federal decennial census which shall target, but not be limited to, infant mortality, cardiovascular disease, obesity, diabetes, and asthma.

(2) Each office shall prepare an annual report regarding minority health initiatives implemented in the immediately preceding fiscal year. The report shall be submitted to the department by October 1. The department shall submit such reports to the Health and Human Services Committee of the Legislature by December 1.

Source: Laws 2001, LB 692, § 10; Laws 2003, LB 412, § 1; Laws 2005, LB 301, § 37; Laws 2007, LB296, § 479.

71-1628.08 County Public Health Aid Program; created; funds; distribution.

(1) The County Public Health Aid Program is created. Aid as appropriated by the Legislature from the Nebraska Health Care Cash Fund shall be distributed in each fiscal year as provided in this section.

(2) Of funds appropriated by the Legislature under subsection (1) of this section, the following amounts shall be distributed to local public health departments established under sections 71-1626 to 71-1636:

(a) One hundred thousand dollars to each local public health department established by at least three contiguous counties with a total population of at least thirty thousand and not more than fifty thousand persons;

(b) One hundred twenty-five thousand dollars to each local public health department established by a single county with a total population of more than fifty thousand and not more than one hundred thousand persons, with or without additional counties as part of the department, or by at least three contiguous counties with a total population of more than fifty thousand and not more than one hundred thousand persons; and

(c) One hundred fifty thousand dollars to each local public health department established by one or more counties with a total population of more than one hundred thousand persons.

(3) Any appropriated funds not distributed under subsection (2) of this section shall be allocated among all counties on a per capita basis as determined by the most recent federal decennial census. The funds allocated for each county shall be distributed to the local public health department which is established by such county and receiving funding under subsection (2) of this section. Any funds not distributed under this subsection shall be equally distributed among all local public health departments receiving funding under subsection (2) of this section.

(4) Funds appropriated under this section shall not be used to replace existing county funding to any local public health department. Funding for any local public health department under this section shall be reduced to offset any such replacement.

Source: Laws 2001, LB 692, § 11; Laws 2003, LB 412, § 2; Laws 2004, LB 1005, § 64.

71-1629 County or city-county health department; county board; powers; tax; election; when required.

(1) The county board of a county which has established a county or city-county health department may (a) incur the expenses necessary for the establishment and maintenance of such health department and (b) appropriate and use any unused funds in the general fund belonging to the county for the purposes set forth in sections 71-1626 to 71-1636.

(2) An annual tax to meet and pay the expenses necessary for the establishment and maintenance of a county or city-county health department may be levied and collected (a) by the county board of a county which has a population of thirty thousand inhabitants or more or (b) by the county board of a county which has a population of less than thirty thousand if the county board has put the proposition of having such a tax to the electors of the county and imposition of the tax has been approved by a majority of electors voting on the proposition. The election shall be called, proclaimed, held, conducted, and canvassed in the manner of general or special elections held for the submission of propositions to the voters of a county as provided in sections 23-126 and 23-128.

Source: Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(1), p. 593; Laws 1953, c. 287, § 68, p. 970; Laws 1967, c. 449, § 1, p. 1393; Laws 1984, LB 783, § 1; Laws 1994, LB 1223, § 38.

71-1629.01 District health department; county board; levy; limitation.

The county boards of the counties which have established a district health department may levy and collect an annual tax of not to exceed eight-tenths of one cent on each one hundred dollars upon the taxable value of all the taxable property in such county as may be necessary to meet the expenditures of such district health department in proportion to which the population of such county bears to the entire population of such district subject to section 77-3443.

Source: Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(2), p. 593; Laws 1953, c. 287, § 69, p. 970; Laws 1979, LB 187, § 185; Laws 1992, LB 719A, § 159; Laws 1994, LB 1223, § 39; Laws 1996, LB 1114, § 63.

71-1629.02 Municipalities; powers; levy.

Municipalities located within counties which have established health departments or which join in the establishment of a city-county health department may (1) cooperate in the maintenance of such health departments as health departments for such municipalities, (2) incur the necessary expenses for their proportionate share in the establishment and maintenance of such health departments, and (3) levy and collect an annual tax to meet and pay such expenses.

Source: Laws 1943, c. 152, § 4, p. 556; R.S.1943, § 71-1629; Laws 1949, c. 206, § 2(3), p. 594; Laws 1953, c. 287, § 70, p. 970; Laws 1967, c. 449, § 2, p. 1393; Laws 1984, LB 783, § 2; Laws 1994, LB 1223, § 40.

71-1630 Local boards of health; membership; terms; vacancies; duties.

(1) When a health department has been established by the county board of a county and approved by the Department of Health and Human Services as a county health department, the county board of such county shall appoint a board of health which shall consist of the following members: (a) One member of the county board; (b) one dentist; (c) one physician; and (d) six public-spirited men or women interested in the health of the community. The physician and dentist shall each serve an initial term of three years. Three public-spirited men or women shall each serve an initial term of three years, and three public-spirited men or women shall each serve an initial term of two years. After the initial terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired term of the member whose term is being filled by such appointment. A county association or society of dentists or physicians or its managing board may submit each year to the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(2) When a district health department has been established by a joint resolution of the county boards of each county in a district health department, the county boards of such district shall meet and establish a district board of health with due consideration for a fair and equitable representation from the entire area to be served. The district board of health shall consist of the following members: (a) One member of each county board in the district, (b) at least one physician, (c) at least one dentist, and (d) one or more public-spirited men or women interested in the health of the community from each county in the district. One-third of the members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a term of three years. Appointments to fill any vacancies shall be for the unexpired terms. A county association or society of dentists or physicians or its managing board may submit each year to the county boards a list of three persons of recognized ability in such profession. If such a list is submitted, the county boards, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(3) Except as provided in subsection (4) of this section, when the county board of any county and the city council of any city located in such county have

executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department, the city and county shall establish a city-county board of health. It shall consist of the following members selected by a majority vote of the city council and the county board, with due consideration to be given in an endeavor to secure a fair and equitable representation from the entire area to be served: (a) One representative of the county board, (b) one representative from the city council, (c) one physician, (d) one dentist, and (e) five public-spirited men or women, not employed in the health industry or in the health professions, who are interested in the health of the community. One-third of its members shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years. After their terms of office expire, each new appointment shall be for a period of three years. A county association or society of dentists or physicians or its managing board may submit each year to the city council and the county board a list of three persons of recognized ability in such profession. If such a list is submitted, the city council and the county board, in making an appointment for such profession, shall consider the names on the list and may appoint one of the persons so named.

(4)(a) When the county board of any county having a population of more than two hundred thousand inhabitants and the city council of any city located in such county have executed an agreement, approved by the Department of Health and Human Services, for maintaining a city-county health department on or after January 1, 1997, the city and county shall establish a city-county board of health. The board shall consist of the following members to be appointed by the mayor with the consent of the city council and county board: One representative of the county board, one representative from the city council, one physician, one dentist, and five public-spirited persons who are interested in the health of the community. Three of the members shall be appointed for terms of one year, three for terms of two years, and three for terms of three years. After the initial terms of office expire, each successor member shall be appointed for a term of three years. The physician and dentist members shall be appointed as provided in this subdivision. The mayor shall invite the local county association or society of dentists or physicians or its managing board to timely submit to the mayor a list of three persons of recognized ability in the profession. A list is timely submitted if it is submitted within sixty days after the mayor's invitation. If the list is not timely submitted, the mayor may consider the list timely submitted at any time prior to making an appointment, otherwise the mayor shall appoint a person of recognized ability in the profession. If the list is timely submitted, the mayor shall consider the names on the list and shall either appoint one of the persons on the list or invite a list of three new names using the process provided in this subdivision.

(b) The board of health shall, immediately after appointment, meet and organize by the election of one of its own members as president and one as vice president. The board members may elect such other officers as they deem necessary and may adopt and promulgate rules for the guidance of the board which are not inconsistent with law or the agreement creating the board. If any board member resigns or ceases to meet the requirements for eligibility on the board, or if there is any other vacancy on the board, the mayor shall appoint another representative to serve for the member's unexpired term subject to consent by a majority vote of both the city council and the county board. Any

appointment to fill a vacancy on the board shall be for the unexpired term of the member whose vacancy is being filled.

(c) The board of health shall have the following duties:

(i) Assessment of community health status and available resources for health matters, including collecting and analyzing relevant data and annually reporting and making recommendations on improving public health matters to the mayor, city council, and county board;

(ii) Policy development for proposals before the board of health, the city council, and the county board to support and improve public health, including appointing, with the approval of the mayor, city council, and county board, advisory committees to the board of health to facilitate community development functions and coalition building related to public health and adopting and approving official health department policies consistent with applicable law and approved by the affirmative vote of not less than five board members at a regular meeting of the board in the following areas:

(A) Community health services and health promotion and outreach, specifically including policies related to the following:

(I) Client services and fees;

(II) Standing orders, supervision, screening, and emergency and referral protocols and procedures;

(III) Monitoring and reporting; and

(IV) Communicable disease investigation, immunization, vaccination, testing, and prevention measures, including measures to arrest the progress of communicable diseases;

(B) Environmental health, specifically including policies related to the following:

(I) Permitting, inspection, and enforcement;

(II) Monitoring, sampling, and reporting;

(III) Technical assistance and plan review; and

(IV) Prevention measures;

(C) Investigating and controlling diseases and injury, specifically including policies related to the following:

(I) Permitting, inspection, and enforcement;

(II) Monitoring, sampling, and reporting;

(III) Technical assistance and plan review; and

(IV) Prevention measures; and

(D) Other health matters as may be requested by the city council or county board; and

(iii) Assurance that needed services are available through public or private sources in the community, including:

(A) Acting in an advisory capacity to review and recommend changes to ordinances, resolutions, and resource allocations before the city council or county board related to health matters;

(B) Annually reviewing and recommending changes in the proposed budget for resource allocations related to the health department as provided in the city-county agreement; and

(C) Monitoring and reviewing the enforcement of laws and regulations of the board of health, city council, and county board related to public health in the community.

(d) The mayor of the city shall appoint, with the approval of the board of health, city council, and county board, the health director of the health department. The health director shall be a member of the unclassified service of the city under the direction and supervision of the mayor. The health director shall be well-trained in public health work, but he or she need not be a graduate of an accredited medical school. If the health director is not a graduate of an accredited medical school, the health director shall be assisted at least part time by at least one medical consultant who is a licensed physician. The mayor shall submit the health department budget to the city council and county board. The mayor shall also provide budget information to the board of health with sufficient time to allow such board to consider such information. The mayor may enter into contracts and accept grants on behalf of the health department. The mayor may terminate the health director with approval of a majority vote of the city council, the county board, and the board of health. The health director shall:

(i) Provide administrative supervision of the health department;

(ii) Make all necessary sanitary and health investigations and inspections;

(iii) Investigate the existence of any contagious or infectious disease and adopt measures to arrest the progress of the disease;

(iv) Distribute free, as the local needs may require, all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or otherwise provided for public health purposes;

(v) Give professional advice and information to school authorities and other public agencies on all matters pertaining to sanitation and public health;

(vi) Inform the board of health when the city council or county board is considering proposals related to health matters or has otherwise requested recommendations from the board of health;

(vii) Inform the board of health of developments in the field of public health and of any need for updating or adding to or deleting from the programs of the health department; and

(viii) Perform duties and functions as otherwise provided by law.

Source: Laws 1943, c. 152, § 5, p. 557; R.S.1943, § 71-1630; Laws 1969, c. 151, § 3, p. 711; Laws 1971, LB 43, § 2; Laws 1972, LB 1497, § 4; Laws 1976, LB 716, § 1; Laws 1978, LB 580, § 1; Laws 1979, LB 198, § 1; Laws 1994, LB 1223, § 41; Laws 1996, LB 1044, § 570; Laws 1997, LB 185, § 3; Laws 2007, LB296, § 480.

71-1630.01 Repealed. Laws 1979, LB 198, § 4.

71-1630.02 Repealed. Laws 1979, LB 198, § 4.

71-1630.03 Repealed. Laws 1979, LB 198, § 4.

71-1631 Local boards of health; meetings; expenses; powers and duties; rules and regulations; pension and retirement plans.

Except as provided in subsection (4) of section 71-1630, the board of health of each county, district, or city-county health department organized under

sections 71-1626 to 71-1636 shall, immediately after appointment, meet and organize by the election of one of its own members as president, one as vice president, and another as secretary and, either from its own members or otherwise, a treasurer and shall have the power set forth in this section. The board may elect such other officers as it may deem necessary and may adopt and promulgate such rules and regulations for its own guidance and for the government of such health department as may be necessary, not inconsistent with sections 71-1626 to 71-1636. The board of health shall, with the approval of the county board and the municipality, whenever a city is a party in such a city-county health department:

(1) Select the health director of such department who shall be (a) well-trained in public health work though he or she need not be a graduate of an accredited medical school, but if he or she is not such a graduate, he or she shall be assisted at least part time by at least one medical consultant who shall be a licensed physician, (b) qualified in accordance with the state personnel system, and (c) approved by the Department of Health and Human Services;

(2) Hold an annual meeting each year, at which meeting officers shall be elected for the ensuing year;

(3) Hold meetings quarterly each year;

(4) Hold special meetings upon a written request signed by two of its members and filed with the secretary;

(5) Provide suitable offices, facilities, and equipment for the health director and assistants and their pay and traveling expenses in the performance of their duties, with mileage to be computed at the rate provided in section 81-1176;

(6) Publish, on or soon after the second Tuesday in July of each year, in pamphlet form for free distribution, an annual report showing (a) the condition of its trust for each year, (b) the sums of money received from all sources, giving the name of any donor, (c) how all money has been expended and for what purpose, and (d) such other statistics and information with regard to the work of such health department as may be of general interest;

(7) Enact rules and regulations, subsequent to public hearing held after due public notice of such hearing by publication at least once in a newspaper having general circulation in the county or district at least ten days prior to such hearing, and enforce the same for the protection of public health and the prevention of communicable diseases within its jurisdiction, subject to the review and approval of such rules and regulations by the Department of Health and Human Services;

(8) Make all necessary sanitary and health investigations and inspections;

(9) In counties having a population of more than three hundred thousand inhabitants, enact rules and regulations for the protection of public health and the prevention of communicable diseases within the district, except that such rules and regulations shall have no application within the jurisdictional limits of any city of the metropolitan class and shall not be in effect until (a) thirty days after the completion of a three-week publication in a legal newspaper, (b) approved by the county attorney with his or her written approval attached thereto, and (c) filed in the office of the county clerk of such county;

(10) Investigate the existence of any contagious or infectious disease and adopt measures, with the approval of the Department of Health and Human Services, to arrest the progress of the same;

(11) Distribute free as the local needs may require all vaccines, drugs, serums, and other preparations obtained from the Department of Health and Human Services or purchased for public health purposes by the county board;

(12) Upon request, give professional advice and information to all city, village, and school authorities on all matters pertaining to sanitation and public health;

(13) Fix the salaries of all employees, including the health director. Such city-county health department may also establish an independent pension plan, retirement plan, or health insurance plan or, by agreement with any participating city or county, provide for the coverage of officers and employees of such city-county health department under such city or county pension plan, retirement plan, or health insurance plan. Officers and employees of a county health department shall be eligible to participate in the county pension plan, retirement plan, or health insurance plan of such county. Officers and employees of a district health department formed by two or more counties shall be eligible to participate in the county retirement plan unless the district health department establishes an independent pension plan or retirement plan for its officers or employees;

(14) Establish fees for the costs of all services, including those services for which third-party payment is available; and

(15) In addition to powers conferred elsewhere in the laws of the state and notwithstanding any other law of the state, implement and enforce an air pollution control program under subdivision (23) of section 81-1504 or subsection (1) of section 81-1528, which program shall be consistent with the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq. Such powers shall include without limitation those involving injunctive relief, civil penalties, criminal fines, and burden of proof. Nothing in this section shall preclude the control of air pollution by resolution, ordinance, or regulation not in actual conflict with the state air pollution control regulations.

Source: Laws 1943, c. 152, § 6, p. 558; R.S.1943, § 71-1631; Laws 1953, c. 249, § 1, p. 852; Laws 1955, c. 275, § 1, p. 871; Laws 1963, c. 401, § 1, p. 1286; Laws 1967, c. 449, § 3, p. 1394; Laws 1969, c. 151, § 5, p. 713; Laws 1972, LB 1497, § 6; Laws 1973, LB 285, § 1; Laws 1979, LB 198, § 2; Laws 1981, LB 204, § 120; Laws 1992, LB 860, § 3; Laws 1992, LB 1257, § 74; Laws 1993, LB 623, § 2; Laws 1996, LB 1011, § 28; Laws 1996, LB 1044, § 571; Laws 1997, LB 185, § 4; Laws 2006, LB 1019, § 6; Laws 2007, LB296, § 481.

71-1631.01 Local boards of health; rules and regulations; violations; penalty.

Any person violating any rule or regulation, authorized by the provisions of either subdivision (7) or (9) of section 71-1631, shall be guilty of a Class III misdemeanor, and each day's violation shall be considered a separate offense.

Source: Laws 1955, c. 275, § 2, p. 872; Laws 1969, c. 151, § 7, p. 717; Laws 1977, LB 39, § 161.

71-1631.02 Local boards of health; retirement plan; reports.

(1) Beginning December 31, 1998, and each year thereafter, the health director of a board of health with an independent retirement plan established

pursuant to section 71-1631 and section 401(a) of the Internal Revenue Code shall file with the Public Employees Retirement Board an annual report on such plan and shall submit copies of such report to the members of the Nebraska Retirement Systems Committee of the Legislature. The annual report shall be in a form prescribed by the Public Employees Retirement Board and shall contain the following information for each such retirement plan:

(a) The number of persons participating in the retirement plan;

(b) The contribution rates of participants in the plan;

(c) Plan assets and liabilities;

(d) The names and positions of persons administering the plan;

(e) The names and positions of persons investing plan assets;

(f) The form and nature of investments;

(g) For each independent defined contribution plan, a full description of investment policies and options available to plan participants; and

(h) For each independent defined benefit plan, the levels of benefits of participants in the plan, the number of members who are eligible for a benefit, and the total present value of such members' benefits, as well as the funding sources which will pay for such benefits.

If an independent plan contains no current active participants, the health director may file in place of such report a statement with the Public Employees Retirement Board indicating the number of retirees still drawing benefits, and the sources and amount of funding for such benefits.

(2) Beginning December 31, 1998, and every four years thereafter, if such retirement plan is a defined benefit plan, a board of health with an independent retirement plan established pursuant to section 71-1631 shall cause to be prepared a quadrennial report and the health director shall file the same with the Public Employees Retirement Board and submit to the members of the Nebraska Retirement Systems Committee of the Legislature a copy of such report. The report shall consist of a full actuarial analysis of each such independent retirement plan established pursuant to section 71-1631. The analysis shall be prepared by an independent private organization or public entity employing actuaries who are members in good standing of the American Academy of Actuaries, and which organization or entity has demonstrated expertise to perform this type of analysis and is unrelated to any organization offering investment advice or which provides investment management services to the retirement plan.

Source: Laws 1998, LB 1191, § 43; Laws 1999, LB 795, § 12.

71-1632 Health director; powers; duties.

Except as provided in subsection (4) of section 71-1630, the health director of a county, district, or city-county health department shall have the power and duty to (1) be the executive officer of the local boards of health; (2) appoint, subject to any applicable county or city civil service laws, rules, or regulations, a properly functioning staff and other personnel as may be necessary, whose qualifications shall conform to the United States Public Health Standards and whose remuneration shall conform to an established compensation schedule set by such local board of health and which is reviewed and approved annually by such board; (3) review annually, with the local board of health, the proposed

budget of the department; (4) organize, with the approval of the local board of health, a citizens' advisory health council that will aid in developing a public health program to meet the particular needs, hazards, and problems of the health district; and (5) organize, with the approval of the local board of health, a medical and dental advisory committee.

Source: Laws 1943, c. 152, § 7, p. 560; R.S.1943, § 71-1632; Laws 1969, c. 572, § 1, p. 2318; Laws 1969, c. 151, § 9, p. 717; Laws 1975, LB 139, § 2; Laws 1979, LB 198, § 3; Laws 1984, LB 783, § 3; Laws 1997, LB 185, § 5.

71-1633 Local boards of health; records required.

The health department of such county, district or city-county, as provided in sections 71-1626 to 71-1636, shall keep minutes of all the meetings of the health boards, and shall retain the records of everything pertaining to expenses, income, complaints, work done, meetings had, pamphlets printed and distributed, cases handled, and of any other matters pertaining to the work of the board of health.

Source: Laws 1943, c. 152, § 8, p. 560; R.S.1943, § 71-1633.

71-1634 Health department; funds; how disbursed.

(1) No funds shall be disbursed except upon vouchers approved by the director of health and the president of the board of health of a county or district health department. In the absence of the health director, the president and the vice president or, in his or her absence, the secretary are authorized to approve such vouchers before any funds are disbursed. In the absence of the president, the health director and the vice president or, in his or her absence, the secretary are authorized to approve such vouchers before any funds are disbursed. In the absence of both president and health director, the vice president and the secretary are authorized to approve such vouchers before any funds are disbursed.

(2) Funds of a city-county health department shall be disbursed as provided by the agreement between the county and the city.

Source: Laws 1943, c. 152, § 9, p. 560; R.S.1943, § 71-1634; Laws 1953, c. 249, § 2, p. 853; Laws 1967, c. 449, § 4, p. 1395; Laws 1997, LB 185, § 6.

71-1635 Health department; establishment; other health agencies abolished; exception; city-county health department; control by department.

When the county board of any county or counties creates a health department as provided by sections 71-1626 to 71-1636, every other local, municipal, or county public health agency or department, except city or county hospitals, may be abolished, and such county or district health department may be given full control over all health matters in the county or counties, including all municipalities in the county in conformity with the rules, regulations, and policies of the Department of Health and Human Services. When a city has joined in the establishment of a city-county health department, such city-county health department may be given such control over all health matters in the city as may be provided by agreement between the county and the city with the approval of the Department of Health and Human Services. If the health department in a county or city is changed, any lawful ordinance, resolution, regulation, policy,

or procedure relating to any of the functions conferred by sections 71-1626 to 71-1636 of the former health department shall remain in full force and effect until it is repealed or replaced or until it conflicts with a subsequently enacted measure.

Source: Laws 1943, c. 152, § 10, p. 560; R.S.1943, § 71-1635; Laws 1967, c. 449, § 5, p. 1396; Laws 1996, LB 1044, § 572; Laws 1997, LB 185, § 7; Laws 2007, LB296, § 482.

71-1636 Sections not applicable to school district; exception.

Sections 71-1626 to 71-1636 do not apply to any school district in the State of Nebraska, except that any school district, upon application to a county, district, or city-county health department formed under such sections, may accept in whole or in part any of the provisions of such sections, by entering into an agreement for that purpose with such health department.

Source: Laws 1943, c. 152, § 11, p. 560; R.S.1943, § 71-1636; Laws 2004, LB 1005, § 65.

(c) COMMUNITY AND HOME HEALTH SERVICES

71-1637 Political subdivision; employment and contracts authorized; duties; tax to support; limitation; section, how construed.

(1) Any city by its mayor and council or by its commission, any village by its village board, any county by its board of supervisors or commissioners, or any township by its electors shall have power to employ a visiting community nurse, a home health nurse, or a home health agency defined in section 71-417 and the rules and regulations adopted and promulgated under the Health Care Facility Licensure Act. Such nurses or home health agency shall do and perform such duties as the city, village, county, or township, by their officials and electors, shall prescribe and direct. The city, village, county, or township shall have the power to levy a tax, not exceeding three and five-tenths cents on each one hundred dollars on the taxable valuation of the taxable property of such city, village, county, or township, for the purpose of paying the salary and expenses of such nurses or home health agency. The levy shall be subject to sections 77-3442 and 77-3443. The city, village, county, or township shall have the power to constitute and empower such nurses or home health agency with police power to carry out the order of such city, village, county, or township.

(2) The governing body of any city, village, county, or township may contract with any visiting nurses association, licensed hospital home health agency, or other licensed home health agency, including those operated by the Department of Health and Human Services, to perform the duties contemplated in subsection (1) of this section, subject to the supervision of the governing body, and may pay the expense of such contract out of the general funds of the city, village, county, or township.

(3) Nothing in this section shall be construed to allow any city, village, county, township, nurse, or home health agency to (a) avoid the requirements of individual licensure, (b) perform any service beyond the scope of practice of licensure or beyond the limits of licensure prescribed by the Health Care Facility Licensure Act, or (c) violate any rule or regulation adopted and promulgated by the Department of Health and Human Services.

Source: Laws 1917, c. 209, § 1, p. 514; C.S.1922, § 8234; C.S.1929, § 71-2406; R.S.1943, § 71-1701; Laws 1973, LB 483, § 1; Laws

1979, LB 187, § 186; R.S.1943, (1986), § 71-1701; Laws 1987, LB 389, § 1; Laws 1989, LB 429, § 1; Laws 1992, LB 719A, § 160; Laws 1996, LB 1044, § 573; Laws 1996, LB 1114, § 64; Laws 1996, LB 1155, § 29; Laws 1997, LB 269, § 32; Laws 1997, LB 608, § 8; Laws 1998, LB 306, § 17; Laws 2000, LB 819, § 98; Laws 2007, LB296, § 483.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-1638 Political subdivision; tax levy; limitation; election; procedure.

Whenever petitions signed by twenty-five percent of the electors of a city, county, or village shall be presented to the city council or board of supervisors, commissioners, or trustees praying for the submission of the question of making a levy to provide for salary and expenses of a visiting community nurse, a home health nurse, or a home health agency and stating the amount of the levy and the period of years in which the same shall be made, it shall be the duty of such council or board of supervisors, commissioners, or trustees to submit the question to a vote of the people at a regular or special election called for that purpose. If the question is submitted at a special election, three weeks' notice of such special election shall be given by publication in some newspaper of general circulation. Such notice shall be published three consecutive weeks if the election is in a city or village or, if in a village and no paper is published in such village, then the notice shall be posted in three of the most public places in the village. If a majority of the votes cast at such election on the question are in favor of the levy, then the regularly constituted authorities of the city, county, or village shall include the same in the estimate for expenses for each year during the period for which adopted, unless the same shall be revoked. The tax shall be levied and collected in the same manner as other taxes are levied and collected. The levy shall be subject to section 77-3443.

Source: Laws 1917, c. 209, § 2, p. 515; C.S.1922, § 8235; C.S.1929, § 71-2407; R.S.1943, § 71-1702; R.S.1943, (1986), § 71-1702; Laws 1987, LB 389, § 4; Laws 1996, LB 1114, § 65; Laws 1997, LB 269, § 33.

Regular election as used in this section has the same meaning as general election, and therefore a general November election is a competent time at which to submit to the voters the proposed tax levy. State ex rel. Long v. City of Nebraska City, 123 Neb. 614, 243 N.W. 858 (1932).

Writ of mandamus was denied in an action to compel the county clerk to make an additional tax levy for the expenses of a community nurse after the clerk had completed the main tax list and turned it over to the treasurer. State ex rel. Long v. Barstler, 122 Neb. 167, 240 N.W. 273 (1931).

71-1639 Political subdivision; tax levy; resubmission; procedure.

Whenever a petition signed by twenty-five percent of the electors, as required in section 71-1638, shall be presented to the city council, county board or village trustees praying for the resubmission of the question of making a levy under sections 71-1637 to 71-1639, it shall be the duty of that body to resubmit the question in the same manner as provided by section 71-1638. If a majority of the votes cast at such election favor the discontinuance of such levy, the same shall be discontinued. If a majority favor its continuance, then it shall be continued for the period which has been approved by the electors at the election.

Source: Laws 1917, c. 209, § 3, p. 516; C.S.1922, § 8236; C.S.1929, § 71-2408; R.S.1943, § 71-1703; R.S.1943, (1986), § 71-1703.

ARTICLE 17
NURSES

Cross References

Advanced Practice Registered Nurse Practice Act, see section 38-201.
Certified Nurse Midwifery Practice Act, see section 38-601.
Certified Registered Nurse Anesthetist Practice Act, see section 38-701.
Clinical Nurse Specialist Practice Act, see section 38-901.
Community nurses, see sections 71-1637 to 71-1639.
Division of Public Health of the Department of Health and Human Services, see section 81-3113.
Financial assistance, loan repayment, Rural Health Systems and Professional Incentive Act, see section 71-5650.
Health and Human Services Act, see section 81-3110.
Health Care Facility Licensure Act, see section 71-401.
License Suspension Act, see section 43-3301.
Licensed Practical Nurse-Certified Practice Act, see section 38-1601.
Lien for services, see section 52-401.
Medication Aide Act, see section 71-6718.
Nebraska Center for Nursing Act, see section 71-1796.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Nursing Home Act, see section 71-6037.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Nurse Licensure Compact, see section 71-1795.
Nurse Practice Act, see section 38-2201.
Nurse Practitioner Practice Act, see section 38-2301.
Nursing Faculty Student Loan Act, see section 71-17,108.
Nursing Home Administrator Practice Act, see section 38-2401.
Nursing Student Loan Act, see section 71-17,101.
Patient Safety Improvement Act, see section 71-8701.
Rural Health Systems and Professional Incentive Act, see section 71-5650.
State Board of Health, duties, see section 71-2610 et seq.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.

(a) COMMUNITY NURSES

Section
71-1701. Transferred to section 71-1637.
71-1702. Transferred to section 71-1638.
71-1703. Transferred to section 71-1639.

(b) NURSE PRACTITIONER ACT

71-1704. Transferred to section 38-2301.
71-1705. Repealed. Laws 2005, LB 256, § 103.
71-1706. Transferred to section 38-2302.
71-1707. Transferred to section 38-2312.
71-1708. Transferred to section 38-2306.
71-1709. Repealed. Laws 1996, LB 414, § 52.
71-1709.01. Transferred to section 38-2307.
71-1709.02. Transferred to section 38-2309.
71-1710. Repealed. Laws 2007, LB 463, § 1319.
71-1711. Repealed. Laws 1996, LB 414, § 52.
71-1712. Transferred to section 38-2311.
71-1713. Repealed. Laws 1993, LB 536, § 128.
71-1714. Transferred to section 38-2313.
71-1715. Repealed. Laws 1996, LB 414, § 52.
71-1716. Transferred to section 38-2308.
71-1716.01. Transferred to section 38-2304.
71-1716.02. Transferred to section 38-2303.
71-1716.03. Transferred to section 38-2310.
71-1716.04. Repealed. Laws 1996, LB 414, § 52.
71-1716.05. Transferred to section 38-2314.
71-1717. Transferred to section 38-2305.
71-1718. Repealed. Laws 1993, LB 536, § 128.
71-1718.01. Transferred to section 71-17,134.
71-1718.02. Transferred to section 71-17,135.
71-1719. Repealed. Laws 1993, LB 536, § 128.
71-1720. Repealed. Laws 1993, LB 536, § 128.

Section
71-1721. Transferred to section 38-2315.
71-1721.01. Repealed. Laws 1996, LB 414, § 52.
71-1721.02. Repealed. Laws 1996, LB 414, § 52.
71-1721.03. Repealed. Laws 1996, LB 414, § 52.
71-1721.04. Repealed. Laws 1996, LB 414, § 52.
71-1721.05. Repealed. Laws 1996, LB 414, § 52.
71-1721.06. Repealed. Laws 1996, LB 414, § 52.
71-1721.07. Repealed. Laws 2007, LB 463, § 1319.
71-1722. Transferred to section 38-2317.
71-1723. Repealed. Laws 2007, LB 463, § 1319.
71-1723.01. Transferred to section 38-2321.
71-1723.02. Transferred to section 38-2322.
71-1723.03. Transferred to section 38-2323.
71-1723.04. Transferred to section 38-2320.
71-1724. Transferred to section 38-2319.
71-1724.01. Transferred to section 38-2318.
71-1724.02. Repealed. Laws 2007, LB 185, § 54.
71-1725. Repealed. Laws 2007, LB 185, § 54.
71-1725.01. Repealed. Laws 2007, LB 185, § 54.
71-1726. Repealed. Laws 2007, LB 185, § 54.
71-1726.01. Transferred to section 38-2316.
71-1726.02. Repealed. Laws 2007, LB 463, § 1319.
71-1727. Repealed. Laws 2003, LB 242, § 154.

(c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT

71-1728. Transferred to section 38-701.
71-1729. Transferred to section 38-706.
71-1730. Transferred to section 38-707.
71-1731. Transferred to section 38-708.
71-1732. Repealed. Laws 1992, LB 1019, § 129.
71-1733. Repealed. Laws 1992, LB 1019, § 129.
71-1734. Transferred to section 38-711.
71-1735. Transferred to section 38-709.
71-1736. Repealed. Laws 2005, LB 256, § 103.
71-1736.01. Repealed. Laws 2007, LB 185, § 54.
71-1736.02. Repealed. Laws 2007, LB 185, § 54.
71-1736.03. Repealed. Laws 2007, LB 185, § 54.
71-1737. Repealed. Laws 2007, LB 463, § 1319.

(d) NURSE MIDWIFERY

71-1738. Transferred to section 38-601.
71-1739. Transferred to section 38-602.
71-1740. Transferred to section 38-603.
71-1741. Repealed. Laws 1999, LB 828, § 178.
71-1742. Repealed. Laws 1999, LB 828, § 178.
71-1743. Transferred to section 38-605.
71-1744. Repealed. Laws 2002, LB 93, § 27.
71-1745. Repealed. Laws 2007, LB 463, § 1319.
71-1746. Transferred to section 38-608.
71-1747. Transferred to section 38-607.
71-1748. Transferred to section 38-606.
71-1749. Transferred to section 38-604.
71-1750. Transferred to section 38-609.
71-1751. Transferred to section 38-610.
71-1752. Transferred to section 38-611.
71-1753. Transferred to section 38-613.
71-1754. Transferred to section 38-614.
71-1755. Transferred to section 38-615.
71-1756. Transferred to section 38-617.
71-1757. Transferred to section 38-616.
71-1758. Repealed. Laws 2007, LB 185, § 54.

Section

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,108. Act, how cited.
71-17,109. Terms, defined.
71-17,110. Loan; eligibility.
71-17,111. Loan distribution; conditions.
71-17,112. Nursing Faculty Student Loan Cash Fund; created; use; investment.
71-17,113. License renewal; extra fee.
71-17,114. Department; powers and duties.
71-17,115. Report required.
71-17,116. Rules and regulations.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

71-17,117. Transferred to section 38-901.
71-17,118. Transferred to section 38-903.
71-17,119. Transferred to section 38-908.
71-17,120. Transferred to section 38-906.
71-17,121. Transferred to section 38-910.
71-17,122. Repealed. Laws 2007, LB 463, § 1319.
71-17,123. Repealed. Laws 2007, LB 463, § 1319.
71-17,124. Repealed. Laws 2007, LB 463, § 1319.
71-17,125. Repealed. Laws 2007, LB 185, § 54.
71-17,126. Repealed. Laws 2007, LB 185, § 54.
71-17,127. Repealed. Laws 2007, LB 185, § 54.
71-17,128. Transferred to section 38-907.
71-17,129. Repealed. Laws 2007, LB 463, § 1319.
71-17,130. Repealed. Laws 2007, LB 463, § 1319.

(l) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

71-17,131. Transferred to section 38-201.
71-17,132. Transferred to section 38-202.
71-17,133. Transferred to section 38-203.
71-17,134. Transferred to section 38-205.
71-17,135. Transferred to section 38-206.
71-17,136. Transferred to section 38-207.
71-17,137. Transferred to section 38-208.
71-17,138. Transferred to section 38-209.
71-17,139. Repealed. Laws 2007, LB 463, § 1319.
71-17,140. Transferred to section 38-210.
71-17,141. Repealed. Laws 2007, LB 463, § 1319.

(a) COMMUNITY NURSES

71-1701 Transferred to section 71-1637.

71-1702 Transferred to section 71-1638.

71-1703 Transferred to section 71-1639.

(b) NURSE PRACTITIONER ACT

71-1704 Transferred to section 38-2301.

71-1705 Repealed. Laws 2005, LB 256, § 103.

71-1706 Transferred to section 38-2302.

71-1707 Transferred to section 38-2312.

71-1708 Transferred to section 38-2306.

71-1709 Repealed. Laws 1996, LB 414, § 52.

71-1709.01 Transferred to section 38-2307.

71-1709.02 Transferred to section 38-2309.

71-1710 Repealed. Laws 2007, LB 463, § 1319.

71-1711 Repealed. Laws 1996, LB 414, § 52.

71-1712 Transferred to section 38-2311.

71-1713 Repealed. Laws 1993, LB 536, § 128.

71-1714 Transferred to section 38-2313.

71-1715 Repealed. Laws 1996, LB 414, § 52.

71-1716 Transferred to section 38-2308.

71-1716.01 Transferred to section 38-2304.

71-1716.02 Transferred to section 38-2303.

71-1716.03 Transferred to section 38-2310.

71-1716.04 Repealed. Laws 1996, LB 414, § 52.

71-1716.05 Transferred to section 38-2314.

71-1717 Transferred to section 38-2305.

71-1718 Repealed. Laws 1993, LB 536, § 128.

71-1718.01 Transferred to section 71-17,134.

71-1718.02 Transferred to section 71-17,135.

71-1719 Repealed. Laws 1993, LB 536, § 128.

71-1720 Repealed. Laws 1993, LB 536, § 128.

71-1721 Transferred to section 38-2315.

71-1721.01 Repealed. Laws 1996, LB 414, § 52.

71-1721.02 Repealed. Laws 1996, LB 414, § 52.

71-1721.03 Repealed. Laws 1996, LB 414, § 52.

71-1721.04 Repealed. Laws 1996, LB 414, § 52.

71-1721.05 Repealed. Laws 1996, LB 414, § 52.

71-1721.06 Repealed. Laws 1996, LB 414, § 52.

71-1721.07 Repealed. Laws 2007, LB 463, § 1319.

71-1722 Transferred to section 38-2317.

71-1723 Repealed. Laws 2007, LB 463, § 1319.

71-1723.01 Transferred to section 38-2321.

71-1723.02 Transferred to section 38-2322.

71-1723.03 Transferred to section 38-2323.

71-1723.04 Transferred to section 38-2320.

71-1724 Transferred to section 38-2319.

71-1724.01 Transferred to section 38-2318.

71-1724.02 Repealed. Laws 2007, LB 185, § 54.

71-1725 Repealed. Laws 2007, LB 185, § 54.

71-1725.01 Repealed. Laws 2007, LB 185, § 54.

71-1726 Repealed. Laws 2007, LB 185, § 54.

71-1726.01 Transferred to section 38-2316.

71-1726.02 Repealed. Laws 2007, LB 463, § 1319.

71-1727 Repealed. Laws 2003, LB 242, § 154.

(c) CERTIFIED REGISTERED NURSE ANESTHETIST ACT

71-1728 Transferred to section 38-701.

71-1729 Transferred to section 38-706.

71-1730 Transferred to section 38-707.

71-1731 Transferred to section 38-708.

71-1732 Repealed. Laws 1992, LB 1019, § 129.

71-1733 Repealed. Laws 1992, LB 1019, § 129.

71-1734 Transferred to section 38-711.

71-1735 Transferred to section 38-709.

71-1736 Repealed. Laws 2005, LB 256, § 103.

71-1736.01 Repealed. Laws 2007, LB 185, § 54.

71-1736.02 Repealed. Laws 2007, LB 185, § 54.

71-1736.03 Repealed. Laws 2007, LB 185, § 54.

71-1737 Repealed. Laws 2007, LB 463, § 1319.

(d) NURSE MIDWIFERY

71-1738 Transferred to section 38-601.

71-1739 Transferred to section 38-602.

71-1740 Transferred to section 38-603.

71-1741 Repealed. Laws 1999, LB 828, § 178.

71-1742 Repealed. Laws 1999, LB 828, § 178.

71-1743 Transferred to section 38-605.

71-1744 Repealed. Laws 2002, LB 93, § 27.

71-1745 Repealed. Laws 2007, LB 463, § 1319.

71-1746 Transferred to section 38-608.

71-1747 Transferred to section 38-607.

71-1748 Transferred to section 38-606.

71-1749 Transferred to section 38-604.

71-1750 Transferred to section 38-609.

71-1751 Transferred to section 38-610.

71-1752 Transferred to section 38-611.

71-1753 Transferred to section 38-613.

71-1754 Transferred to section 38-614.

71-1755 Transferred to section 38-615.

71-1756 Transferred to section 38-617.

71-1757 Transferred to section 38-616.

71-1758 Repealed. Laws 2007, LB 185, § 54.

71-1759 Repealed. Laws 2002, LB 93, § 27.

71-1760 Repealed. Laws 2003, LB 242, § 154.

71-1761 Repealed. Laws 2007, LB 185, § 54.

71-1762 Repealed. Laws 2007, LB 185, § 54.

71-1763 Transferred to section 38-618.

71-1764 Repealed. Laws 2007, LB 463, § 1319.

71-1765 Transferred to section 38-612.

(e) NURSING INCENTIVES

71-1766 Repealed. Laws 1997, LB 622, § 136.

71-1767 Repealed. Laws 1997, LB 622, § 136.

71-1768 Repealed. Laws 1997, LB 622, § 136.

71-1769 Repealed. Laws 1997, LB 622, § 136.

71-1770 Repealed. Laws 1997, LB 622, § 136.

71-1771 Repealed. Laws 1997, LB 622, § 136.

(f) LICENSED PRACTICAL NURSE-CERTIFIED

71-1772 Transferred to section 38-1601.

71-1773 Transferred to section 38-1602.

71-1774 Repealed. Laws 2007, LB 463, § 1319.

71-1775 Transferred to section 38-1621.

71-1776 Transferred to section 38-1613.

71-1777 Transferred to section 38-1615.

71-1778 Transferred to section 38-1616.

71-1779 Transferred to section 38-1617.

71-1780 Transferred to section 38-1622.

71-1781 Transferred to section 38-1623.

71-1782 Repealed. Laws 2007, LB 463, § 1319.

71-1783 Transferred to section 38-1624.

71-1784 Repealed. Laws 2007, LB 463, § 1319.

71-1785 Transferred to section 38-1625.

71-1786 Repealed. Laws 2003, LB 242, § 154.

71-1787 Repealed. Laws 2007, LB 463, § 1319.

71-1788 Repealed. Laws 2007, LB 463, § 1319.

71-1789 Transferred to section 38-1614.

71-1790 Transferred to section 38-1620.

71-1791 Repealed. Laws 2007, LB 463, § 1319.

71-1792 Transferred to section 38-1618.

71-1793 Repealed. Laws 2007, LB 463, § 1319.

71-1794 Repealed. Laws 2007, LB 463, § 1319.

(g) NURSE LICENSURE COMPACT

71-1795 Nurse Licensure Compact.

The Nurse Licensure Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

ARTICLE I. Findings and Declaration of Purpose

(a) The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

(2) Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

(5) The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

(b) The general purposes of this compact are to:

(1) Facilitate the states' responsibility to protect the public's health and safety;

(2) Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

(3) Facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;

(4) Promote compliance with the laws governing the practice of nursing in each jurisdiction;

(5) Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II. Definitions

As used in this compact:

(a) Adverse action means a home or remote state action.

(b) Alternative program means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.

(c) Coordinated licensure information system means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards.

(d) Current significant investigative information means:

(1) Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

(2) Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

(e) Home state means the party state which is the nurse's primary state of residence.

(f) Home state action means any administrative, civil, equitable, or criminal action permitted by the home state's laws which is imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(g) Licensing board means a party state's regulatory body responsible for issuing nurse licenses.

(h) Multistate licensure privilege means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical or vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

(i) Nurse means a registered nurse or licensed practical or vocational nurse, as those terms are defined by each party state's state practice laws.

(j) Party state means any state that has adopted this compact.

(k) Remote state means a party state, other than the home state:

(1) Where the patient is located at the time nursing care is provided; or

(2) In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

(l) Remote state action means:

(1) Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state; and

(2) Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

(m) State means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(n) State practice laws means those individual party states' laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. State practice laws does not include the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III. General Provisions and Jurisdiction

(a) A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical or vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical or vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

(b) Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to

protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

(c) Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

(d) This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

(e) Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV. Applications for Licensure in a Party State

(a) Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

(b) A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

(c) A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in the primary state of residence satisfactory to the new home state's licensing board.

(d) When a nurse changes primary state of residence by:

(1) Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

(2) Moving from a nonparty state to a party state, and obtains a license from the new home state, the individual state license issued by the nonparty state is not affected and will remain in full force if so provided by the laws of the nonparty state;

(3) Moving from a party state to a nonparty state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V. Adverse Actions

In addition to the general provisions described in Article III, the following provisions apply:

(a) The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state action, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any current significant investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such report.

(b) The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate actions and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

(c) A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

(d) For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

(e) The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

(f) Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI. Additional Authorities Invested in Party

State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

(a) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

(b) Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence are located;

(c) Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

(d) Promulgate uniform rules and regulations as provided for in Article VIII(c).

ARTICLE VII. Coordinated Licensure Information System

(a) All party states shall participate in a cooperative effort to create a coordinated data base of all licensed registered nurses and licensed practical or vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(b) Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials to the coordinated licensure information system.

(c) Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

(d) Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(e) Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(f) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

(g) The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

ARTICLE VIII. Compact Administration and Interchange of Information

(a) The head of the nurse licensing board or his or her designee of each party state shall be the administrator of this compact for his or her state.

(b) The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents, including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

(c) Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under Article VI(d).

ARTICLE IX. Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who act in accordance with the provisions of this compact shall be liable except as provided in the State Tort Claims Act.

ARTICLE X. Entry into Force, Withdrawal, and Amendment

(a) This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

(b) No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

(c) Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(d) This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI. Construction and Severability

(a) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

(b) In the event party states find a need for settling disputes arising under this compact:

(1) The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute;

(2) The decision of a majority of the arbitrators shall be final and binding.

Source: Laws 2000, LB 523, § 1.

Cross References

State Tort Claims Act, see section 81-8,235.

(h) NEBRASKA CENTER FOR NURSING ACT

71-1796 Act, how cited.

Sections 71-1796 to 71-17,100 shall be known and may be cited as the Nebraska Center for Nursing Act.

Source: Laws 2000, LB 1025, § 1; Laws 2005, LB 243, § 2.
Termination date July 1, 2010.

71-1797 Legislative findings.

The Legislature finds that it is imperative that the State of Nebraska protect its investment and the progress made in its efforts to alleviate the nursing shortage which exists. The Legislature also finds that the Nebraska Center for Nursing will provide the appropriate means to do so. It is the intent of the Legislature to appropriate funds necessary for the center to carry out the Nebraska Center for Nursing Act.

Source: Laws 2000, LB 1025, § 2.
Termination date July 1, 2010.

71-1798 Nebraska Center for Nursing; established; goals.

The Nebraska Center for Nursing is established. The center shall address issues of supply and demand for nurses, including issues of recruitment, retention, and utilization of nurses. The Legislature finds that the center will repay the state's investment by providing an ongoing strategy for the allocation of the state's resources directed towards nursing. The primary goals for the center are:

(1) To develop a strategic statewide plan to alleviate the nursing shortage in Nebraska by:

(a) Establishing and maintaining a data base on nursing supply and demand in Nebraska, including current supply and demand and future projections; and

(b) Selecting priorities from the plan to be addressed;

(2) To convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:

(a) Review and comment on data analysis prepared for the center;

(b) Recommend systemic changes, including strategies for implementation of recommended changes; and

(c) Evaluate and report the results of these efforts to the Legislature and the public; and

(3) To enhance and promote recognition, reward, and renewal activities for nurses by:

(a) Proposing and creating recognition, reward, and renewal activities; and

(b) Promoting media and positive image-building efforts for nursing.

Source: Laws 2000, LB 1025, § 3.
Termination date July 1, 2010.

71-1798.01 Board of Nursing; duties.

The Board of Nursing shall recommend annually to the Department of Health and Human Services the percentage of all nursing fees collected during the year that are to be used to cover the cost of the Nebraska Center for Nursing,

except that the percentage shall not be greater than fifteen percent of the biennial revenue derived from the fees.

Source: Laws 2005, LB 243, § 3; Laws 2007, LB296, § 488.
Termination date July 1, 2010.

71-1799 Nebraska Center for Nursing Board; created; members; terms; powers and duties; expenses.

(1) The Nebraska Center for Nursing Board is created. The board shall be a policy-setting board for the Nebraska Center for Nursing. The board shall be appointed by the Governor as follows:

(a) Ten members, at least three of whom shall be registered nurses, one of whom shall be a licensed practical nurse, one of whom shall be a representative of the hospital industry, and one of whom shall be a representative of the long-term care industry;

(b) One nurse educator recommended by the Board of Regents of the University of Nebraska;

(c) One nurse educator recommended by the Nebraska Community College Association;

(d) One nurse educator recommended by the Nebraska Association of Independent Colleges and Universities; and

(e) Three members recommended by the State Board of Health.

(2) The initial terms of the members of the Nebraska Center for Nursing Board shall be:

(a) Five of the ten members appointed under subdivision (1)(a) of this section shall serve for one year and five shall serve for two years;

(b) The member recommended by the Board of Regents shall serve for three years;

(c) The member recommended by the Nebraska Community College Association shall serve for two years;

(d) The member recommended by the Nebraska Association of Independent Colleges and Universities shall serve for one year; and

(e) The members recommended by the State Board of Health shall serve for three years.

The initial appointments shall be made within sixty days after July 13, 2000. After the initial terms expire, the terms of all of the members shall be three years with no member serving more than two consecutive terms.

(3) The Nebraska Center for Nursing Board shall have the following powers and duties:

(a) To determine operational policy;

(b) To elect a chairperson and officers to serve two-year terms. The chairperson and officers may not succeed themselves;

(c) To establish committees of the board as needed;

(d) To appoint a multidisciplinary advisory council for input and advice on policy matters;

(e) To implement the major functions of the Nebraska Center for Nursing; and

(f) To seek and accept nonstate funds for carrying out center policy.

(4) The board members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(5) The Department of Health and Human Services shall provide administrative support for the board. The board may contract for additional support not provided by the department.

Source: Laws 2000, LB 1025, § 4; Laws 2007, LB296, § 489.
Termination date July 1, 2010.

71-17,100 Act; termination.

The Nebraska Center for Nursing Act terminates on July 1, 2010.

Source: Laws 2000, LB 1025, § 5; Laws 2005, LB 243, § 4.
Termination date July 1, 2010.

(i) NURSING STUDENT LOAN ACT

71-17,101 Act, how cited.

Sections 71-17,101 to 71-17,107 shall be known and may be cited as the Nursing Student Loan Act.

Source: Laws 2001, LB 468, § 1.

71-17,102 Terms, defined.

For purposes of the Nursing Student Loan Act:

(1) Approved nursing program means a program offered by a public or private institution in this state (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;

(2) Department means the Department of Health and Human Services;

(3) Nontraditional student means a student who has not attended classes as a regular full-time student for at least three years; and

(4) Practice of nursing has the definition found in section 38-2210.

Source: Laws 2001, LB 468, § 2; Laws 2007, LB296, § 490; Laws 2007, LB463, § 1191.

71-17,103 Department; duties.

The department shall administer a student loan program under the Nursing Student Loan Act which shall make loans directly to qualified students enrolled in approved nursing programs in the State of Nebraska as provided in section 71-17,106. The number of loans made to qualified students at each institution which has an approved nursing program shall be in direct proportion to the number of students enrolled in each nursing program, except that the program shall include at least one qualified student at each institution in the state which has an approved nursing program. The funds shall be loaned in a manner intended to result in the greatest increase in the number of persons engaged in the study of nursing. Loans shall be made available for students beginning January 1, 2002, and in each academic year thereafter. It is the intent of the

Legislature that a portion of the loans allocated be used to enhance the educational opportunities of nontraditional students and ethnic minority students.

Source: Laws 2001, LB 468, § 3.

71-17,104 Student loan; eligibility.

(1) To qualify for a loan under the Nursing Student Loan Act, a student shall be a resident of Nebraska, intend to practice in Nebraska, be motivated to practice in Nebraska, and have substantial financial need. For purposes of this section, substantial financial need means the difference between the student's financial resources available, including those available from parents, a parent, a guardian, or a spouse, and the student's anticipated educational expenses while attending the approved nursing program, taking into account that:

(a) In determining whether a dependent student has substantial financial need, the following factors shall be considered: (i) Serious family illness; (ii) the number of dependent children of the student's parents; (iii) the number of such dependent children attending institutions of higher education; and (iv) such other circumstances as may affect the ability of the student and student's parents to contribute toward the cost of the student's education; and

(b) In determining whether an independent or self-supporting student has substantial financial need, the following factors shall be considered: (i) Any serious illness in the student's family; (ii) the number of dependent children of the student; (iii) the number of such dependent children attending institutions of higher education; and (iv) such other circumstances as may affect the ability of the student or spouse to contribute toward the cost of the student's education.

(2) Each recipient of a loan under the act shall agree to engage in the practice of nursing in the State of Nebraska for the equivalent of one year of full-time practice for each year a loan is received.

(3) Each approved nursing program shall forward to the department the names of the qualified students recommended to receive loans under the act, based on the criteria specified in subsections (1) and (2) of this section, and any other information and documentation the department deems necessary.

Source: Laws 2001, LB 468, § 4; Laws 2003, LB 574, § 23.

71-17,105 Loans; restrictions; repayment; when.

(1) Loans received under the Nursing Student Loan Act shall be used only for educational expenses for an approved nursing program. The use of such loan funds by a student is subject to review by the department.

(2) Each loan shall be for one academic year. Each student shall not be loaned more than one thousand dollars per academic year nor a total of more than two thousand dollars.

(3) If a student who has received a loan discontinues the approved nursing program before completing the program, the student shall repay one hundred percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate. Such repayment shall commence within six months after the date of discontinuation of the course of study and shall be completed within the number of years for which loans were awarded.

(4) After completion of the approved nursing program, a loan awarded to a student shall be forgiven when the recipient of the loan has engaged in the full-time practice of nursing in Nebraska for a period of time which would be the equivalent of full-time practice for the number of years for which loans were received.

(5) If a recipient of a loan under the act is not engaged in full-time practice, or the equivalent of full-time practice, as required in subsection (2) of section 71-17,104, the recipient shall repay one hundred twenty-five percent of the outstanding loan principal. Such repayment shall be with simple interest at a rate of one point below the prime interest rate. Interest shall accrue beginning upon completion of the approved nursing program. Such repayment shall commence within six months after the date of discontinuation of the practice of nursing in Nebraska and shall be completed within the number of years for which loans were awarded.

Source: Laws 2001, LB 468, § 5.

71-17,106 Rules and regulations.

The department, in conjunction with approved nursing programs, shall adopt and promulgate rules and regulations to carry out the Nursing Student Loan Act. In conformance with such rules and regulations, institutions with approved nursing programs may act as agents of the department for the distribution of the loans to eligible students. The department may contract with outside sources to carry out the act.

Source: Laws 2001, LB 468, § 6.

71-17,107 Nursing Student Loan Cash Fund; created; use; investment.

The Nursing Student Loan Cash Fund is created. The fund shall be the repository for loan repayments received under section 71-17,105. 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.

Source: Laws 2001, LB 468, § 7.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(j) NURSING FACULTY STUDENT LOAN ACT

71-17,108 Act, how cited.

Sections 71-17,108 to 71-17,116 shall be known and may be cited as the Nursing Faculty Student Loan Act.

Source: Laws 2005, LB 146, § 1.

Cross References

Nurse Practice Act, see section 38-2201.

71-17,109 Terms, defined.

For purposes of the Nursing Faculty Student Loan Act:

(1) Approved nursing program means a program offered by a public or private postsecondary educational institution in Nebraska (a) which consists of courses of instruction in regularly scheduled classes leading to a master of science degree, a bachelor of science degree, an associate degree, or a diploma in nursing or (b) for the preparation for licensure as a licensed practical nurse available to regularly enrolled undergraduate or graduate students;

(2) Department means the Department of Health and Human Services; and

(3) Masters or doctoral accredited nursing program means a postgraduate nursing education program that has been accredited by a nationally recognized accrediting agency and offered by a public or private postsecondary educational institution in Nebraska.

Source: Laws 2005, LB 146, § 2; Laws 2007, LB296, § 491.

71-17,110 Loan; eligibility.

To qualify for a loan under the Nursing Faculty Student Loan Act, a student shall (1) be a resident of Nebraska, (2) be enrolled in a masters or doctoral accredited nursing program, and (3) agree in writing to engage in nursing instruction in an approved nursing program.

Source: Laws 2005, LB 146, § 3.

71-17,111 Loan distribution; conditions.

Loans may be made by the department under the Nursing Faculty Student Loan Act for educational expenses of a qualified student who agrees in writing to engage in nursing instruction in an approved nursing program for two years of full-time nursing instruction for each year a loan is received, with a maximum of six years of nursing instruction in Nebraska in return for three years of loans under the act. Loans shall be subject to the following conditions:

(1) Loans shall be used only for educational expenses for a masters or doctoral accredited nursing program. The use of loan funds by the recipient is subject to review by the department;

(2) Each loan shall be for one academic year;

(3) A loan recipient shall not receive more than five thousand dollars per academic year and shall not receive more than fifteen thousand dollars under the act;

(4) Loans shall be forgiven at the rate of five thousand dollars loaned per two years of full-time nursing instruction in Nebraska;

(5) If a loan recipient discontinues enrollment in the masters or doctoral accredited nursing program before completing the program, he or she shall repay to the department one hundred percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate as of the date the loan recipient signed the contract. Interest shall accrue as of the date the loan recipient signed the contract. Such repayment shall commence within six months after the date he or she discontinues enrollment and shall be completed within the number of years for which loans were awarded;

(6) If, after the loan recipient completes the masters or doctoral accredited nursing program and before all of his or her loans are forgiven under the act, he or she fails to begin or ceases full-time nursing instruction pursuant to the loan agreement, he or she shall repay to the department one hundred twenty-

five percent of the outstanding loan principal with simple interest at a rate of one point below the prime interest rate as of the date the loan recipient signed the contract. Interest shall accrue as of the date the loan recipient signed the contract. Such repayment shall commence within six months after the date of completion of the program or the date the loan recipient ceases full-time nursing instruction, whichever is later, and shall be completed within the number of years for which loans were awarded; and

(7) Institutions which offer a masters or doctoral accredited nursing program may act as agents of the department for the distribution of loans to eligible students.

Source: Laws 2005, LB 146, § 4.

71-17,112 Nursing Faculty Student Loan Cash Fund; created; use; investment.

The Nursing Faculty Student Loan Cash Fund is created. The fund shall consist of grants, private donations, fees collected pursuant to section 71-17,113, and loan repayments under the Nursing Faculty Student Loan Act remitted by the department to the State Treasurer for credit to the fund. The fund shall be used to administer the act and for loans to qualified students pursuant to the act. Any money in the Nursing Faculty Student Loan Cash 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.

Source: Laws 2005, LB 146, § 5; Laws 2006, LB 962, § 1.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-17,113 License renewal; extra fee.

Beginning January 1, 2006, through December 31, 2007, the department shall charge a fee of one dollar, in addition to any other fee, for each license renewal for a registered nurse or licensed practical nurse pursuant to the Nurse Practice Act. Such fee shall be collected at the time of renewal and remitted to the State Treasurer for credit to the Nursing Faculty Student Loan Cash Fund.

Source: Laws 2005, LB 146, § 6; Laws 2007, LB296, § 492; Laws 2007, LB463, § 1192.

Cross References

Nurse Practice Act, see section 38-2201.

71-17,114 Department; powers and duties.

The department has the administrative responsibility to track loan recipients and to develop repayment tracking and collection mechanisms. The department may contract for such services. When a loan has been forgiven pursuant to section 71-17,111, the amount forgiven may be taxable income to the loan recipient and the department shall provide notification of the amount forgiven to the loan recipient, the Department of Revenue, and the Internal Revenue Service if required by the Internal Revenue Code as defined in section 49-801.01.

Source: Laws 2005, LB 146, § 7.

71-17,115 Report required.

The department shall annually provide a report to the Governor and the Clerk of the Legislature on the status of the program, the status of the loan recipients, and the impact of the program on the number of nursing faculty in Nebraska. Any report which includes information about loan recipients shall exclude confidential information or any other information which specifically identifies a loan recipient.

Source: Laws 2005, LB 146, § 8.

71-17,116 Rules and regulations.

The department, in consultation with approved nursing programs in Nebraska, shall adopt and promulgate rules and regulations to carry out the Nursing Faculty Student Loan Act. The department may adopt rules that require the maximum forgiveness amount of fifteen thousand dollars pursuant to subdivision (3) of section 71-17,111 be present in the Nursing Faculty Student Loan Cash Fund before each qualified student is chosen.

Source: Laws 2005, LB 146, § 9.

(k) CLINICAL NURSE SPECIALIST PRACTICE ACT

71-17,117 Transferred to section 38-901.

71-17,118 Transferred to section 38-903.

71-17,119 Transferred to section 38-908.

71-17,120 Transferred to section 38-906.

71-17,121 Transferred to section 38-910.

71-17,122 Repealed. Laws 2007, LB 463, § 1319.

71-17,123 Repealed. Laws 2007, LB 463, § 1319.

71-17,124 Repealed. Laws 2007, LB 463, § 1319.

71-17,125 Repealed. Laws 2007, LB 185, § 54.

71-17,126 Repealed. Laws 2007, LB 185, § 54.

71-17,127 Repealed. Laws 2007, LB 185, § 54.

71-17,128 Transferred to section 38-907.

71-17,129 Repealed. Laws 2007, LB 463, § 1319.

71-17,130 Repealed. Laws 2007, LB 463, § 1319.

(l) ADVANCED PRACTICE REGISTERED NURSE LICENSURE ACT

71-17,131 Transferred to section 38-201.

71-17,132 Transferred to section 38-202.

71-17,133 Transferred to section 38-203.

71-17,134 Transferred to section 38-205.

71-17,135 Transferred to section 38-206.

71-17,136 Transferred to section 38-207.

71-17,137 Transferred to section 38-208.

71-17,138 Transferred to section 38-209.

71-17,139 Repealed. Laws 2007, LB 463, § 1319.

71-17,140 Transferred to section 38-210.

71-17,141 Repealed. Laws 2007, LB 463, § 1319.

ARTICLE 18
PATHOGENIC MICROORGANISMS

Section
71-1801. Pathogenic microorganisms; sale and distribution; permit required.
71-1802. Permit; Department of Health and Human Services, authority; certification to State Veterinarian.
71-1803. Permit; State Veterinarian, authority; rules and regulations.
71-1804. Permit; duration; abrogation; renewal.
71-1805. Violation; penalty.

71-1801 Pathogenic microorganisms; sale and distribution; permit required.

The sale and distribution of any material or substance, containing live microorganisms which are pathogenic to humans, is hereby prohibited unless authorized by special permits as provided for by sections 71-1802 and 71-1803.

Source: Laws 1943, c. 153, § 1, p. 561; R.S.1943, § 71-1801.

71-1802 Permit; Department of Health and Human Services, authority; certification to State Veterinarian.

The Department of Health and Human Services is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases in humans, if in the opinion of the department there is sufficient warrant for their utilization for such purpose. The department shall certify to the State Veterinarian the materials or substances that contain live microorganisms which are pathogenic to humans. The department is further authorized to promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 1943, c. 153, § 2, p. 562; R.S.1943, § 71-1802; Laws 1996, LB 1044, § 579; Laws 2007, LB296, § 494.

71-1803 Permit; State Veterinarian, authority; rules and regulations.

The State Veterinarian is hereby authorized to issue permits for the use of the pathogenic microorganisms described in section 71-1801 in the prevention or control of diseases of animals, if in the opinion of the Department of Health and Human Services there is sufficient warrant for their utilization for such purpose. In carrying out the duties of this section with reference to animals, the State Veterinarian shall take into consideration the certification made by the Department of Health and Human Services as provided for in section 71-1802.

The State Veterinarian is further authorized to promulgate rules and regulations to carry out the provisions of this section.

Source: Laws 1943, c. 153, § 3, p. 562; R.S.1943, § 71-1803; Laws 1965, c. 334, § 8, p. 958; Laws 1996, LB 1044, § 580; Laws 2007, LB296, § 495.

71-1804 Permit; duration; abrogation; renewal.

The permits, issued under the provisions of sections 71-1802 and 71-1803, shall be valid for the period of one year, or part thereof, expiring on December 31 of each year. However, all such permits must remain subject to abrogation and renewal, if in the opinion of the Department of Health and Human Services or State Veterinarian there is sufficient warrant for such abrogation or renewal.

Source: Laws 1943, c. 153, § 4, p. 562; R.S.1943, § 71-1804; Laws 1996, LB 1044, § 581; Laws 2007, LB296, § 496.

71-1805 Violation; penalty.

Any person violating any of the provisions of sections 71-1801 to 71-1804 shall be guilty of a Class II misdemeanor.

Source: Laws 1943, c. 153, § 5, p. 562; R.S.1943, § 71-1805; Laws 1977, LB 39, § 162; Laws 1996, LB 1044, § 582.

ARTICLE 19

CARE OF CHILDREN

Cross References

Abuse or neglect, criminal penalties, see section 28-705 et seq.
Before-and-after school services, school districts provide, see section 79-1104.
Central register, child protection cases, see section 28-718 et seq.
Child Protection Act, see section 28-710.
Confidential information, access, see section 43-3001.
Early Childhood Interagency Coordinating Council, see section 43-3401.
Early Childhood Training Center, see section 79-1102.
Fire safety inspection, see section 81-502.
Foster Care Review Act, see section 43-1318.
Interstate Compact for the Placement of Children, see section 43-1103.
Juvenile emergency shelter care, see section 13-317.
Medication administration, Medication Aide Act, see section 71-6718.
Nebraska Indian Child Welfare Act, see section 43-1501.
Quality Child Care Act, see section 43-2601.
Reimbursement by state, market rate survey, see section 43-536.
Social services, enumerated, see section 68-1202.
Ward of state or court, school district tuition, see section 79-215.

(a) FOSTER CARE LICENSURE

Section
71-1901. Terms, defined.
71-1902. Foster care; license required; training required; license renewal; fees; license revocation; procedure.
71-1903. Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.
71-1904. Rules and regulations; waiver of training requirements; when.
71-1905. Violation; penalty.
71-1906. Native American foster homes; legislative intent.
71-1906.01. Native American foster homes; rules and regulations.
71-1906.02. Repealed. Laws 2002, LB 93, § 27.
71-1906.03. Repealed. Laws 2002, LB 93, § 27.
71-1907. Child passenger restraint; requirements; violation; penalty.

Section

(b) CHILD CARE LICENSURE

(a) FOSTER CARE LICENSURE

71-1901 Terms, defined.

For purposes of sections 71-1901 to 71-1906.01:

(1) Person includes a partnership, limited liability company, firm, agency, association, or corporation;

(2) Child means an unemancipated minor;

(3) Department means the Division of Public Health of the Department of Health and Human Services;

(4) Foster care means engaged in the service of exercising twenty-four-hour daily care, supervision, custody, or control over children, for compensation or hire, in lieu of the care or supervision normally exercised by parents in their own home. Foster care does not include casual care at irregular intervals or programs as defined in section 71-1910; and

(5) Native American means a person who is a member of an Indian tribe or eligible for membership in an Indian tribe.

Source: Laws 1943, c. 154, § 1, p. 563; R.S.1943, § 71-1901; Laws 1945, c. 171, § 1, p. 548; Laws 1961, c. 415, § 25, p. 1258; Laws 1984, LB 130, § 13; Laws 1987, LB 386, § 1; Laws 1993, LB 121, § 425; Laws 1995, LB 401, § 24; Laws 1995, LB 451, § 1; Laws 1996, LB 1044, § 583; Laws 1997, LB 307, § 171; Laws 2001, LB 209, § 19; Laws 2002, LB 93, § 7; Laws 2008, LB797, § 12.

71-1902 Foster care; license required; training required; license renewal; fees; license revocation; procedure.

Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for two or more children from different families without having in full force and effect a written license issued by the department upon such terms and conditions as may be prescribed by general rules and regulations adopted and promulgated by the department. The department may issue a time-limited, nonrenewable provisional license to an applicant who is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the time period stated in the license. The department may issue a time-limited, nonrenewable probationary license to a licensee who agrees to establish compliance with rules and regulations that, when violated, do not present an unreasonable risk to the health, safety, or well-being of the foster children in the care of the applicant. No license shall be issued pursuant to this section unless the applicant has completed the required hours of training in foster care as prescribed by the department.

All nonprovisional and nonprobationary licenses issued under sections 71-1901 to 71-1906.01 shall expire two years from the date of issuance and shall be subject to renewal under the same terms and conditions as the original license, except that if a licensee submits a completed renewal application thirty days or more before the license's expiration date, the license shall remain in effect until the department either renews the license or denies the renewal application. No license issued pursuant to this section shall be renewed unless the licensee has completed the required hours of training in foster care in the preceding twelve months as prescribed by the department. For the issuance or renewal of each nonprovisional and nonprobationary license, the department shall charge a fee of fifty dollars for a group home, fifty dollars for a child-caring agency, and fifty dollars for a child-placing agency. For the issuance of each provisional license and each probationary license, the department shall charge a fee of twenty-five dollars for a group home, twenty-five dollars for a child-caring agency, and twenty-five dollars for a child-placing agency. A license may be revoked for cause, after notice and hearing, in accordance with rules and regulations adopted and promulgated by the department.

For purposes of this section:

(1) Foster family home means any home which provides twenty-four-hour care to children who are not related to the foster parent by blood or adoption;

(2) Group home means a home which is operated under the auspices of an organization which is responsible for providing social services, administration, direction, and control for the home and which is designed to provide twenty-four-hour care for children and youth in a residential setting;

(3) Child-caring agency means an organization which is incorporated for the purpose of providing care for children in buildings maintained by the organization for that purpose; and

(4) Child-placing agency means an organization which is authorized by its articles of incorporation and by its license to place children in foster family homes.

Source: Laws 1943, c. 154, § 2, p. 564; R.S.1943, § 71-1902; Laws 1945, c. 171, § 2, p. 549; Laws 1949, c. 207, § 1, p. 595; Laws 1961, c. 415, § 26, p. 1258; Laws 1982, LB 928, § 52; Laws 1984, LB 130, § 14; Laws 1987, LB 386, § 2; Laws 1988, LB 930, § 1; Laws

1990, LB 1222, § 12; Laws 1995, LB 401, § 25; Laws 1995, LB 402, § 1; Laws 1995, LB 451, § 2; Laws 2001, LB 209, § 20; Laws 2002, LB 93, § 8.

71-1903 Foster care; investigation by department; State Fire Marshal; fee; criminal history record information check.

(1) Before issuance of a license under sections 71-1901 to 71-1906.01, the department shall cause such investigation to be made as it deems necessary to determine if the character of the applicant, any member of the applicant's household, or the person in charge of the service and the place where the foster care is to be furnished are such as to ensure the proper care and treatment of children. The department may request the State Fire Marshal to inspect such places for fire safety pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01, payable by the licensee or applicant for a license, except that the department may pay the fee for inspection for fire safety of foster family homes as defined in section 71-1902. The department may conduct sanitation and health standards investigations pursuant to subsection (2) of this section. The department may also, at any time it sees fit, cause an inspection to be made of the place where any licensee is furnishing foster care to see that such service is being properly conducted.

(2) The department shall make an investigation and report of all facilities and programs of licensed providers of foster care programs subject to this section or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of health and sanitation set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate the investigation authority to qualified local environmental health personnel.

(3) Before the foster care placement of any child in Nebraska by the department, the department shall require a national criminal history record information check of the prospective foster parent of such child and each member of such prospective foster parent's household who is eighteen years of age or older. The department shall provide two sets of legible fingerprints for such persons to the Nebraska State Patrol for submission to the Federal Bureau of Investigation. The Nebraska State Patrol shall conduct a criminal history record information check of such persons and shall submit such fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information from federal repositories of such information and repositories of such information in other states if authorized by federal law. The Nebraska State Patrol shall issue a report of the results of such criminal history record information check to the department. The department shall pay a fee to the Nebraska State Patrol for conducting such check. Information received from the criminal history record information check required under this subsection shall be used solely for the purpose of evaluating and confirming information provided by such persons for providing foster care or for the finalization of an adoption. A child may be placed in foster care by the department prior to the completion of a criminal history record information check under this subsection in emergency situations as determined by the department.

Source: Laws 1943, c. 154, § 3, p. 564; R.S.1943, § 71-1903; Laws 1945, c. 171, § 3, p. 549; Laws 1961, c. 415, § 27, p. 1259; Laws 1967,

c. 446, § 2, p. 1388; Laws 1983, LB 498, § 2; Laws 1985, LB 447, § 37; Laws 1987, LB 386, § 3; Laws 1988, LB 930, § 2; Laws 1991, LB 836, § 28; Laws 1995, LB 401, § 26; Laws 1995, LB 451, § 3; Laws 1996, LB 1044, § 584; Laws 1997, LB 307, § 172; Laws 1997, LB 622, § 101; Laws 2001, LB 209, § 21; Laws 2002, LB 93, § 9; Laws 2004, LB 1005, § 66; Laws 2007, LB296, § 497.

71-1904 Rules and regulations; waiver of training requirements; when.

(1) The department shall adopt and promulgate rules and regulations pursuant to sections 71-1901 to 71-1906.01 for (a) the proper care and protection of children by licensees under such sections, (b) the issuance, suspension, and revocation of licenses to provide foster care, (c) the issuance, suspension, and revocation of probationary licenses to provide foster care, (d) the issuance, suspension, and revocation of provisional licenses to provide foster care, (e) the provision of training in foster care, which training shall be directly related to the skills necessary to care for children in need of out-of-home care, including, but not limited to, abused, neglected, dependent, and delinquent children, and (f) the proper administration of sections 71-1901 to 71-1906.01.

(2) The training required by subdivision (1)(e) of this section may be waived in whole or in part by the department for persons operating foster homes providing care only to relatives of the foster care provider. Such waivers shall be granted on a case-by-case basis upon assessment by the department of the appropriateness of the relative foster care placement. The department shall report annually to the Health and Human Services Committee of the Legislature the number of waivers granted under this subsection and the total number of children placed in relative foster homes.

Source: Laws 1943, c. 154, § 4, p. 564; R.S.1943, § 71-1904; Laws 1945, c. 171, § 4, p. 550; Laws 1961, c. 415, § 28, p. 1259; Laws 1990, LB 1222, § 13; Laws 1995, LB 401, § 27; Laws 1995, LB 402, § 2; Laws 1995, LB 451, § 4; Laws 2001, LB 209, § 22; Laws 2002, LB 93, § 10; Laws 2003, LB 54, § 1.

71-1905 Violation; penalty.

Any person who violates any of the provisions of sections 71-1901 to 71-1906.01 shall be deemed guilty of a Class III misdemeanor.

Source: Laws 1943, c. 154, § 5, p. 564; R.S.1943, § 71-1905; Laws 1945, c. 171, § 5, p. 550; Laws 1977, LB 39, § 163; Laws 1995, LB 451, § 5; Laws 2001, LB 209, § 23; Laws 2002, LB 93, § 11.

71-1906 Native American foster homes; legislative intent.

In order to achieve the goals and further the purposes of the federal Indian Child Welfare Act of 1978 and the Nebraska Indian Child Welfare Act, it is the intent of the Legislature that Native American families have the option to meet separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503.

Source: Laws 1995, LB 451, § 6; Laws 1999, LB 475, § 4.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

71-1906.01 Native American foster homes; rules and regulations.

The department may adopt and promulgate rules and regulations establishing separate licensing standards for Native American foster homes located outside the boundaries of any Indian reservation or tribal service area as defined in section 43-1503. The department shall, in consultation with the Commission on Indian Affairs, develop appropriate standards for the licensing of such foster homes. Such standards shall comply with the federal Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq., the Nebraska Indian Child Welfare Act, and all other applicable federal and state laws.

Source: Laws 1995, LB 451, § 7; Laws 1999, LB 475, § 5.

Cross References

Nebraska Indian Child Welfare Act, see section 43-1501.

71-1906.02 Repealed. Laws 2002, LB 93, § 27.

71-1906.03 Repealed. Laws 2002, LB 93, § 27.

71-1907 Child passenger restraint; requirements; violation; penalty.

Any person furnishing foster care who is subject to licensure under section 71-1902, when transporting in a motor vehicle any children for whom care is being furnished, shall use an approved child passenger restraint system for each child, except that an occupant protection system as defined in section 60-6,265 may be used for any child six years of age or older.

Any person violating this section shall be guilty of an infraction as defined in section 29-431 and shall have his or her license to furnish foster care revoked or suspended by the Department of Health and Human Services.

For purposes of this section, approved child passenger restraint system shall mean a restraint system which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on July 20, 2002.

Source: Laws 1982, LB 69, § 1; Laws 1987, LB 386, § 4; Laws 1992, LB 958, § 10; Laws 1993, LB 370, § 475; Laws 1995, LB 401, § 28; Laws 1996, LB 1044, § 586; Laws 1997, LB 307, § 174; Laws 2000, LB 410, § 3; Laws 2002, LB 1073, § 3.

(b) CHILD CARE LICENSURE

71-1908 Act, how cited; legislative findings.

(1) Sections 71-1908 to 71-1923 shall be known and may be cited as the Child Care Licensing Act.

(2) The Legislature finds that there is a present and growing need for quality child care programs and facilities. There is a need to establish and maintain licensure of persons providing such programs to ensure that such persons are competent and are using safe and adequate facilities. The Legislature further finds and declares that the development and supervision of programs are a matter of statewide concern and should be dealt with uniformly on the state and local levels. There is a need for cooperation among the various state and local agencies which impose standards on licensees, and there should be one agency which coordinates the enforcement of such standards and informs the Legislature about cooperation among the various agencies.

Source: Laws 1984, LB 130, § 1; Laws 1995, LB 401, § 29; Laws 2004, LB 1005, § 67.

71-1909 Purposes of act; legislative intent.

(1) The purposes of the Child Care Licensing Act are to provide:

(a) Statewide licensure standards for persons providing child care programs; and

(b) The department with authority to coordinate the enforcement of standards on licensees.

(2) It is the intent of the Legislature that the licensing and regulation of programs under the act exist for the protection of children and to assist parents in making informed decisions concerning enrollment and care of their children in such programs.

Source: Laws 1984, LB 130, § 2; Laws 1995, LB 401, § 30; Laws 1996, LB 1044, § 587; Laws 1997, LB 307, § 175; Laws 1997, LB 310, § 4; Laws 1999, LB 594, § 50; Laws 2004, LB 1005, § 68; Laws 2007, LB296, § 498.

71-1910 Terms, defined.

For purposes of the Child Care Licensing Act, unless the context otherwise requires:

(1) Department means the Department of Health and Human Services; and

(2)(a) Program means the provision of services in lieu of parental supervision for children under thirteen years of age for compensation, either directly or indirectly, on the average of less than twelve hours per day, but more than two hours per week, and includes any employer-sponsored child care, family child care home, child care center, school-age child care program, school-age services pursuant to section 79-1104, or preschool or nursery school.

(b) Program does not include casual care at irregular intervals, a recreation camp as defined in section 71-3101, a recreation facility, center, or program operated by a political or governmental subdivision pursuant to the authority provided in section 13-304, classes or services provided by a religious organization other than child care or a preschool or nursery school, a preschool program conducted in a school approved pursuant to section 79-318, services provided only to school-age children during the summer and other extended breaks in the school year, or foster care as defined in section 71-1901.

Source: Laws 1984, LB 130, § 3; Laws 1986, LB 68, § 1; Laws 1987, LB 472, § 1; Laws 1991, LB 836, § 29; Laws 1995, LB 401, § 31; Laws 1995, LB 451, § 9; Laws 1996, LB 900, § 1058; Laws 1996, LB 1044, § 588; Laws 1997, LB 307, § 176; Laws 1997, LB 310, § 5; Laws 1999, LB 594, § 51; Laws 2004, LB 1005, § 69; Laws 2006, LB 994, § 97; Laws 2007, LB296, § 499; Laws 2008, LB928, § 19.

71-1911 Licenses; when required; issuance; corrective action status; display of license.

(1) A person may operate child care for three or fewer children without having a license issued by the department. A person who is not required to be licensed may choose to apply for a license and, upon obtaining a license, shall be subject to the Child Care Licensing Act. A person who has had a license issued pursuant to this section and has had such license suspended or revoked other than for nonpayment of fees shall not operate or offer to operate a

program for or provide care to any number of children until the person is licensed pursuant to this section.

(2) No person shall operate or offer to operate a program for four or more children under his or her direct supervision, care, and control at any one time from families other than that of such person without having in full force and effect a written license issued by the department upon such terms as may be prescribed by the rules and regulations adopted and promulgated by the department. The license may be a provisional license or an operating license. A city, village, or county which has rules, regulations, or ordinances in effect on July 10, 1984, which apply to programs operating for two or three children from different families may continue to license persons providing such programs. If the license of a person is suspended or revoked other than for nonpayment of fees, such person shall not be licensed by any city, village, or county rules, regulations, or ordinances until the person is licensed pursuant to this section.

(3) A provisional license shall be issued to all applicants following the completion of preservice orientation training approved or delivered by the department for the first year of operation. At the end of one year of operation, the department shall either issue an operating license, extend the provisional license, or deny the operating license. The provisional license may be extended once for a period of no more than six months. The decision regarding extension of the provisional license is not appealable. The provisional license may be extended if:

(a) A licensee is unable to comply with all licensure requirements and standards, is making a good faith effort to comply, and is capable of compliance within the next six months;

(b) The effect of the current inability to comply with a rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department which is to be completed within the renewal period.

(4) The department may place a provisional or operating license on corrective action status. Corrective action status is voluntary and may be in effect for up to six months. The decision regarding placement on corrective action status is not a disciplinary action and is not appealable. If the written plan of correction is not approved by the department, the department may discipline the license. A probationary license may be issued for the licensee to operate under corrective action status if the department determines that:

(a) The licensee is unable to comply with all licensure requirements and standards or has had a history of noncompliance;

(b) The effect of noncompliance with any rule or regulation does not present an unreasonable risk to the health, safety, or well-being of children or staff; and

(c) The licensee has a written plan of correction that has been approved by the department.

(5) Operating licenses issued under the Child Care Licensing Act shall remain in full force and effect subject to annual inspections and fees. The department may amend a license upon change of ownership or location. Amending a license requires a site inspection by the department at the time of amendment, except that for amendment of a family child care home I license, an inspection

shall occur within sixty days. When a program is to be permanently closed, the licensee shall return the license to the department within one week after the closing.

(6) The license, including any applicable status or amendment, shall be displayed by the licensee in a prominent place so that it is clearly visible to parents and others. License record information and inspection reports shall be made available by the licensee for public inspection upon request.

Source: Laws 1984, LB 130, § 4; Laws 1988, LB 1013, § 1; Laws 1991, LB 836, § 30; Laws 1993, LB 510, § 1; Laws 1995, LB 401, § 32; Laws 1997, LB 310, § 6; Laws 1997, LB 752, § 177; Laws 1998, LB 1354, § 33; Laws 1999, LB 594, § 52; Laws 2004, LB 1005, § 70; Laws 2006, LB 994, § 98.

Denial of license for cause must be based on reasonable grounds, as distinguished from frivolous, arbitrary, or incompetent grounds. Ballard v. Nebraska Dept. of Soc. Servs., 2 Neb. App. 809, 515 N.W.2d 437 (1994).

71-1911.01 Fees.

(1) For a license to operate a program for fewer than thirty children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of twenty-five dollars.

(2) For a license to operate a program for thirty or more children, each applicant for a license and each licensee shall pay to the department, at the time of initial application and annually thereafter, a license fee of fifty dollars.

(3) If the department denies an application for a license and has not completed an inspection prior to such denial, the department shall return the license fee to the applicant.

Source: Laws 1993, LB 510, § 2; Laws 2004, LB 1005, § 72.

71-1911.02 Application; contents.

(1) An applicant for a license to operate a program required to be licensed under the Child Care Licensing Act shall file a written application with the department. The application shall be accompanied by the license fee pursuant to section 71-1911.01 and shall set forth the full name and address of the program to be licensed, the full name and address of the owner of such program, the names of all household members if the program is located in a residence, the names of all persons in control of the program, and additional information as required by the department, including affirmative evidence of the applicant's ability to comply with rules and regulations adopted and promulgated under the act. The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be public record and may only be used for administrative purposes.

(2) The application shall be signed by (a) the owner, if the applicant is an individual, a partnership, or the sole owner of a limited liability company or a corporation, (b) two of its members, if the applicant is a limited liability company, or (c) two of its officers, if the applicant is a corporation.

Source: Laws 2004, LB 1005, § 71; Laws 2006, LB 994, § 99.

71-1912 Department; investigation; inspections.

(1) Before issuance of a license, the department shall investigate or cause an investigation to be made, when it deems necessary, to determine if the applicant or person in charge of the program meets or is capable of meeting the physical well-being, safety, and protection standards and the other rules and regulations of the department adopted and promulgated under the Child Care Licensing Act. The department may investigate the character of applicants and licensees, any member of the applicant's or licensee's household, and the staff and employees of programs by making a national criminal history record information check. The department may at any time inspect or cause an inspection to be made of any place where a program is operating to determine if such program is being properly conducted.

(2) All inspections by the department shall be unannounced except for initial licensure visits and consultation visits. Initial licensure visits are announced visits necessary for a provisional license to be issued to a family child care home II, child care center, or preschool program. Consultation visits are announced visits made at the request of a licensee for the purpose of consulting with a department specialist on ways of improving the program.

(3) An unannounced inspection of any place where a program is operating shall be conducted by the department or the city, village, or county pursuant to subsection (2) of section 71-1914 at least annually for a program licensed to provide child care for fewer than thirty children and at least twice every year for a program licensed to provide child care for thirty or more children.

(4) Whenever an inspection is made, the findings shall be recorded in a report designated by the department. The public shall have access to the results of these inspections upon a written or oral request to the department. The request must include the name and address of the program. Additional unannounced inspections shall be performed as often as is necessary for the efficient and effective enforcement of the Child Care Licensing Act.

Source: Laws 1984, LB 130, § 5; Laws 1985, LB 447, § 38; Laws 1987, LB 386, § 5; Laws 1988, LB 1013, § 2; Laws 1995, LB 401, § 33; Laws 1997, LB 310, § 7; Laws 2004, LB 1005, § 73.

71-1913 Fire and health inspections.

(1) The department may request the State Fire Marshal to inspect any program for fire safety pursuant to section 81-502. The State Fire Marshal shall immediately notify the department whenever he or she delegates authority for such inspections under such section.

(2) The department may investigate all facilities and programs of licensed providers of child care programs as defined in section 71-1910 or applicants for licenses to provide such programs to determine if the place or places to be covered by such licenses meet standards of sanitation and physical well-being set by the department for the care and protection of the child or children who may be placed in such facilities and programs. The department may delegate this authority to qualified local environmental health personnel.

Source: Laws 1984, LB 130, § 6; Laws 1991, LB 836, § 31; Laws 1995, LB 401, § 34; Laws 1996, LB 1044, § 589; Laws 1997, LB 307, § 177; Laws 1997, LB 622, § 102; Laws 1999, LB 594, § 53.

71-1913.01 Immunization requirements; record; report.

(1) Each program shall require the parent or guardian of each child enrolled in such program to present within thirty days after enrollment and periodically thereafter (a) proof that the child is protected by age-appropriate immunization against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, tetanus, haemophilus influenzae type B, and invasive pneumococcal disease and such other diseases as the department may from time to time specify based on then current medical and scientific knowledge, (b) certification by a physician, an advanced practice registered nurse practicing under and in accordance with his or her respective certification act, or a physician assistant that immunization is not appropriate for a stated medical reason, or (c) a written statement that the parent or guardian does not wish to have such child so immunized and the reasons therefor. The program shall exclude a child from attendance until such proof, certification, or written statement is provided. At the time the parent or guardian is notified that such information is required, he or she shall be notified in writing of his or her right to submit a certification or written statement pursuant to subdivision (b) or (c) of this subsection.

(2) Each program shall keep the written record of immunization, the certification, or the written statement of the parent or guardian. Such record, certification, or statement shall be kept by the program as part of the child's file, shall be available onsite to the department, and shall be filed with the department for review and inspection. Each program shall report to the department by November 1 of each year the status of immunization for children enrolled as of September 30 of that year, and children who have reached kindergarten age and who are enrolled in public or private school need not be included in the report.

Source: Laws 1987, LB 472, § 2; Laws 1992, LB 431, § 6; Laws 1995, LB 401, § 35; Laws 1996, LB 414, § 49; Laws 1996, LB 1044, § 590; Laws 1998, LB 1073, § 103; Laws 1999, LB 594, § 54; Laws 2000, LB 1115, § 70; Laws 2005, LB 256, § 92; Laws 2005, LB 301, § 38; Laws 2007, LB247, § 50; Laws 2007, LB296, § 500.

Cross References

Childhood Vaccine Act, see section 71-526.
School-age children, immunization requirements, see section 79-217 et seq.

71-1913.02 Immunization reports; audit; deficiencies; duties.

(1) The department shall perform annually a random audit of the reports submitted under section 71-1913.01 to check for compliance with such section on an annual basis and such other audits and inspections as are necessary to prevent the introduction or spread of disease. Audit results shall be reported to the department.

(2) If the department discovers noncompliance with section 71-1913.01, the department shall allow a noncomplying program thirty days to correct deficiencies.

(3) The department shall develop and provide educational and other materials to programs and the public as may be necessary to implement section 71-1913.01.

Source: Laws 1987, LB 472, § 3; Laws 1995, LB 401, § 36; Laws 1996, LB 1044, § 591; Laws 1997, LB 307, § 178; Laws 1998, LB 1073, § 104; Laws 1999, LB 594, § 55; Laws 2005, LB 301, § 39; Laws 2007, LB296, § 501.

71-1913.03 Immunization; department; adopt rules and regulations.

The department shall adopt and promulgate rules and regulations relating to the required levels of protection, using as a guide the recommendations of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services, Public Health Service, and the methods, manner, and frequency of reporting of each child's immunization status. The department shall furnish each program with copies of such rules and regulations and any other material which will assist in carrying out section 71-1913.01.

Source: Laws 1987, LB 472, § 4; Laws 1992, LB 431, § 7; Laws 1995, LB 401, § 37; Laws 1996, LB 1044, § 592; Laws 1998, LB 1073, § 105; Laws 2005, LB 301, § 40; Laws 2007, LB296, § 502.

71-1914 Department; serve as coordinating agency; local rules and regulations; report of violation.

(1) The department shall be the state's coordinating agency for licensure and regulation of programs in this state in order to (a) provide efficient services pursuant to the Child Care Licensing Act, (b) avoid duplication of services, and (c) prevent an unnecessary number of inspections of any program. The department may request cooperation and assistance from local and state agencies and such agencies shall promptly respond. The extent of an agency's cooperation may be included in the report to the Legislature pursuant to section 43-3402.

(2) A city, village, or county may adopt rules, regulations, or ordinances establishing physical well-being and safety standards for programs whether or not the persons providing such programs are subject to licensure under section 71-1911. Such rules, regulations, or ordinances shall be as stringent as or more stringent than the department's rules and regulations for licensees pursuant to the Child Care Licensing Act. The city, village, or county adopting such rules, regulations, or ordinances and the department shall coordinate the inspection and supervision of licensees to avoid duplication of inspections. A city, village, or county shall report any violation of such rules, regulations, or ordinances to the department. The city, village, or county may administer and enforce such rules, regulations, and ordinances. Enforcement of provisions of the Child Care Licensing Act or rules or regulations adopted and promulgated under the act shall be by the department pursuant to sections 71-1919 to 71-1923.

Source: Laws 1984, LB 130, § 7; Laws 1995, LB 401, § 38; Laws 1997, LB 310, § 11; Laws 1997, LB 752, § 178; Laws 2001, LB 213, § 1; Laws 2004, LB 1005, § 74; Laws 2006, LB 994, § 100; Laws 2007, LB296, § 503.

71-1914.01 Unlicensed child care; investigation.

When the department receives a complaint of allegedly improper unlicensed care, the department shall investigate the claim and shall go to the premises of the alleged unlicensed program to ascertain if child care is being provided there which must be licensed according to the Child Care Licensing Act. If unlicensed child care is occurring in violation of the act, the person providing the unlicensed care shall have thirty days to either become licensed or cease providing unlicensed child care. The department shall visit the program again after such thirty-day period. If the person has not initiated action to become

licensed or ceased providing unlicensed child care, the department may involve law enforcement and may proceed under sections 71-1914.02 and 71-1914.03.

Source: Laws 1997, LB 310, § 8; Laws 2004, LB 1005, § 75.

71-1914.02 Unlicensed child care; restraining order or injunction; department; powers.

The department may apply for a restraining order or a temporary or permanent injunction against any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required. The district court of the county where the violation is occurring shall have 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.

Source: Laws 1997, LB 310, § 9; Laws 2004, LB 1005, § 76.

71-1914.03 Unlicensed child care; violations; penalty; county attorney; duties.

(1) Any person violating the Child Care Licensing Act by providing unlicensed child care when a license is required is guilty of a Class IV misdemeanor. Each day the violation continues shall be a separate offense.

(2) The county attorney of the county in which any provision of unlicensed child care in violation of the act is occurring shall, when notified of such violation by the department or a law enforcement agency, cause appropriate proceedings under subsection (1) of this section to be instituted and pursued in a court of competent jurisdiction.

Source: Laws 1997, LB 310, § 10; Laws 2004, LB 1005, § 77.

71-1915 Department; emergency powers; injunction.

(1) Whenever the department finds that an emergency exists requiring immediate action to protect the physical well-being and safety of a child in a program, the department may, without notice or hearing, issue an order declaring the existence of such an emergency and requiring that such action be taken as the department deems necessary to meet the emergency. The order may include an immediate prohibition on the care of children by the licensee other than children of the licensee. An order under this subsection shall be effective immediately. Any person to whom the order is directed shall comply immediately, and upon application to the department, the person shall be afforded a hearing as soon as possible and not later than ten days after his or her application for the hearing. On the basis of such hearing the department shall continue to enforce such order or rescind or modify it.

(2) The department may petition the appropriate district court for an injunction whenever there is the belief that any person is violating the Child Care Licensing Act, an order issued pursuant to the act, or any rule or regulation adopted and promulgated pursuant to the act. It shall be the duty of each county attorney or the Attorney General to whom the department reports a violation to cause appropriate proceedings to be instituted without delay to ensure compliance with the act, rules, regulations, and orders.

Source: Laws 1984, LB 130, § 8; Laws 1987, LB 472, § 5; Laws 1988, LB 1013, § 3; Laws 1993, LB 510, § 3; Laws 1995, LB 401, § 39;

Laws 1997, LB 310, § 12; Laws 1999, LB 594, § 56; Laws 2001, LB 213, § 2; Laws 2004, LB 1005, § 78; Laws 2007, LB296, § 504.

71-1916 Department; administrative procedures.

(1) The department shall adopt and promulgate such rules and regulations, consistent with the Child Care Licensing Act, as necessary for (a) the proper care and protection of children in programs regulated under the act, (b) the issuance and discipline of licenses, and (c) the proper administration of the act.

(2) The department shall adopt and promulgate rules and regulations establishing standards for the physical well-being, safety, and protection of children in programs licensed under the Child Care Licensing Act. Such standards shall insure that the program is providing proper care for and treatment of the children served and that such care and treatment is consistent with the children's physical well-being, safety, and protection. Such standards shall not require the use of any specific instructional materials or affect the contents of any course of instruction which may be offered by a program. The rules and regulations shall contain provisions which encourage the involvement of parents in child care for their children and insure the availability, accessibility, and high quality of services for children.

(3) The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedure Act, except that the department shall hold a public hearing in each geographic area of the state prior to the adoption, amendment, or repeal of any rule or regulation. The department shall review and provide recommendations to the Governor for updating such rules and regulations at least every five years.

(4) The rules and regulations applicable to programs required to be licensed under the Child Care Licensing Act do not apply to any program operated or contracted by a public school district and subject to the rules and regulations of the State Department of Education as provided in section 79-1104.

(5) Contested cases of the department under the Child Care Licensing Act shall be in accordance with the Administrative Procedure Act.

Source: Laws 1984, LB 130, § 9; Laws 1988, LB 352, § 124; Laws 1995, LB 401, § 40; Laws 1997, LB 310, § 13; Laws 2001, LB 213, § 3; Laws 2004, LB 1005, § 79; Laws 2006, LB 994, § 101.

Cross References

Administrative Procedure Act, see section 84-920.

71-1917 Repealed. Laws 2006, LB 994, § 162.

71-1918 Complaint tracking system.

The department shall maintain a complaint tracking system for licensees under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 81.

71-1919 License denial; disciplinary action; grounds.

The department may deny the issuance of or take disciplinary action against a license issued under the Child Care Licensing Act on any of the following grounds:

(1) Failure to meet or violation of any of the requirements of the Child Care Licensing Act or the rules and regulations adopted and promulgated under the act;

(2) Violation of an order of the department under the act;

(3) Conviction of, or substantial evidence of committing or permitting, aiding, or abetting another to commit, any unlawful act, including, but not limited to, unlawful acts committed by an applicant or licensee under the act, household members who reside at the place where the program is provided, or employees of the applicant or licensee that involve:

(a) Physical abuse of children or vulnerable adults as defined in section 28-371;

(b) Endangerment or neglect of children or vulnerable adults;

(c) Sexual abuse, sexual assault, or sexual misconduct;

(d) Homicide;

(e) Use, possession, manufacturing, or distribution of a controlled substance listed in section 28-405;

(f) Property crimes, including, but not limited to, fraud, embezzlement, and theft by deception; and

(g) Use of a weapon in the commission of an unlawful act;

(4) Conduct or practices detrimental to the health or safety of a person served by or employed at the program;

(5) Failure to allow an agent or employee of the department access to the program for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department;

(6) Failure to allow state or local inspectors, investigators, or law enforcement officers access to the program for the purposes of investigation necessary to carry out their duties;

(7) Failure to meet requirements relating to sanitation, fire safety, and building codes;

(8) Failure to comply with or violation of the Medication Aide Act;

(9) Failure to file a report of suspected abuse or neglect as required by sections 28-372 and 28-711;

(10) Violation of any city, village, or county rules, regulations, or ordinances regulating licensees; or

(11) Failure to pay fees required under the Child Care Licensing Act.

Source: Laws 2004, LB 1005, § 82; Laws 2007, LB296, § 505.

Cross References

Medication Aide Act, see section 71-6718.

71-1920 Disciplinary action; types; fines; disposition.

(1) The department may impose any one or a combination of the following types of disciplinary action against a license issued under the Child Care Licensing Act:

(a) Issue a probationary license;

(b) Suspend or revoke a provisional, probationary, or operating license;

(c) Impose a civil penalty of up to five dollars per child, based upon the number of children for which the program is authorized to provide child care on the effective date of the finding of violation, for each day the program is in violation;

(d) Establish restrictions on new enrollment in the program;

(e) Establish restrictions or other limitations on the number of children or the age of the children served in the program; or

(f) Establish other restrictions or limitations on the type of service provided by the program.

(2) A person who has had a license revoked for any cause other than nonpayment of fees shall not be eligible to reapply for a license for a period of two years.

(3) Any fine imposed and unpaid under the Child Care Licensing Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the program is located. The department shall, within thirty days after receipt, remit fines to the State Treasurer for credit to the permanent school fund.

Source: Laws 2004, LB 1005, § 83.

71-1921 Disciplinary action; considerations.

(1) In determining what type of disciplinary action to impose, the department shall consider:

(a) The gravity of the violation, including the probability that death or serious physical or mental harm will result, the severity of the actual or potential harm, and the extent to which the provisions of applicable statutes, rules, and regulations were violated;

(b) The diligence exercised by the program in identifying or correcting the violation;

(c) The degree of cooperation exhibited by the licensee in the identification, disclosure, and correction of the violation;

(d) Any previous violations committed by the program; and

(e) The financial benefit to the program of committing or continuing the violation.

(2) If the licensee fails to correct a violation or to comply with a particular type of disciplinary action, the department may take additional disciplinary action as described in section 71-1920.

Source: Laws 2004, LB 1005, § 84.

71-1922 Denial of license; disciplinary action; notice; final; when.

(1) If the department determines to deny the issuance of or take disciplinary action against a license under the Child Care Licensing Act, the department shall send to the applicant or licensee, by certified mail to the address of the applicant or licensee, a notice setting forth the determination, the particular reasons for the determination, including a specific description of the nature of the violation and the statute, rule, regulation, or order violated, and the type of disciplinary action which is pending. A copy of the notice shall also be mailed

to the person in charge of the program if the licensee is not actually involved in the daily operation of the program. If the licensee is a corporation, a copy of the notice shall be sent to the corporation's registered agent.

(2) The denial or disciplinary action shall become final fifteen days after the mailing of the notice unless the applicant or licensee, within such fifteen-day period, makes a written request for a hearing. The license shall continue in effect until the final order of the department if a hearing is requested. If the department does not receive such request within such fifteen-day period, the action of the department shall be final.

Source: Laws 2004, LB 1005, § 85; Laws 2007, LB296, § 506.

71-1923 Voluntary surrender of license.

A licensee may voluntarily surrender the license issued under the Child Care Licensing Act at any time, except that the department may refuse to accept a voluntary surrender of a license if the licensee is under investigation or if the department has initiated disciplinary action against the licensee.

Source: Laws 2004, LB 1005, § 86.

ARTICLE 20

HOSPITALS

Cross References

Abortions, not required to perform, limitation of liability, see section 28-337 et seq.
Alcohol or controlled substance testing, agent of state, when, see sections 37-1254.06, 60-4,164.01, and 60-6,202.
Automated Medication Systems Act, see section 71-2444.
Brain Injury Registry Act, see section 81-653.
Cancer registry, see section 81-642 et seq.
Child left at hospital, duty, see section 29-121.
County medical facilities, bonds, see section 23-3501 et seq.
Death during apprehension or custody, duty to notify, see section 23-1821.
Emergency medical technicians, perform activities at hospital, see section 38-1224.
Health Care Facility Licensure Act, see section 71-401.
Health Care Professional Credentialing Verification Act, see section 44-7001.
Health Carrier Grievance Procedure Act, see section 44-7301.
Hospice licensure, Health Care Facility Licensure Act, see section 71-401.
Hospital Authorities Act, see section 23-3579.
Hospital districts, see section 23-3573 et seq. and sections 77-2369 to 77-2385.
Hospital medical staff committee or hospital utilization committee, members, limitation of liability, see section 25-12,121.
Hospital Sinking Fund Act, see section 15-235.05.
Lien for services, see section 52-401.
Managed Care Emergency Services Act, see section 44-6825.
Managed Care Plan Network Adequacy Act, see section 44-7101.
Medicaid, Medical Assistance Act, see section 68-901.
Municipal Proprietary Function Act, see section 18-2801.
Nebraska Health Care Certificate of Need Act, see section 71-5801.
Nebraska Hospital and Physicians Mutual Insurance Association Act, see section 44-2918.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Nebraska Local Hospital District Act, see section 23-3528.
Outpatient Surgical Procedures Data Act, see section 81-6,111.
Patient Safety Improvement Act, see section 71-8701.
Powers and duties of cities and villages, see sections 14-102 et seq., 15-231, 15-234 et seq., 16-239, 17-121 et seq., and 17-961 et seq.
Quality Assessment and Improvement Act, see section 44-7201.
Records, implied consent to examination, see section 25-12,120.
Shaken baby syndrome, requirements, see section 71-2103.
Smoking, regulation, Nebraska Clean Indoor Air Act, see section 71-5716.
Standardized Health Claim Form Act, see section 44-524.
State hospitals for the mentally ill:
Administration, see Chapter 83, article 3.
Nebraska Mental Health Commitment Act, see section 71-901.
Statewide Trauma System Act, see section 71-8201.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Vital Statistics Act, see section 71-601.
Volunteer in free clinic, immunity, see section 25-21,188.02.

(a) SURVEY AND CONSTRUCTION

(b) BASIC STANDARDS

(c) NURSING HOMES

Section
71-2033. Transferred to section 71-6045.
71-2034. Transferred to section 71-6046.
71-2035. Transferred to section 71-6047.
71-2036. Transferred to section 71-6048.
71-2037. Transferred to section 71-6049.
71-2038. Transferred to section 71-6050.
71-2039. Transferred to section 71-6051.
71-2040. Transferred to section 71-6052.
71-2041. Repealed. Laws 1972, LB 1040, § 14.
71-2041.01. Transferred to section 71-6053.
71-2041.02. Transferred to section 71-6054.
71-2041.03. Transferred to section 71-6055.
71-2041.04. Transferred to section 71-6056.
71-2041.05. Transferred to section 71-6057.
71-2041.06. Transferred to section 71-6058.
71-2041.07. Transferred to section 71-6059.
71-2042. Transferred to section 71-6067.
71-2043. Repealed. Laws 1973, LB 5, § 2.
71-2044. Repealed. Laws 1980, LB 686, § 11.
71-2045. Repealed. Laws 1972, LB 1040, § 14.
71-2045.01. Transferred to section 71-6065.
71-2045.02. Transferred to section 71-2041.02.
71-2045.03. Transferred to section 71-6060.
71-2045.04. Transferred to section 71-6062.
71-2045.05. Transferred to section 71-6061.
71-2045.06. Transferred to section 71-6066.
71-2045.07. Repealed. Laws 1988, LB 693, § 18.
71-2045.08. Transferred to section 71-6063.
71-2045.09. Transferred to section 71-6064.
71-2045.10. Transferred to section 71-6068.

(d) MEDICAL AND HOSPITAL CARE

71-2046. Medical staff committee; utilization review committee; duties.
71-2047. Medical staff committee; utilization review committee; reports to; privilege to refuse; exception.
71-2048. Communications; privileged; waiver.
71-2048.01. Clinical privileges; standards and procedures.
71-2049. Repealed. Laws 2009, LB 288, § 54.

(e) CARE STAFF MEMBERS

71-2050. Repealed. Laws 1998, LB 1354, § 48.
71-2051. Repealed. Laws 1998, LB 1354, § 48.
71-2052. Repealed. Laws 1998, LB 1354, § 48.
71-2053. Repealed. Laws 1998, LB 1354, § 48.
71-2054. Repealed. Laws 1998, LB 1354, § 48.
71-2055. Repealed. Laws 1998, LB 1354, § 48.

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

71-2056. Legislative findings.
71-2057. Terms, defined.
71-2058. Public hospital; marketing strategies and plans authorized.
71-2059. Governmental body; powers.
71-2060. Conversion of public funds.
71-2061. Public hospital; indebtedness, how construed; expenditures, limitation.

(g) HOSPITAL CONSUMER INFORMATION

71-2062. Repealed. Laws 1994, LB 1222, § 65.
71-2063. Repealed. Laws 1994, LB 1222, § 65.
71-2064. Repealed. Laws 1994, LB 1222, § 65.
71-2065. Repealed. Laws 1994, LB 1222, § 65.
71-2066. Repealed. Laws 1994, LB 1222, § 65.
71-2067. Repealed. Laws 1994, LB 1222, § 65.

(a) SURVEY AND CONSTRUCTION

71-2001 Act, how cited.

Sections 71-2001 to 71-2016 may be cited as the State Hospital Survey and Construction Act.

Source: Laws 1947, c. 232, § 1, p. 733.

71-2002 Terms, defined.

For purposes of the State Hospital Survey and Construction Act:

(1) Department shall mean the Department of Health and Human Services;

(2) The federal act shall mean, but is not restricted to, Public Law 88-156, Public Law 88-164, Public Law 88-581, Public Law 88-443, and other measures of similar intent which have been, or may in the future be, passed by the Congress of the United States;

(3) The Surgeon General shall mean the Surgeon General of the Public Health Service of the United States or such other federal office or agency responsible for the administration of the federal Hospital Survey and Construction Act, 42 U.S.C. 291 and amendments thereto;

(4) Hospital includes, but is not restricted to, facilities or parts of facilities, which provide space for public health centers, mental health clinics, and general, tuberculosis, mental, long-term care, and other types of hospitals, and related facilities, such as homes for the aged or infirm, laboratories, out-patient departments, nurses' home and educational facilities, and central service facilities operated in connection with hospitals;

(5) Public health center shall mean a publicly owned facility for providing public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers; and

(6) Nonprofit hospital shall mean any hospital owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

Source: Laws 1947, c. 232, § 2, p. 733; Laws 1965, c. 421, § 1, p. 1349; Laws 1971, LB 753, § 1; Laws 1996, LB 1044, § 593; Laws 2007, LB296, § 507.

71-2003 Department; duties.

The department shall constitute the sole agency of the state for the purpose of (1) making an inventory of existing hospitals, surveying the need for construction of hospitals, and developing a program of hospital construction as provided in section 71-2007, and (2) developing and administering a state plan for the construction of public and other nonprofit hospitals as provided in the State Hospital Survey and Construction Act.

Source: Laws 1947, c. 232, § 3, p. 734; Laws 1965, c. 421, § 2, p. 1350; Laws 1996, LB 1044, § 594; Laws 1997, LB 307, § 179; Laws 2007, LB296, § 508.

71-2004 Department; powers and duties.

In carrying out the purposes of the State Hospital Survey and Construction Act, the department is authorized and directed:

(1) To require such reports, make such inspections and investigations, and prescribe such regulations as it deems necessary;

(2) To provide such methods of administration, appoint an assistant director and other personnel of the division, and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part-time or fee-for-service basis and do not involve the performance of administrative duties;

(4) To the extent desirable to effectuate the purposes of the State Hospital Survey and Construction Act, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public or private;

(5) To accept on behalf of the state and to deposit with the State Treasurer any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of the act and to expend the same for such purpose; and

(6) To match funds with federal grants when required in order to obtain such funds in carrying out the act.

Source: Laws 1947, c. 232, § 4, p. 734; Laws 1967, c. 450, § 1, p. 1397; Laws 1981, LB 545, § 21; Laws 2007, LB296, § 509.

71-2005 Repealed. Laws 1982, LB 829, § 3.

71-2006 Administration; appropriation by the Legislature; expenditures; certification by department.

Such money as may be appropriated by the Legislature for the administration of the State Hospital Survey and Construction Act shall be expended upon proper certification by the department as provided by law.

Source: Laws 1947, c. 232, § 6, p. 736; Laws 1965, c. 421, § 4, p. 1351; Laws 2007, LB296, § 510.

71-2007 Department; inventory; survey; planning; program.

The department is authorized and directed to make an inventory of existing hospitals and medical facilities, including, but not restricted to, public, nonprofit and proprietary hospitals and other medical facilities, to accumulate pertinent comparable statistical data from existing hospitals and medical facilities, to survey the need for construction or expansion of hospitals and, on the basis of such statistical data, inventory and survey, and to develop a program for the construction or expansion of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital, clinic, and other essential health services without duplication or fragmentation of such facilities or services to all the people of the state.

Source: Laws 1947, c. 232, § 7, p. 736; Laws 1965, c. 421, § 5, p. 1351; Laws 1972, LB 1310, § 1; Laws 2007, LB296, § 511.

71-2008 Construction program.

The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state.

Source: Laws 1947, c. 232, § 8, p. 736; Laws 1965, c. 421, § 6, p. 1351.

71-2009 Survey and planning; application for federal funds; expenditure.

The department is authorized to make application to the Surgeon General for federal funds to assist in carrying out the activities provided in the State Hospital Survey and Construction Act. Such funds shall be deposited in the state treasury and shall be available when appropriated for expenditure for carrying out the purposes of the act. Any such funds received and not expended for such purposes shall be repaid to the Treasury of the United States.

Source: Laws 1947, c. 232, § 9, p. 736; Laws 1965, c. 421, § 7, p. 1352; Laws 2007, LB296, § 512.

71-2010 State plan; notice; hearing; submission to Surgeon General; hearing; approval of plans; review of program.

The department shall prepare and submit to the Surgeon General a state plan which shall include the hospital construction program developed under the State Hospital Survey and Construction Act, and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and regulations thereunder. The department shall, prior to the submission of such plan to the Surgeon General, give adequate publicity to a general description of all the provisions proposed to be included therein and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the Surgeon General, the department shall make the plan, or plans, or a copy thereof, available upon request to all interested persons or organizations. The department shall from time to time review the hospital construction program and submit to the Surgeon General any modifications necessary, and

may submit to the Surgeon General such modifications of the state plan, or plans, not inconsistent with the requirements of the federal act.

Source: Laws 1947, c. 232, § 10, p. 737; Laws 1965, c. 421, § 8, p. 1352; Laws 2007, LB296, § 513.

71-2011 Department; maintenance and operation of hospitals and medical facilities; prescribe minimum standards.

The department shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and other medical facilities which receive federal aid for construction under the state plan.

Source: Laws 1947, c. 232, § 11, p. 737; Laws 1965, c. 421, § 9, p. 1353; Laws 2007, LB296, § 514.

71-2012 State plan; need; construction.

The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need.

Source: Laws 1947, c. 232, § 12, p. 737.

71-2013 Construction projects; federal funds; application; requirements.

Applications for hospital construction projects for which federal funds are requested shall be submitted to the department and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital. Each such application shall conform to federal and state requirements.

Source: Laws 1947, c. 232, § 13, p. 737; Laws 1965, c. 421, § 10, p. 1353; Laws 2007, LB296, § 515.

71-2014 Construction projects; hearing; approval; recommendation of department.

The department shall afford to every applicant for a construction project an opportunity for a fair hearing. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of section 71-2013 and is otherwise in conformity with the state plan, such application shall be approved and shall be recommended and forwarded to the Surgeon General.

Source: Laws 1947, c. 232, § 14, p. 738; Laws 2007, LB296, § 516.

71-2015 Construction projects; inspection; certification of work performed; payment due.

From time to time the department shall inspect each construction project approved by the Surgeon General and, if the inspection so warrants, the department shall certify to the Surgeon General that work has been performed upon the project, or purchases have been made, in accordance with the

approved plans and specifications, and that payment of an installment of federal funds is due to the applicant.

Source: Laws 1947, c. 232, § 15, p. 738; Laws 2007, LB296, § 517.

71-2016 Hospital and Medical Facilities Fund; State Treasurer; disbursement by warrants; funds; investment.

The State Treasurer is hereby authorized to receive federal funds and transmit them to such applicants or to the department, if to carry out any survey, administration, or other authorized function. There is hereby established, separate and apart from all public money and funds of this state, a Hospital and Medical Facilities Fund. Money from the federal government for any authorized purpose of survey, planning, administration, or construction of approved projects, shall be received by the State Treasurer for credit to the fund. Warrants for all payments from the fund shall be drawn and paid in the manner provided by law. 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.

Source: Laws 1947, c. 232, § 16, p. 738; Laws 1965, c. 421, § 11, p. 1353; Laws 1969, c. 584, § 71, p. 2388; Laws 1995, LB 7, § 75.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(b) BASIC STANDARDS

71-2017 Repealed. Laws 2000, LB 819, § 162.

71-2017.01 Repealed. Laws 2000, LB 819, § 162.

71-2017.02 Repealed. Laws 1989, LB 355, § 19.

71-2017.03 Repealed. Laws 2000, LB 819, § 162.

71-2017.04 Repealed. Laws 2000, LB 819, § 162.

71-2017.05 Repealed. Laws 1988, LB 1100, § 185.

71-2017.06 Repealed. Laws 2000, LB 819, § 162.

71-2017.07 Repealed. Laws 2000, LB 819, § 162.

71-2018 Repealed. Laws 2000, LB 819, § 162.

71-2019 Repealed. Laws 1982, LB 592, § 2.

71-2020 Repealed. Laws 2000, LB 819, § 162.

71-2021 Repealed. Laws 2000, LB 819, § 162.

71-2021.01 Repealed. Laws 2000, LB 819, § 162.

71-2021.02 Repealed. Laws 2000, LB 819, § 162.

71-2022 Repealed. Laws 2000, LB 819, § 162.

71-2023 Repealed. Laws 2000, LB 819, § 162.

71-2023.01 Repealed. Laws 2000, LB 819, § 162.

71-2023.02 Repealed. Laws 2000, LB 819, § 162.

71-2023.03 Repealed. Laws 2000, LB 819, § 162.

71-2023.04 Repealed. Laws 2000, LB 819, § 162.

71-2023.05 Repealed. Laws 2000, LB 819, § 162.

71-2023.06 Repealed. Laws 2000, LB 819, § 162.

71-2023.07 Repealed. Laws 2000, LB 819, § 162.

71-2024 Repealed. Laws 2000, LB 819, § 162.

71-2024.01 Repealed. Laws 1987, LB 459, § 7.

71-2024.02 Repealed. Laws 1987, LB 459, § 7.

71-2025 Repealed. Laws 1982, LB 829, § 3.

71-2026 Repealed. Laws 2000, LB 819, § 162.

71-2027 Repealed. Laws 2000, LB 819, § 162.

71-2028 Repealed. Laws 2000, LB 819, § 162.

71-2029 Repealed. Laws 2000, LB 819, § 162.

71-2030 Repealed. Laws 1965, c. 423, § 1.

(c) NURSING HOMES

71-2031 Transferred to section 71-6043.

71-2032 Transferred to section 71-6044.

71-2033 Transferred to section 71-6045.

71-2034 Transferred to section 71-6046.

71-2035 Transferred to section 71-6047.

71-2036 Transferred to section 71-6048.

71-2037 Transferred to section 71-6049.

71-2038 Transferred to section 71-6050.

71-2039 Transferred to section 71-6051.

71-2040 Transferred to section 71-6052.

71-2041 Repealed. Laws 1972, LB 1040, § 14.

71-2041.01 Transferred to section 71-6053.

71-2041.02 Transferred to section 71-6054.

71-2041.03 Transferred to section 71-6055.

71-2041.04 Transferred to section 71-6056.

71-2041.05 Transferred to section 71-6057.

71-2041.06 Transferred to section 71-6058.

71-2041.07 Transferred to section 71-6059.

71-2042 Transferred to section 71-6067.

71-2043 Repealed. Laws 1973, LB 5, § 2.

71-2044 Repealed. Laws 1980, LB 686, § 11.

71-2045 Repealed. Laws 1972, LB 1040, § 14.

71-2045.01 Transferred to section 71-6065.

71-2045.02 Transferred to section 71-2041.02.

71-2045.03 Transferred to section 71-6060.

71-2045.04 Transferred to section 71-6062.

71-2045.05 Transferred to section 71-6061.

71-2045.06 Transferred to section 71-6066.

71-2045.07 Repealed. Laws 1988, LB 693, § 18.

71-2045.08 Transferred to section 71-6063.

71-2045.09 Transferred to section 71-6064.

71-2045.10 Transferred to section 71-6068.

(d) MEDICAL AND HOSPITAL CARE

71-2046 Medical staff committee; utilization review committee; duties.

Each hospital licensed in the State of Nebraska shall cause a medical staff committee and a utilization review committee to be formed and operated for the purpose of reviewing, from time to time, the medical and hospital care provided in such hospital and the use of such hospital facilities and for assisting individual physicians and surgeons practicing in such hospital and the administrators and nurses employed in the operation of such hospital in maintaining and providing a high standard of medical and hospital care and promoting the most efficient use of such hospital facilities.

Source: Laws 1971, LB 148, § 1.

This section provides that Nebraska hospitals will create one of each of the committees set forth in the statute to perform their functions on a hospital-wide basis. State ex rel. AMISUB, Inc. v. Buckley, 260 Neb. 596, 618 N.W.2d 684 (2000).

71-2047 Medical staff committee; utilization review committee; reports to; privilege to refuse; exception.

Any physician, surgeon, hospital administrator, nurse, technologist, and any other person engaged in work in or about a licensed hospital and having any information or knowledge relating to the medical and hospital care provided in

such hospital or the efficient use of such hospital facilities shall be obligated, when requested by a hospital medical staff committee or a utilization review committee, to provide such committee with all of the facts or information possessed by such individual with reference to such care or use. Any person making a report or providing information to a hospital medical staff committee or a utilization review committee of a hospital upon request of such committee has a privilege to refuse to disclose and to prevent any other person from disclosing the report or information so provided, except as provided in section 71-2048.

Source: Laws 1971, LB 148, § 3.

The party claiming the privileges under this section and section 71-2048 has the burden of proving that the documents claimed as privileged are protected documents under one of those statutes. State ex rel. AMISUB, Inc. v. Buckley, 260 Neb. 596, 618 N.W.2d 684 (2000).

This section together with section 71-2048 provides that all communications to medical staff or utilization review committees are privileged. Shilling v. Moore, 249 Neb. 704, 545 N.W.2d 442 (1996).

71-2048 Communications; privileged; waiver.

The proceedings, minutes, records, and reports of any medical staff committee or utilization review committee as defined in section 71-2046, together with all communications originating in such committees are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless (1) the privilege is waived by the patient and (2) a court of record, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Nothing in sections 71-2046 to 71-2048 shall be construed as providing any privilege to hospital medical records kept with respect to any patient in the ordinary course of business of operating a hospital nor to any facts or information contained in such records nor shall sections 71-2046 to 71-2048 preclude or affect discovery of or production of evidence relating to hospitalization or treatment of any patient in the ordinary course of hospitalization of such patient.

Source: Laws 1971, LB 148, § 4.

The language of this section does not protect antecedent reports relating to the care of a specific patient which memorialize bare facts and which were written by or collected from percipient witnesses notwithstanding the fact that such documents may have been forwarded to a hospital-wide committee, nor does this section protect an assembly of such facts outside the committees identified in section 71-2046. Based upon the plain language of this section and reading this section sensibly in conjunction with section 71-2046, which requires the creation of hospital-wide committees, and noting prior case law precedent, it is clear that the proceedings, minutes, records, and reports which are privileged communications under this section are those communications which are part of the deliberations or communications of a hospital-wide medical staff committee or a hospital-wide utilization review committee or such communications which originate in such committees, as those committees are defined under section 71-2046, and when those hospital-wide committees are conducting the business authorized under section 71-2046 et seq. State ex rel. AMISUB, Inc. v. Buckley, 260 Neb. 596, 618 N.W.2d 684 (2000).

The party claiming the privileges under section 71-2047 and this section has the burden of proving that the documents claimed as privileged are protected documents under one of those statutes. State ex rel. AMISUB, Inc. v. Buckley, 260 Neb. 596, 618 N.W.2d 684 (2000).

This section adopted in 1971 held applicable to pending untried cases and to grant privilege to proceedings of hospital medical staff in absence of showing of extraordinary circumstances. Oviatt v. Archbishop Bergan Mercy Hospital, 191 Neb. 224, 214 N.W.2d 490 (1974).

71-2048.01 Clinical privileges; standards and procedures.

Any hospital required to be licensed under the Health Care Facility Licensure Act shall not deny clinical privileges to physicians and surgeons, podiatrists, osteopathic physicians, osteopathic physicians and surgeons, licensed psychologists, or dentists solely by reason of the license held by the practitioner. Each such hospital shall establish reasonable standards and procedures to be applied when considering and acting upon an application for medical staff membership

and privileges. Once an application is determined to be complete by the hospital and is verified in accordance with such standards and procedures, the hospital shall notify the applicant of its initial recommendation regarding membership and privileges within one hundred twenty days.

Source: Laws 1989, LB 646, § 1; Laws 1998, LB 1073, § 122; Laws 2000, LB 819, § 99.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2049 Repealed. Laws 2009, LB 288, § 54.

(e) CARE STAFF MEMBERS

71-2050 Repealed. Laws 1998, LB 1354, § 48.

71-2051 Repealed. Laws 1998, LB 1354, § 48.

71-2052 Repealed. Laws 1998, LB 1354, § 48.

71-2053 Repealed. Laws 1998, LB 1354, § 48.

71-2054 Repealed. Laws 1998, LB 1354, § 48.

71-2055 Repealed. Laws 1998, LB 1354, § 48.

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

71-2056 Legislative findings.

The Legislature finds that the market for hospital and health care services is becoming increasingly competitive, that hospitals and other health care providers are contracting to engage in economic joint ventures to form partnerships to offer integrated health care services to the public, and that this increasing competition is forcing hospitals and other health care providers to develop market strategies and strategic plans to effectively compete. The purpose of sections 71-2056 to 71-2061 is to enhance the ability of public hospitals to compete effectively and equally in the market for health care services.

Source: Laws 1985, LB 61, § 1.

71-2057 Terms, defined.

For purposes of sections 71-2056 to 71-2061, unless the context otherwise requires:

(1) Hospital health services means, but is not limited to, any health care clinical, diagnostic, or rehabilitation service and any administrative, managerial, health system, or operational service incident to such service;

(2) Market strategy means any plan, strategy, or device developed or intended to promote, sell, or offer to sell any hospital health service;

(3) Strategic plan means any plan, strategy, or device developed or intended to construct, operate, or maintain a health facility or to engage in providing, promoting, or selling a hospital health service; and

(4) Tangible benefit means, but is not limited to, any (a) reasonable expectation of a demonstrable increase in or maintenance of usage of the provider's

services, (b) contractual provision requiring quality control of patient care and participation in a resource monitoring procedure, or (c) reasonable expectation of prompt payment for any service rendered.

Source: Laws 1985, LB 61, § 2; Laws 1995, LB 366, § 5.

71-2058 Public hospital; marketing strategies and plans authorized.

In addition to powers and duties otherwise provided by law, a hospital which is owned or operated by a political subdivision, state agency, or other governmental entity may develop marketing strategies for its existing hospital health services or any hospital health service to be provided in the future and may develop strategic plans for the development of any future hospital health service or facility. Market strategies and strategic plans may be developed in cooperation with other health care providers.

Source: Laws 1985, LB 61, § 3.

71-2059 Governmental body; powers.

A political subdivision, state agency, or other governmental entity which owns or operates a hospital or hospital health service shall, relative to the delivery of health care services, have the authority to:

(1) Enter into agreements with other health care providers to share services or provide a tangible benefit to the hospital and into other cooperative ventures;

(2) Join or sponsor membership in organizations or associations intended to benefit the hospital or hospitals in general;

(3) Enter into partnerships;

(4) Create or merge with other corporations;

(5) Create or merge with other limited liability companies;

(6) Have members of its governing authority or its officers or administrators serve without pay as directors or officers of any such venture, organization, association, partnership, limited liability company, or corporation;

(7) Offer, directly or indirectly, products and services of the hospital or any such venture, organization, association, partnership, limited liability company, or corporation to the general public; and

(8) Acquire, erect, staff, equip, or operate one or more medical office buildings, clinic buildings, or other buildings or parts thereof for medical services. Such buildings or parts may be freestanding facilities or additions to or parts of an existing hospital or health care facility. Unless the governmental entity declares otherwise, the building or parts shall be considered an addition or improvement to the existing facilities. The governmental entity may lease all or part of such building to one or more health care practitioners or groups of health care practitioners or otherwise allow health care practitioners the use thereof on such terms as the governmental entity deems appropriate. Such lease or other use shall not be required to comply with public bidding requirements or approval of the electorate.

Source: Laws 1985, LB 61, § 4; Laws 1992, LB 1019, § 77; Laws 1993, LB 121, § 430.

71-2060 Conversion of public funds.

The conversion of public funds intended for or contributed to an undertaking authorized by section 71-2059 for the benefit of any individual shall constitute grounds for review and action by the Attorney General or the county attorney pursuant to sections 28-509 to 28-518.

Source: Laws 1985, LB 61, § 5.

71-2061 Public hospital; indebtedness, how construed; expenditures, limitation.

(1) All agreements and obligations undertaken and all securities issued, as permitted under sections 71-2056 to 71-2061, by a hospital which is owned or operated by a political subdivision, state agency, or other governmental entity shall be exclusively an obligation of the hospital and shall not create an obligation or debt of the state or any political subdivision, state agency, or other governmental entity. The full faith and credit of the state or of any political subdivision, state agency, or other governmental entity shall not be pledged for the payment of any securities issued by such a hospital, nor shall the state or any political subdivision, state agency, or other governmental entity be liable in any manner for the payment of the principal of or interest on any securities of such a hospital or for the performance of any pledge, mortgage, obligation, or agreement of any kind that may be undertaken by such a hospital.

(2) Expenditures permitted by sections 71-2056 to 71-2061 to be made by or on behalf of a hospital shall be for operating and maintaining public hospitals and public facilities for a public purpose. No such expenditure shall be considered to be a giving or lending of the credit of the state, or a granting of public money or a thing of value, in aid of any individual, association, or corporation within the meaning of any constitutional or statutory provision.

Source: Laws 1985, LB 61, § 6.

(g) HOSPITAL CONSUMER INFORMATION

71-2062 Repealed. Laws 1994, LB 1222, § 65.

71-2063 Repealed. Laws 1994, LB 1222, § 65.

71-2064 Repealed. Laws 1994, LB 1222, § 65.

71-2065 Repealed. Laws 1994, LB 1222, § 65.

71-2066 Repealed. Laws 1994, LB 1222, § 65.

71-2067 Repealed. Laws 1994, LB 1222, § 65.

71-2068 Repealed. Laws 1994, LB 1222, § 65.

71-2069 Repealed. Laws 1994, LB 1222, § 65.

71-2070 Repealed. Laws 1994, LB 1222, § 65.

71-2071 Repealed. Laws 1994, LB 1222, § 65.

71-2072 Repealed. Laws 1994, LB 1222, § 65.

71-2073 Repealed. Laws 1994, LB 1222, § 65.

71-2074 Repealed. Laws 1994, LB 1222, § 65.

71-2075 Written estimate of charges; when required; notice.

(1) Upon the written request of a prospective patient, his or her attending physician, or any authorized agent of the prospective patient, each hospital, except hospitals excluded under section 1886(d)(1)(B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall provide a written estimate of the average charges for health services related to a particular diagnostic condition or medical procedure if such services are provided by the hospital or center. Such written request shall include a written medical diagnosis made by a health care practitioner licensed to provide such diagnosis. The prospective patient or his or her agent may also provide to the hospital or center the prospective patient's age and sex, any complications or co-morbidities of the prospective patient, other procedures required for the prospective patient, and other information which would allow the hospital or center to provide a more accurate or detailed estimate. Such estimate shall be provided within seven working days from the date of submission of the written request and information necessary to prepare such an estimate.

(2) All hospitals and ambulatory surgical centers shall provide notice to the public that such hospital or center will provide an estimate of charges for medical procedures or diagnostic conditions pursuant to subsection (1) of this section. Such public notice shall be provided either as a part of the advertising or promotional materials of the hospital or center or by posting a notice in an obvious place within the public areas of the hospital or center.

Source: Laws 1985, LB 382, § 14; Laws 1994, LB 1210, § 120.

71-2076 Listing of common diagnostic related groups; when required.

(1) Effective January 1, 1986, each hospital, except hospitals excluded under section 1886(d)(1)(B) of Public Law 98-21, the Social Security Act Amendments of 1983, and ambulatory surgical center shall identify the twenty most common diagnostic related groups for which services are provided by the hospital or center. Such listing of diagnostic related groups shall be made available to consumers of health care, along with the range of average charges for treatment and the associated average length of stay for each diagnostic related group listed. Such listing shall be provided to any person upon request. The information included in the listing shall show the date prepared and shall be regularly updated every six months.

(2) Any hospital or ambulatory surgical center which provides services for fewer than twenty diagnostic related groups or performs an insufficient number of procedures to compute a statistically valid average shall provide a listing to the public of the most common diagnostic related groups provided by the hospital or center and the average charges and length of stay for which a valid statistical average is available and shall disclose the circumstances for such limited available data.

Source: Laws 1985, LB 382, § 15; Laws 1994, LB 1210, § 121.

71-2077 Repealed. Laws 1994, LB 1222, § 65.

(h) UNIFORM BILLING FORMS

71-2078 Injury data; legislative findings.

The Legislature finds and declares that the cost of injury and the deaths associated with injury are of a vital concern to the health of the residents of the State of Nebraska. The Legislature further finds that the availability of reliable injury data is necessary in order to provide for the protection and promotion of the health of the residents of the state. It is the intent of the Legislature to assist in and encourage injury prevention by requiring that specific data relating to injuries be available to health care professionals and analysts in order that such data be utilized for research, analytical, and statistical purposes.

Source: Laws 1993, LB 387, § 1.

71-2079 Terms, defined.

For purposes of sections 71-2078 to 71-2082:

(1) Hospital shall have the meaning found in section 71-419; and

(2) Hospital uniform billing form shall mean the Health Care Financing Administration claim form number 1450 mandated for the medicare program pursuant to sections 1814(a)(2) and 1871 of the federal Social Security Act, as amended, developed by the National Uniform Billing Committee and commonly referred to as the uniform billing claim form number 92.

Source: Laws 1993, LB 387, § 2; Laws 2000, LB 819, § 101.

71-2080 Diagnosis code; required.

Beginning on January 1, 1994, each hospital in this state shall provide a diagnosis code for the external cause of an injury, poisoning, or adverse effect for every patient discharged from a hospital, receiving outpatient services, or released from observation for whom such a code would be appropriate. The diagnosis code shall be used in addition to other codes required under federal or state statute, rule, or regulation. The diagnosis code shall be the same as the code required by the International Classification of Diseases, Ninth Revision, Clinical Modification System, or its most recent revision, and shall be entered on the hospital uniform billing form.

Source: Laws 1993, LB 387, § 3.

71-2081 Hospital; submission of data; release by department.

For each hospital uniform billing form on which a diagnosis code for the external cause of an injury, poisoning, or adverse effect is entered pursuant to section 71-2080, each hospital in this state shall submit data to the Department of Health and Human Services. Such data shall be submitted quarterly and shall include, but not be limited to, the diagnosis code for the external cause of an injury, poisoning, or adverse effect, other diagnosis codes, the procedure codes, admission date, discharge date, disposition code, and demographic data to include, but not be limited to, the birthdate, sex, city and county of residence, and zip code of residence for every patient discharged from a hospital, receiving outpatient services, or released from observation for whom a diagnosis code for the external cause of an injury, poisoning, or adverse effect is recorded pursuant to section 71-2080. This data shall be submitted to the department in written or computer form. The data provided to the department under this

section shall be classified for release as determined by the department only in aggregate data reports created by the department. Such aggregate data reports shall be considered public documents.

Source: Laws 1993, LB 387, § 4; Laws 1996, LB 1044, § 610; Laws 2005, LB 301, § 41; Laws 2007, LB296, § 518.

71-2082 Department; adopt rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations governing the recordation, acquisition, compilation, and dissemination of all data collected pursuant to sections 71-2078 to 71-2082.

Source: Laws 1993, LB 387, § 5; Laws 1996, LB 1044, § 611; Laws 2007, LB296, § 519.

(i) SURGICAL INFECTIONS

71-2083 Surgical infections; report required.

Each hospital licensed in Nebraska shall, at least annually, provide surgeons performing surgery at such hospital a report as to the number and rates of surgical infections in surgical patients of such surgeon.

Source: Laws 1994, LB 1210, § 112.

(j) RECEIVERS

71-2084 Terms, defined.

For purposes of sections 71-2084 to 71-2096:

(1) Department means the Department of Health and Human Services; and

(2) Health care facility means a health care facility subject to licensing under the Health Care Facility Licensure Act.

Source: Laws 1983, LB 274, § 1; R.S.1943, (1990), § 71-6001; Laws 1995, LB 406, § 60; Laws 1996, LB 1044, § 612; Laws 2000, LB 819, § 102; Laws 2007, LB296, § 520.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2085 Appointment of receiver; conditions.

The department may petition the district court for appointment of a receiver for a health care facility when any of the following conditions exist:

(1) If the department determines that the health, safety, or welfare of the residents or patients is in immediate danger;

(2) The health care facility is operating without a license;

(3) The department has suspended, revoked, or refused to renew the existing license of the health care facility;

(4) The health care facility is closing, or has informed the department that it intends to close, and adequate arrangements for the relocation of the residents or patients of such health care facility have not been made at least thirty days prior to closure; or

(5) The department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, and because of the unwillingness or inability of the licensee, owner, or operator to remedy the emergency, the department believes a receiver is necessary.

Source: Laws 1983, LB 274, § 2; R.S.1943, (1990), § 71-6002; Laws 1995, LB 406, § 61.

71-2086 Appointment of receiver; procedure; temporary receiver; purpose of receivership.

(1) The department shall file the petition for the appointment of a receiver provided for in section 71-2085 in the district court of the county where the health care facility is located and shall request that a receiver be appointed for the health care facility.

(2) The court shall expeditiously hold a hearing on the petition within seven days after the filing of the petition. The department shall present evidence at the hearing in support of the petition. The licensee, owner, or operator may also present evidence, and both parties may subpoena witnesses. The court may appoint a temporary receiver for the health care facility ex parte if the department, by affidavit, states that an emergency exists which presents an imminent danger of death or physical harm to the residents or patients of the health care facility. If a temporary receiver is appointed, notice of the petition and order shall be served on the licensee, owner, operator, or administrator of the health care facility within seventy-two hours after the entry of the order. The petition and order may be served by any method specified in section 25-505.01 or the court may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. A hearing on the petition and temporary order shall be held within seventy-two hours after notice has been served unless the licensee, owner, or operator consents to a later date. After the hearing the court may terminate, continue, or modify the temporary order. If the court determines that the department did not have probable cause to submit the affidavit in support of the appointment of the temporary receiver, the court shall have the jurisdiction to determine and award compensatory damages against the state to the owner or operator. If the licensee, owner, or operator informs the court at or before the time set for hearing that he or she does not object to the petition, the court shall waive the hearing and at once appoint a receiver for the health care facility.

(3) The purpose of a receivership created under this section is to safeguard the health, safety, and continuity of care of residents and patients and to protect them from adverse health effects. A receiver shall not take any actions or assume any responsibilities inconsistent with this purpose. No person shall impede the operation of a receivership created under this section. After the appointment of a receiver, there shall be an automatic stay of any action that would interfere with the functioning of the health care facility, including, but not limited to, cancellation of insurance policies executed by the licensee, owner, or operator, termination of utility services, attachments or setoffs of resident trust funds or working capital accounts, and repossession of equipment used in the health care facility. The stay shall not apply to any licensure, certification, or injunctive action taken by the department.

Source: Laws 1983, LB 274, § 3; R.S.1943, (1990), § 71-6003; Laws 1995, LB 406, § 62; Laws 2007, LB296, § 521.

71-2087 Receiver; appointment; effect; duties.

When a receiver is appointed under section 71-2086, the licensee, owner, or operator shall be divested of possession and control of the health care facility in favor of the receiver. The appointment of the receiver shall not affect the rights of the owner or operator to defend against any claim, suit, or action against such owner or operator or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department. A receiver shall:

(1) Take such action as is reasonably necessary to protect and conserve the assets or property of which the receiver takes possession or the proceeds of any transfer of the assets or property and may use them only in the performance of the powers and duties set forth in this section and section 71-2088 or by order of the court;

(2) Apply the current revenue and current assets of the health care facility to current operating expenses and to debts incurred by the licensee, owner, or operator prior to the appointment of the receiver. The receiver may apply to the court for approval for payment of debts incurred prior to appointment if the debts appear extraordinary, of questionable validity, or unrelated to the normal and expected maintenance and operation of the health care facility or if the payment of the debts will interfere with the purposes of the receivership. The receiver shall give priority to expenditures for current, direct resident care, including nursing care, social services, dietary services, and housekeeping;

(3) Be responsible for the payment of taxes against the health care facility which become due during the receivership, including property taxes, sales and use taxes, withholding, taxes imposed pursuant to the Federal Insurance Contributions Act, and other payroll taxes, but not including state and federal taxes which are the liability of the owner or operator;

(4) Be entitled to and take possession of all property or assets of residents or patients which are in the possession of the licensee, owner, operator, or administrator of the health care facility. The receiver shall preserve all property, assets, and records of residents or patients of which the receiver takes possession and shall provide for the prompt transfer of the property, assets, and necessary and appropriate records to the alternative placement of any transferred or discharged resident;

(5) Upon order of the court, provide for the orderly transfer of all residents or patients in the health care facility to other suitable facilities if correction of violations of federal and state laws and regulations is not possible or cannot be completed in a timely manner or there are reasonable grounds to believe the health care facility cannot be operated on a sound financial basis and in compliance with all applicable federal or state laws and regulations or make other provisions for the continued health, safety, and welfare of the residents or patients;

(6) Perform regular accountings; and

(7) Make periodic reports to the court and the department.

Source: Laws 1995, LB 406, § 63.

71-2088 Receiver; powers.

A receiver appointed under section 71-2086 may exercise those powers and shall perform those duties set out by the court. A receiver may:

(1) Assume the role of administrator and take control of day-to-day operations or name an administrator to conduct the day-to-day operations of the health care facility subject to the supervision and direction of the receiver;

(2) Remedy violations of federal and state laws and regulations governing the operation of the health care facility;

(3) Let contracts and hire agents and employees, including legal counsel, to carry out the powers and duties of the receiver; and

(4) Hire or discharge any employees including the administrator.

Source: Laws 1995, LB 406, § 64.

71-2089 Receiver; litigation authorized.

The receiver in its discretion may, but shall not be required to, defend any claim, suit, or action against the receiver or the health care facility arising out of conditions, actions, or circumstances occurring or continuing at the health care facility after the appointment of the receiver. The receiver in its discretion may, but shall not be required to, defend any licensure, certification, or injunctive action initiated by the department after its appointment. The receiver shall not appeal or continue the appeal of any licensure or certification action initiated by the department against the health care facility before the appointment of the receiver. The receiver shall cooperate with the owner or operator in any defense undertaken by the owner or operator against any claim, suit, or action against him or her or the health care facility, including, but not limited to, any licensure, certification, or injunctive action taken by the department.

Source: Laws 1995, LB 406, § 65.

71-2090 Property and records; inspection by department.

The department may inspect the health care facility at any time during the receivership, and the receiver shall cooperate with the department in any such inspection. All records required by federal or state statutes and regulations shall be kept on the premises of the health care facility and shall be available for inspection and copying by any authorized employee of the department.

Source: Laws 1995, LB 406, § 66.

71-2091 Receivership; receiver responsibility; successor appointed; when.

The receiver is responsible for the conduct of the health care facility during the receivership. The department may apply to the court for an order terminating the appointment of a receiver and appointing a successor receiver when violations of federal or state laws or regulations occur during the receivership or for other appropriate reasons.

Source: Laws 1995, LB 406, § 67.

71-2092 Receivership; termination; procedure; failure to terminate; effect.

(1) A receivership established under section 71-2086 may be terminated by the district court which established it after a hearing upon an application for termination. The application may be filed:

(a) Jointly by the receiver and the current licensee of the health care facility which is in receivership, stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the

receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto;

(b) By the current licensee of the health care facility, alleging that termination of the receivership is merited for the reasons set forth in subdivision (a) of this subsection, but that the receiver has declined to join in the petition for termination of the receivership;

(c) By the receiver, stating that all residents or patients of the health care facility have been relocated elsewhere and that there are reasonable grounds to believe it will not be feasible to again operate the health care facility on a sound financial basis and in compliance with federal and state laws and regulations and asking that the court approve the surrender of the license of the health care facility to the department and the subsequent return of the control of the premises of the health care facility to the owner of the premises; or

(d) By the department (i) stating that the deficiencies in the operation, maintenance, or other circumstances which were the grounds for establishment of the receivership have been corrected and that there are reasonable grounds to believe that the health care facility will be operated in compliance with all applicable statutes and the rules and regulations adopted and promulgated pursuant thereto or (ii) stating that there are reasonable grounds to believe that the health care facility cannot be operated in compliance with federal or state law and regulations and asking that the court order the removal of the residents or patients to appropriate alternative placements, the closure of the facility, and the license, if any, surrendered to the department or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department.

(2) If the receivership has not been terminated within twelve months after the appointment of the receiver, the court shall, after hearing, order either that the health care facility be closed after an orderly transfer of the residents or patients to appropriate alternative placements or that the health care facility be sold under reasonable terms approved by the court to a new owner approved for licensure by the department. The receivership period may be extended as necessary to protect the health, safety, and welfare of the residents or patients.

Source: Laws 1983, LB 274, § 4; R.S.1943, (1990), § 71-6004; Laws 1995, LB 406, § 68.

71-2093 Receivership; payment of expenses.

The health care facility for which a receiver is appointed shall be responsible for payment of the expenses of a receivership established under section 71-2086 unless the court directs otherwise. The expenses include, but are not limited to:

(1) Compensation for the receiver and any related receivership expenses;

(2) Expenses incurred by the health care facility for the continuing care of the residents or patients of the health care facility;

(3) Expenses incurred by the health care facility for the maintenance of buildings and grounds of the health care facility; and

(4) Expenses incurred by the health care facility in the ordinary course of business, such as employees' salaries and accounts payable.

Source: Laws 1983, LB 274, § 5; R.S.1943, (1990), § 71-6005; Laws 1995, LB 406, § 69.

71-2094 Action against receiver; requirements.

No person shall bring an action against a receiver appointed under section 71-2086 without first securing leave of the court. The receiver is liable in his or her personal capacity for intentional wrongdoing or gross negligence. In all other cases, the receiver is liable in his or her official capacity only, and any judgment rendered shall be satisfied out of the receivership assets. The receiver is not personally liable for the expenses of the health care facility during the receivership. The receiver is an employee of the state only for the purpose of defending a claim filed against the receiver. The Attorney General shall defend or arrange for the defense of all suits filed against the receiver personally.

Source: Laws 1995, LB 406, § 70.

71-2095 Receivership; acts not precluded; effect on liability.

Sections 71-2086 to 71-2094 shall not:

(1) Preclude the sale or lease of a health care facility as otherwise provided by law; or

(2) Affect the civil or criminal liability of the licensee, owner, or operator of the health care facility placed in receivership for any acts or omissions of the licensee, owner, or operator which occurred before the receiver was appointed.

Source: Laws 1983, LB 274, § 6; R.S.1943, (1990), § 71-6006; Laws 1995, LB 406, § 71.

71-2096 Interference with enforcement; penalty.

(1) Any person who prevents or interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of sections 71-2084 to 71-2096 shall be guilty of a Class IV misdemeanor. For purposes of this subsection, lawful enforcement includes, but is not limited to, (a) contacting or interviewing any resident or patient of a health care facility in private at any reasonable hour and without advance notice, (b) examining any relevant books or records of a health care facility, or (c) preserving evidence of any violations of sections 71-2084 to 71-2096.

(2) The county attorney of the county in which the health care facility is located or the Attorney General may be requested by the department to initiate prosecution.

Source: Laws 1983, LB 274, § 7; R.S.1943, (1990), § 71-6007; Laws 1995, LB 406, § 72; Laws 2007, LB296, § 522.

(k) MEDICAID PROGRAM VIOLATIONS

71-2097 Terms, defined.

For purposes of sections 71-2097 to 71-20,101:

(1) Civil penalties include any remedies required under federal law and include the imposition of monetary penalties;

(2) Department means the Department of Health and Human Services;

(3) Federal regulations for participation in the medicaid program means the regulations found in 42 C.F.R. parts 442 and 483, as amended, for participation in the medicaid program under Title XIX of the federal Social Security Act, as amended; and

(4) Nursing facility means any intermediate care facility or nursing facility, as defined in sections 71-420 and 71-424, which receives federal and state funds under Title XIX of the federal Social Security Act, as amended.

Source: Laws 1996, LB 1155, § 72; Laws 1997, LB 307, § 180; Laws 2000, LB 819, § 103; Laws 2007, LB296, § 523.

71-2098 Civil penalties; department; powers.

(1) The department may assess, enforce, and collect civil penalties against a nursing facility which the department has found in violation of federal regulations for participation in the medicaid program pursuant to the authority granted to the department under section 81-604.03.

(2) If the department finds that a violation is life threatening to one or more residents or creates a direct threat of serious adverse harm to one or more residents, a civil penalty shall be imposed for each day the deficiencies which constitute the violation exist. The department may assess an appropriate civil penalty for other violations based on the nature of the violation. Any monetary penalty assessed shall not be less than fifty dollars nor more than ten thousand dollars for each day the facility is found to be in violation of such federal regulations. Monetary penalties assessed shall include interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1996, LB 1155, § 73; Laws 1997, LB 307, § 181; Laws 2007, LB296, § 524.

71-2099 Civil penalties; type and amount; criteria.

The department shall adopt criteria for determining the type and amount of the civil penalty assessed under section 71-2098. Such criteria shall include, but need not be limited to, consideration of the following factors:

(1) The period of time over which the violation occurred;

(2) The frequency of the violation;

(3) The nursing facility's history concerning the type of violation for which the civil penalty is assessed;

(4) The nursing facility's intent or reason for the violation;

(5) The effect, if any, of the violation on the health, safety, security, or welfare of the residents;

(6) The existence of other violations, in combination with the violation for which the civil penalty is assessed, which increase the threat to the health, safety, security, rights, or welfare of the residents;

(7) The accuracy, thoroughness, and availability of records regarding the violation, which the nursing facility is required to maintain; and

(8) The number of additional related violations occurring within the same time span as the violation in question.

Source: Laws 1996, LB 1155, § 74; Laws 1997, LB 307, § 182; Laws 2007, LB296, § 525.

71-20,100 Nursing Facility Penalty Cash Fund; created; use; investment.

(1) The Nursing Facility Penalty Cash Fund is created. Monetary penalties collected by the department pursuant to section 71-2098 shall be remitted to the State Treasurer for credit to such fund. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

(2) The department shall adopt and promulgate rules and regulations which establish circumstances under which the department may distribute funds from the Nursing Facility Penalty Cash Fund to protect the health or property of individuals residing in nursing facilities which the department has found in violation of federal regulations for participation in the medicaid program. Circumstances considered as a basis for distribution from the fund include paying costs to:

(a) Relocate residents to other facilities;

(b) Maintain the operation of a nursing facility pending correction of violations;

(c) Close a nursing facility; and

(d) Reimburse residents for personal funds lost.

Source: Laws 1996, LB 1155, § 75; Laws 1997, LB 307, § 183; Laws 2007, LB296, § 526.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-20,101 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out sections 71-2097 to 71-20,101, including rules and regulations for notice and appeal procedures.

Source: Laws 1996, LB 1155, § 76; Laws 1997, LB 307, § 184; Laws 2007, LB296, § 527.

(l) NONPROFIT HOSPITAL SALE ACT

71-20,102 Act, how cited.

Sections 71-20,102 to 71-20,113 shall be known and may be cited as the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, § 1.

71-20,103 Terms, defined.

For purposes of the Nonprofit Hospital Sale Act:

(1) Department means the Department of Health and Human Services;

(2) Hospital has the meaning found in section 71-419;

(3) Acquisition means any acquisition by a person or persons of an ownership or controlling interest in a hospital, whether by purchase, merger, lease, gift, or otherwise, which results in a change of ownership or control of twenty percent or greater or which results in the acquiring person or persons holding a fifty percent or greater interest in the ownership or control of a hospital, but acquisition does not include the acquisition of an ownership or controlling interest in a hospital owned by a nonprofit corporation if the transferee (a) is a nonprofit corporation having a substantially similar charitable health care purpose as the transferor or is a governmental entity, (b) is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or as a governmental entity, and (c) will maintain representation from the affected community on the local board; and

(4) Person has the meaning found in section 71-5803.12.

Source: Laws 1996, LB 1188, § 2; Laws 1997, LB 307, § 185; Laws 1997, LB 798, § 1; Laws 2000, LB 819, § 104; Laws 2007, LB296, § 528.

71-20,104 Acquisition of hospital; approval required; exception; notice; application; procedure.

No person shall engage in the acquisition of a hospital owned by a nonprofit corporation without first having applied for and received the approval of the department and without first having notified the Attorney General and, if applicable, received approval from the Attorney General pursuant to the Nonprofit Hospital Sale Act. No person shall engage in the acquisition of a hospital not owned by a nonprofit corporation without first having applied for and received the approval of the department pursuant to the act unless such acquiring person is a nonprofit corporation exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code or is a governmental entity. For purposes of the act, approval of the department and the Attorney General shall not be required for the acquisition of a hospital not owned by a nonprofit corporation as follows: (1) The lease of a county hospital approved under section 23-3504; or (2) the dissolution of a hospital district approved under sections 23-3544 to 23-3546 or the merger of hospital districts approved under sections 23-3573 to 23-3578.

Any person not required to obtain the approval of the department under the provisions of the Nonprofit Hospital Sale Act shall give the Attorney General at least thirty days' notice of an impending acquisition, during which time the Attorney General may take any necessary and appropriate action consistent with his or her general duties of oversight with regard to the conduct of charities. The notice shall briefly describe the impending acquisition, including any change in ownership of tangible or intangible assets.

The application shall be submitted to the department and the Attorney General on forms provided by the department and shall include the name of the seller, the name of the purchaser or other parties to an acquisition, the terms of the proposed agreement, the sale price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria set forth in section 71-20,108, and all other related documents. A copy of the application and copies of all additional related materials shall be submitted to the department and to the Attorney General at the same time. The applications and all related

documents shall be considered public records for purposes of sections 84-712 to 84-712.09.

Source: Laws 1996, LB 1188, § 3.

71-20,105 Application; department; Attorney General; duties; single unified review process; when.

(1) Within five working days after receipt of an application under section 71-20,104, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first-class United States mail any person who has requested notice of the filing of such applications. The notice shall state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department.

(2) Within sixty days after receiving an application, the department shall review the application in accordance with the standards set forth in the Nonprofit Hospital Sale Act and approve or disapprove the acquisition pursuant to the act.

Within twenty days after receiving an application, the Attorney General shall determine whether to review the application in accordance with section 71-20,108 and shall so notify the applicant. If the Attorney General determines to review the application in accordance with the act, the Attorney General shall, within sixty days after receiving the application, review the application in accordance with the standards set forth in section 71-20,108 and approve or disapprove the acquisition. If the Attorney General determines not to review the application in accordance with the act, then none of the other provisions of the act applicable to review by the Attorney General shall apply.

(3) For acquisitions which require approval from the department under the Nonprofit Hospital Sale Act and a certificate of need under the Nebraska Health Care Certificate of Need Act, the applicant shall submit a single application for both purposes and such application shall be reviewed under a single unified review process by the department. Following the single unified review process, the department shall simultaneously issue (a) its decision for purposes of the Nebraska Health Care Certificate of Need Act and (b) its decision for purposes of the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, § 4.

Cross References

Nebraska Health Care Certificate of Need Act, see section 71-5801.

71-20,106 Review of acquisition; hearing; department or Attorney General; powers.

The department, and the Attorney General if he or she determines to review the acquisition, shall during the course of review under section 71-20,105 or 71-20,107 hold a public hearing in which any person may file written comments and exhibits or appear and make a statement. The department or the Attorney General may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

The hearing shall be held not later than thirty days after receipt of an application. The hearing shall be held upon ten working days' notice, not including days the application is deemed to be incomplete.

Source: Laws 1996, LB 1188, § 5.

71-20,107 Review of application; Attorney General; department; duties; action for declaratory judgment; authorized; contest of denial.

(1) If the Attorney General determines to review the application, he or she shall review the application in accordance with the standards enumerated in section 71-20,108. Within sixty days after receipt of an application, the Attorney General shall approve or disapprove the acquisition.

If the Attorney General does not act within sixty days after receipt of an application, the application shall be deemed approved. If the Attorney General approves or disapproves the acquisition, the applicant, or any person who has submitted comments under section 71-20,106, if the person has a legal interest in the hospital being acquired or in another hospital that has contracted with the acquired hospital for the provision of essential health services, may bring an action for declaratory judgment under the Uniform Declaratory Judgments Act for a determination that the acquisition is or is not in the public interest as provided in section 71-20,108.

(2) The department shall review the completed application in accordance with the standards enumerated in section 71-20,109. Within sixty days after receipt of a completed application, the department shall:

(a) Approve the acquisition, with or without any specific modifications; or

(b) Disapprove the acquisition.

The department shall not make its decision subject to any condition not directly related to criteria enumerated in section 71-20,109, and any condition or modification shall bear a direct and rational relationship to the application under review.

The applicant or any affected person may contest a denial in the manner provided in the Administrative Procedure Act for contested cases. The findings, conclusions, and decisions of the department shall constitute the determination of the department, except that the applicant, or any affected person who has intervened in the contested case before the department, may seek judicial review as provided in sections 84-917 to 84-919.

Source: Laws 1996, LB 1188, § 6; Laws 1997, LB 798, § 2.

Cross References

Administrative Procedure Act, see section 84-920.
Uniform Declaratory Judgments Act, see section 25-21,164.

71-20,108 Review of application; Attorney General; considerations.

If the Attorney General determines to review the application, he or she shall approve the application unless he or she finds that the acquisition is not in the public interest. An acquisition is not in the public interest unless appropriate steps have been taken to safeguard the value of charitable assets and ensure that any proceeds of the transaction are used for appropriate charitable health care purposes as provided in subdivision (8) of this section. In determining whether the acquisition meets such criteria under the Nonprofit Hospital Sale Act, the Attorney General shall consider:

(1) Whether the acquisition is permitted under the Nebraska Nonprofit Corporation Act and other laws of Nebraska governing nonprofit entities, trusts, or charities;

(2) Whether the nonprofit hospital exercised due diligence in deciding to sell, selecting the purchaser, and negotiating the terms and conditions of the sale;

(3) The procedures used by the seller in making its decision, including whether appropriate expert assistance was used;

(4) Whether conflict of interest was disclosed, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the seller, purchaser, or parties to the acquisition;

(5) Whether the seller will receive reasonably fair value for its assets. The Attorney General may employ, at the seller's expense, reasonably necessary expert assistance in making this determination;

(6) Whether charitable funds are placed at unreasonable risk, if the acquisition is financed in part by the seller;

(7) Whether any management contract under the acquisition is for reasonably fair value;

(8) Whether the sale proceeds will be used for appropriate charitable health care purposes consistent with the seller's original purpose or for the support and promotion of health care in the affected community and whether the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition; and

(9) Whether a right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation if the hospital is subsequently sold to, acquired by, or merged with another entity has been retained.

Source: Laws 1996, LB 1188, § 7.

Cross References

Nebraska Nonprofit Corporation Act, see section 21-1901.

71-20,109 Review of application; department; considerations.

In making a decision whether to approve or disapprove an application, the department shall consider:

(1) Whether sufficient safeguards are included to assure the affected community continued access to affordable care;

(2) Whether the purchaser and parties to the acquisition have made a commitment to provide health care to the disadvantaged, the uninsured, and the underinsured and to provide benefits to the affected community to promote improved health care. Activities and funding provided by the seller or its successor nonprofit corporation or foundation to provide such health care may be considered in evaluating compliance with this commitment; and

(3) If health care providers will be offered the opportunity to invest or own an interest in the purchaser or a related entity to the purchaser, whether procedures or safeguards are in place to avoid conflict of interest in patient referral and the nature of such procedures or safeguards.

This section does not apply higher standards to hospitals covered by the Nonprofit Hospital Sale Act than those applicable to hospitals not covered by the act.

Source: Laws 1996, LB 1188, § 8.

71-20,110 Noncompliance with commitment to affected community; revocation of license; when.

If the department receives information indicating that the acquiring person is not fulfilling the commitment to the affected community under section 71-20,109, the department shall hold a hearing upon ten days' notice to the affected parties. If after such hearing the department determines that the information is true, it may institute proceedings to revoke the license issued to the purchaser.

Source: Laws 1996, LB 1188, § 9.

71-20,111 Attorney General; powers to ensure compliance.

The Attorney General shall have the authority to ensure compliance with commitments which inure to the public interest.

Source: Laws 1996, LB 1188, § 10.

71-20,112 Licensure; issuance, renewal, revocation, or suspension; when; section, how construed.

No license to operate a hospital may be issued or renewed by the department pursuant to the Health Care Facility Licensure Act or any other state statute, and a license which has been issued shall be subject to revocation or suspension, if:

(1) There is an acquisition of a hospital without first having received the approval of the department under the Nonprofit Hospital Sale Act;

(2) There is an acquisition of a hospital without the approval of the Attorney General, if the Attorney General determines to review the application under the act;

(3) There is an acquisition of a hospital and the Attorney General disapproves the acquisition and there is a judicial determination under the Uniform Declaratory Judgments Act that the acquisition is not in the public interest; or

(4) The hospital is not fulfilling its commitment under section 71-20,109 or is not following procedures of safeguards committed to under subdivision (3) of such section.

This section does not limit the right to a hearing under section 71-454 or the right of appeal for a hospital from such decision as provided in section 71-455.

Source: Laws 1996, LB 1188, § 11; Laws 2000, LB 819, § 105.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Declaratory Judgments Act, see section 25-21,164.

71-20,113 Applicability of act.

Any acquisition of a hospital before April 16, 1996, and any acquisition in which an application for a certificate of need under the Nebraska Health Care Certificate of Need Act has been granted by the Department of Health and

Human Services Regulation and Licensure before April 16, 1996, is not subject to the Nonprofit Hospital Sale Act.

Source: Laws 1996, LB 1188, § 12; Laws 2007, LB296, § 529.

Cross References

Nebraska Health Care Certificate of Need Act, see section 71-5801.

71-20,114 Authority of Attorney General; act; how construed.

No provision of the Nonprofit Hospital Sale Act shall derogate from the common-law or statutory authority of the Attorney General.

Source: Laws 1996, LB 1188, § 13.

(m) ASSISTED-LIVING FACILITIES

71-20,115 Transferred to section 71-460.

71-20,116 Transferred to section 71-461.

71-20,117 Repealed. Laws 2000, LB 819, § 162.

(n) CRITICAL ACCESS HOSPITALS

71-20,118 Repealed. Laws 2000, LB 819, § 162.

71-20,119 Repealed. Laws 2000, LB 819, § 162.

(o) VISITATION PRIVILEGES

71-20,120 Visitation privileges; designation by patient.

A hospital patient who is nineteen years of age or older or an emancipated minor may designate at any time, orally or in writing, up to five individuals not legally related by marriage or blood to the patient whom the patient wishes to be given the same visitation privileges as an immediate family member of such patient. An individual so designated shall have the same visitation privileges as an immediate family member of such patient. The patient may rescind the designation or designations at any time, orally or in writing. Any designation or rescission made under this section shall be noted on the patient's medical records at such hospital. For purposes of this section, medical records means the hospital's record of a patient's health history and treatment rendered.

Source: Laws 2002, LB 1062, § 51.

(p) DISPOSITION OF REMAINS OF CHILD BORN DEAD

71-20,121 Disposition of remains of child born dead; hospital; duties.

(1) Every hospital licensed under the Health Care Facility Licensure Act shall maintain a written policy for the disposition of the remains of a child born dead at such hospital. A parent of such child shall have the right to direct the disposition of such remains, except that disposition may be made by the hospital if no such direction is given by a parent within fourteen days following the delivery of such remains. Such policy and such disposition shall comply with all applicable provisions of state and federal law. Upon the delivery of a

child born dead, the hospital shall notify at least one parent of such parents' right to direct the disposition of the remains of such child and shall provide at least one parent with a copy of its policy with respect to such disposition.

(2) For purposes of this section, child born dead means a child at any stage of gestation (a) who has died in utero, (b) whose remains have been removed from the uterus of the mother, for whom pregnancy has been confirmed prior to such removal, and (c) whose remains are identified with the naked eye at the time of such removal by the attending physician or upon subsequent pathological examination if requested by a parent. This section shall not apply to the performance of an elective abortion.

(3) Except as otherwise provided by law, nothing in this section shall be interpreted to prohibit any hospital from providing additional notification and assistance to the parent of a child born dead at such hospital relating to the disposition of the remains of such child, even if such remains cannot be identified with the naked eye at the time of delivery or upon subsequent pathological examination.

Source: Laws 2003, LB 95, § 38.

Cross References

Health Care Facility Licensure Act, see section 71-401.

ARTICLE 21
INFANTS

Cross References

Autopsy requirement, see sections 23-1824, 71-605, and 71-605.04.
Educational packet, contents, see section 79-1902.
Providers of child care, training requirements, see section 43-2606.

Section
71-2101. Sudden infant death syndrome; legislative findings.
71-2102. Shaken baby syndrome; legislative findings.
71-2103. Information for parents of newborn child; requirements.
71-2104. Public awareness activities; duties.

71-2101 Sudden infant death syndrome; legislative findings.

The Legislature finds that sudden infant death syndrome is the sudden, unexpected death of an apparently healthy infant less than one year of age that remains unexplained after the performance of a complete postmortem investigation, including an autopsy, an examination of the scene of death, and a review of the medical history. The Legislature further finds that, despite the success of prevention efforts, sudden infant death syndrome has been the second leading cause of death for infants in Nebraska for the last twenty years. Although there are no known ways to prevent sudden infant death syndrome in all cases, there are steps that parents and caregivers can take to reduce the risk of sudden infant death. The Legislature further finds and declares that there is a present and growing need to provide additional programs aimed at reducing the number of cases of sudden infant death syndrome in Nebraska.

Source: Laws 2006, LB 994, § 147.

71-2102 Shaken baby syndrome; legislative findings.

The Legislature finds that shaken baby syndrome is the medical term used to describe the violent shaking of an infant or child and the injuries or other results sustained by the infant or child. The Legislature further finds that shaken baby syndrome may occur when an infant or child is violently shaken as part of a pattern of abuse or because an adult has momentarily succumbed to the frustration of responding to a crying infant or child. The Legislature further finds that these injuries can include brain swelling and damage, subdural hemorrhage, mental retardation, or death. The Legislature further finds and declares that there is a present and growing need to provide programs aimed at reducing the number of cases of shaken baby syndrome in Nebraska.

Source: Laws 2006, LB 994, § 148.

71-2103 Information for parents of newborn child; requirements.

Every hospital, birth center, or other medical facility that discharges a newborn child shall request that each maternity patient and father of a newborn child, if available, view a video presentation and read printed materials, approved by the Department of Health and Human Services, on the dangers of shaking infants and children, the symptoms of shaken baby syndrome, the dangers associated with rough handling or the striking of an infant, safety measures which can be taken to prevent sudden infant death, and the dangers associated with infants sleeping in the same bed with other children or adults. After viewing the presentation and reading the materials or upon a refusal to do so, the hospital, birth center, or other medical facility shall request that the mother and father, if available, sign a form stating that he or she has viewed and read or refused to view and read the presentation and materials. Such presentation, materials, and forms may be provided by the department.

Source: Laws 2006, LB 994, § 149.

71-2104 Public awareness activities; duties.

The Department of Health and Human Services shall conduct public awareness activities designed to promote the prevention of sudden infant death syndrome and shaken baby syndrome. The public awareness activities may include, but not be limited to, public service announcements, information kits and brochures, and the promotion of preventive telephone hotlines.

Source: Laws 2006, LB 994, § 150.

ARTICLE 22

MATERNAL AND CHILD HEALTH

Section

Section
71-2209. Repealed. Laws 1989, LB 344, § 35.
71-2210. Repealed. Laws 1989, LB 344, § 35.
71-2211. Repealed. Laws 1989, LB 344, § 35.
71-2212. Repealed. Laws 1989, LB 344, § 35.
71-2213. Repealed. Laws 1989, LB 344, § 35.
71-2214. Repealed. Laws 1989, LB 344, § 35.
71-2215. Repealed. Laws 1989, LB 344, § 35.
71-2216. Repealed. Laws 1989, LB 344, § 35.
71-2217. Repealed. Laws 1989, LB 344, § 35.
71-2218. Repealed. Laws 1989, LB 344, § 35.
71-2219. Repealed. Laws 1989, LB 344, § 35.
71-2220. Repealed. Laws 1989, LB 344, § 35.
71-2221. Repealed. Laws 1989, LB 344, § 35.
71-2222. Repealed. Laws 1989, LB 344, § 35.
71-2223. Repealed. Laws 1989, LB 344, § 35.
71-2224. Repealed. Laws 1989, LB 344, § 35.
71-2225. Terms, defined.
71-2226. State CSF program; authorized; department; powers.
71-2227. State WIC program; authorized; department; powers.
71-2228. Obtaining benefits; prohibited acts; violation; penalty.
71-2229. Using benefits; prohibited acts; violation; penalty.
71-2230. Attorney General; enforcement.

71-2201 Maternal and Child Health and Public Health Work Fund; created; investment.

There is created a Maternal and Child Health and Public Health Work Fund in the treasury of the State of Nebraska, to be administered by the Department of Health and Human Services for maternal and child health and for public health work, as provided by law. 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.

Source: Laws 1935, Spec. Sess., c. 29, § 1, p. 178; C.S.Supp.,1941, § 81-5718; R.S.1943, § 81-609; Laws 1969, c. 584, § 72, p. 2388; Laws 1995, LB 7, § 76; Laws 1996, LB 1044, § 613; Laws 2007, LB296, § 530.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-2202 Maternal and Child Health and Public Health Work Fund; administration.

The Department of Health and Human Services shall administer the fund for maternal and child health and public health services throughout the State of Nebraska. Seventy-five percent of the fund shall be used for maternal and child health activities in this state, and twenty-five percent shall be used for public health work, if such amounts are needed therefor.

Source: Laws 1935, Spec. Sess., c. 29, § 2, p. 178; C.S.Supp.,1941, § 81-5719; R.S.1943, § 81-610; Laws 1996, LB 1044, § 614; Laws 2007, LB296, § 531.

71-2203 Maternal and Child Health and Public Health Work Fund; disbursements; how made.

Disbursements from the fund referred to in section 71-2201 shall be made upon vouchers signed by an authorized representative of the Department of Health and Human Services and warrants approved by the Director of Administrative Services.

Source: Laws 1935, Spec. Sess., c. 29, § 4, p. 178; C.S.Supp.,1941, § 81-5721; R.S.1943, § 81-611; Laws 1996, LB 1044, § 615; Laws 2007, LB296, § 532.

71-2204 Maternal and Child Health and Public Health Work Fund; federal aid; acceptance.

The fund created by section 71-2201 may be augmented by grants from the United States and by such additional appropriations as may be made by law.

Source: Laws 1935, Spec. Sess., c. 29, § 5, p. 178; C.S.Supp.,1941, § 81-5722; R.S.1943, § 81-612.

71-2205 Construction of sections.

Sections 71-2205 to 71-2208 shall be construed to be new, independent and supplemental legislation with reference to the subjects of maternal and child welfare.

Source: Laws 1935, Spec. Sess., c. 31, § 1, p. 190; C.S.Supp.,1941, § 81-5723; R.S.1943, § 81-613.

71-2206 Repealed. Laws 1997, LB 307, § 236.

71-2207 Maternal and child health funds; how used.

The funds allocated for maternal and child health in this state shall be used and distributed subject to the supervision of the Department of Health and Human Services: (1) For promoting the health of mothers and children, especially in rural areas, suffering from some economic distress; (2) for the establishment, extension, and improvement of local maternal and child health services to be administered by local child health units; and (3) for demonstration services in needy areas and among groups in special need. The department shall also cooperate with licensed physicians and surgeons and with nursing and welfare groups and organizations for the purposes herein expressed.

Source: Laws 1935, Spec. Sess., c. 31, § 3, p. 190; C.S.Supp.,1941, § 81-5725; R.S.1943, § 81-615; Laws 1996, LB 1044, § 617; Laws 2007, LB296, § 533.

71-2208 Maternal and child health; reports by Department of Health and Human Services; to whom made.

The Department of Health and Human Services shall make quarterly or more frequent reports of the administration of sections 71-2205 to 71-2208, and all expenditures thereunder, to the Chief of the Children's Bureau of the United States Department of Labor, and shall comply with requests for information from the Secretary of Labor of the United States or his or her agencies, if federal funds are granted to this state for the purposes mentioned in such sections.

Source: Laws 1935, Spec. Sess., c. 31, § 4, p. 190; C.S.Supp.,1941, § 81-5726; R.S.1943, § 81-616; Laws 1967, c. 437, § 2, p. 1344; Laws 1996, LB 1044, § 618; Laws 2007, LB296, § 534.

71-2209 Repealed. Laws 1989, LB 344, § 35.

71-2210 Repealed. Laws 1989, LB 344, § 35.

71-2211 Repealed. Laws 1989, LB 344, § 35.

71-2212 Repealed. Laws 1989, LB 344, § 35.

71-2213 Repealed. Laws 1989, LB 344, § 35.

71-2214 Repealed. Laws 1989, LB 344, § 35.

71-2215 Repealed. Laws 1989, LB 344, § 35.

71-2216 Repealed. Laws 1989, LB 344, § 35.

71-2217 Repealed. Laws 1989, LB 344, § 35.

71-2218 Repealed. Laws 1989, LB 344, § 35.

71-2219 Repealed. Laws 1989, LB 344, § 35.

71-2220 Repealed. Laws 1989, LB 344, § 35.

71-2221 Repealed. Laws 1989, LB 344, § 35.

71-2222 Repealed. Laws 1989, LB 344, § 35.

71-2223 Repealed. Laws 1989, LB 344, § 35.

71-2224 Repealed. Laws 1989, LB 344, § 35.

71-2225 Terms, defined.

For purposes of sections 71-2225 to 71-2230:

(1) CSF program shall mean the Commodity Supplemental Food Program administered by the United States Department of Agriculture or its successor;

(2) Food instrument shall mean a voucher, check, coupon, or other document used to obtain supplemental foods;

(3) Supplemental foods shall mean (a) foods containing nutrients determined to be beneficial for infants, children, and pregnant, breast-feeding, or postpartum women as prescribed by the United States Department of Agriculture for use in the WIC program and (b) foods donated by the United States Department of Agriculture for use in the CSF program; and

(4) WIC program shall mean the Special Supplemental Nutrition Program for Women, Infants, and Children as administered by the United States Department of Agriculture or its successor.

Source: Laws 1987, LB 643, § 17; Laws 1989, LB 344, § 21; Laws 2006, LB 994, § 102.

71-2226 State CSF program; authorized; department; powers.

The Department of Health and Human Services is authorized to have a state CSF program to protect the health and welfare of the citizens of Nebraska by providing nutritious foods donated for such program by the United States Department of Agriculture, nutrition education, and such other benefits as are available to women, infants, children, and elderly persons in Nebraska who are

low income and vulnerable to malnutrition as long as federal funds are available from the CSF program and are granted to the department.

To the extent consistent with state law, the Department of Health and Human Services may establish, operate, and maintain the program in a way that will qualify it to receive federal funds and that is uniform with United States Department of Agriculture's standards, enter into agreements with the federal government to establish a CSF program, adopt and promulgate rules and regulations to implement a CSF program which are consistent with federal regulations and such other rules and regulations as may be necessary to implement the CSF program, and enter into such other agreements as may be necessary to implement the program within this state.

Source: Laws 1987, LB 643, § 18; Laws 1989, LB 344, § 22; Laws 1996, LB 1044, § 619.

71-2227 State WIC program; authorized; department; powers.

The Department of Health and Human Services is authorized to have a state WIC program to protect the health and welfare of citizens of Nebraska by providing nutritional supplemental foods and nutrition education to women, infants, and children who are low income and determined to be at nutritional risk as long as federal funds are available from the WIC program and are granted to the department.

To the extent consistent with state law, the department may establish, operate, and maintain the program in a way that will qualify it to receive federal funds and that is uniform with United States Department of Agriculture's standards, enter into agreements with the federal government to establish a WIC program, adopt and promulgate rules and regulations to implement a WIC program which are consistent with federal regulations and such other rules and regulations as may be necessary to implement the WIC program, and enter into such other agreements as may be necessary to implement the program within this state.

Source: Laws 1987, LB 643, § 19; Laws 1989, LB 344, § 23; Laws 1996, LB 1044, § 620.

71-2228 Obtaining benefits; prohibited acts; violation; penalty.

Any person who by means of a willfully false statement or representation, by impersonation, or by other device obtains or attempts to obtain or aids or abets any person to obtain or to attempt to obtain (1) a food instrument to which he, she, or it is not entitled, (2) any supplemental foods to which such person is not entitled, or (3) any other benefit administered by the Department of Health and Human Services under sections 71-2226 and 71-2227 commits an offense and shall, upon conviction, be punished as follows: (a) If the aggregate value of all funds or other benefits obtained or attempted to be obtained is less than five hundred dollars, the person so convicted shall be guilty of a Class III misdemeanor; or (b) if the aggregate value of all funds and other benefits obtained or attempted to be obtained is five hundred dollars or more, the person so convicted shall be guilty of a Class IV felony.

Source: Laws 1987, LB 643, § 20; Laws 1989, LB 344, § 24; Laws 1996, LB 1044, § 621.

71-2229 Using benefits; prohibited acts; violation; penalty.

(1) A person commits an offense if he, she, or it knowingly and unlawfully uses, alters, or transfers a food instrument or supplemental food. An offense under this subsection shall be a Class III misdemeanor if the value of the food instrument or benefit is less than five hundred dollars and shall be a Class IV felony if the value of the food instrument or benefit is five hundred dollars or more.

(2) A person commits an offense if he, she, or it (a) knowingly and unlawfully possesses a food instrument or supplemental food, (b) knowingly and unlawfully redeems a food instrument, (c) knowingly falsifies or misapplies a food instrument, or (d) fraudulently obtains a food instrument. An offense under this subsection shall be a Class III misdemeanor if the value of the food instrument or benefit is less than five hundred dollars and shall be a Class IV felony if the value of the food instrument or benefit is five hundred dollars or more.

(3) A person commits an offense if he, she, or it knowingly and unlawfully possesses a blank authorization to participate in the WIC program or CSF program. An offense under this subsection shall be a Class IV felony.

(4) When food instruments or supplemental foods are obtained in violation of this section pursuant to one scheme or a continuing course of conduct, whether from the same or several sources, such conduct may be considered as one offense and the values aggregated in determining the grade of the offense.

Source: Laws 1987, LB 643, § 21; Laws 1989, LB 344, § 25.

71-2230 Attorney General; enforcement.

The Attorney General may take such civil action as may be necessary to enforce the provisions of sections 71-2226 to 71-2229.

Source: Laws 1987, LB 643, § 22; Laws 1989, LB 344, § 26.

ARTICLE 23

NEBRASKA PROSTITUTION INTERVENTION AND TREATMENT ACT

Cross References

Nebraska Behavioral Health Services Act, see section 71-801.

Section
71-2301. Act, how cited.
71-2302. Legislative findings.
71-2303. Legislative intent.
71-2304. Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties.
71-2305. Rules and regulations.

71-2301 Act, how cited.

Sections 71-2301 to 71-2305 shall be known and may be cited as the Nebraska Prostitution Intervention and Treatment Act.

Source: Laws 2006, LB 1086, § 1.

71-2302 Legislative findings.

The Legislature finds that:

(1) Increasing prostitution in Nebraska has become harmful to communities and neighborhoods, often contributing to both incidents of crime and fear of crime. Prostitution depletes local law enforcement resources and leads to a

reduction in the quality of life for the residents and businesses that are within close geographic proximity to concentrated areas of prostitution. Prostitution-related activities create noise, litter, and harassment of residents and businesses and promote declining property values. Residents and businesses in areas within close geographic proximity to prostitution-related activity often feel threatened when solicitors proposition on their streets or when prostitution-related activities are performed in parked cars, empty parking lots, or alleyways;

(2) Many prostitutes use prostitution to support drug and alcohol addictions. In addition, many prostitutes suffer from significant mental health disorders that lead to increased dependency on drugs and alcohol. When panderers are involved, the prostitutes are often subject to physical and psychological abuse;

(3) Solicitors of prostitution are equally contributing sexual offenders;

(4) Resources are needed to coordinate and deliver an array of community-based services to address issues related to prostitution, including, but not limited to, lifestyle choices, substance abuse, mental health disorders, workforce assessment and preparation, education, and other community-based services;

(5) A coordinated array of community-based services delivered to individuals engaged in prostitution-related activity can mitigate individual lifestyle choices and break the cycle of prostitution; and

(6) The quality of life for residents and businesses can be drastically improved when the prevalence of prostitution-related activity is significantly reduced or removed within residential and business areas.

Source: Laws 2006, LB 1086, § 2.

71-2303 Legislative intent.

It is the intent of the Legislature to provide funds for education and treatment of individuals involved in prostitution-related activities.

Source: Laws 2006, LB 1086, § 3.

71-2304 Coordinated program of education and treatment; regional behavioral health funding; Department of Health and Human Services; duties.

(1) The Legislature shall appropriate funds to create a coordinated program of education and treatment for individuals that participate in prostitution-related activities as described in section 28-801.

(2) The Department of Health and Human Services, in consultation with the regional behavioral health authorities, shall distribute funds to regional behavioral health authorities that can demonstrate to the department a high incidence of prostitution within the behavioral health region. The department may consider the following criteria for regional behavioral health funding under this section:

(a) The number of criminal convictions for prostitution-related activities within the counties that comprise the regional behavioral health authority;

(b) Evidence that prostitution-related activities are impacting residential areas and businesses and the quality of life of residents in such areas and businesses is negatively impacted;

(c) The amount of local law enforcement resources devoted specifically to curtailing prostitution-related activity;

(d) Evidence that the regional behavioral health authorities consulted with recognized neighborhood and business associations within geographic proximity to concentrated areas of prostitution; and

(e) The amount of local subdivision treatment funding.

Each regional behavioral health authority may contract with qualifying public, private, or nonprofit entities for the provision of such education and treatment. Such qualifying entities may obtain additional funding from cities and counties to provide a coordinated program of treatment and education for individuals that participate in prostitution-related activities.

Source: Laws 2006, LB 1086, § 4; Laws 2007, LB296, § 535.

71-2305 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Nebraska Prostitution Intervention and Treatment Act.

Source: Laws 2006, LB 1086, § 5; Laws 2007, LB296, § 536.

ARTICLE 24

DRUGS

Cross References

Anabolic steroids, students and public employees, prohibited acts, see sections 48-232, 48-233, and 79-296.
Controlled substances, regulation of, Uniform Controlled Substances Act, see section 28-401.01.
Delegated dispensing permit, see sections 38-2872 to 38-2889.
Driving motor vehicle while under influence of, penalty, see section 60-6,196.
Generic drugs, Nebraska Drug Product Selection Act, see section 71-5401.01.
Health insurer, choice of pharmacy, see section 44-783.
Mail-order pharmacies, insurance reimbursement, see section 44-513.02.
Medical assistance program, see section 68-901 et seq.
Medication Aide Act, see section 71-6718.
Medicines and drugs, prohibited acts, see Chapter 28, article 4.
Nebraska Drug Product Selection Act, see section 71-5401.01.
Paraphernalia, prohibited acts, see sections 28-439 to 28-444.
Pharmacy Practice Act, see section 38-2801.
Rules and regulations, see section 38-2899.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Veterinary Drug Distribution Licensing Act, see section 71-8901.
Wholesale Drug Distributor Licensing Act, see section 71-7427.

(a) ADULTERATION OR MISBRANDING

Section
71-2401. Drugs; adulteration; what constitutes.
71-2402. Drugs; misbranding; what constitutes.
71-2403. Drugs, defined.
71-2404. Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.
71-2405. Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.

(b) MAIL SERVICE PHARMACY LICENSURE ACT

71-2406. Act, how cited.
71-2407. Mail service pharmacy license; requirements; fee.
71-2408. Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties.
71-2409. Rules and regulations.

Section

(c) EMERGENCY BOX DRUG ACT

(d) PAIN MANAGEMENT

(e) RETURN OF DISPENSED DRUGS AND DEVICES

(f) CANCER DRUG REPOSITORY PROGRAM ACT

(g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

(h) CLANDESTINE DRUG LABS

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

(j) AUTOMATED MEDICATION SYSTEMS ACT

(a) ADULTERATION OR MISBRANDING

71-2401 Drugs; adulteration; what constitutes.

For the purpose of section 71-2404, an article, in the case of drugs, shall be deemed adulterated (1) if, when a drug is sold under or by the name recognized in the United States Pharmacopoeia or National Formulary, it differs from the standard of strength, quality or purity as determined by the test laid down in the United States Pharmacopoeia or National Formulary official at the time of investigation; *Provided,* no drug defined in the United States Pharmacopoeia or National Formulary shall be deemed to be adulterated under this provision if the standard of strength or purity is plainly stated upon the bottle, box or other container thereof, although the standard may differ from that determined by the test laid down in the United States Pharmacopoeia or National Formulary; or (2) if its strength or purity falls below the professed standard of quality under which it is sold.

Source: Laws 1941, c. 141, § 9, p. 560; C.S.Supp.,1941, § 81-928; R.S. 1943, § 81-620.

71-2402 Drugs; misbranding; what constitutes.

The term misbranded, as used in section 71-2404, shall apply to all drugs, the package or label of which shall bear any statement, design or device regarding drugs, or the ingredients of substances contained therein, which shall be false or misleading in any particular, or to any drug product which is falsely branded as to the state, territory, place or authority in which it is manufactured or produced. In case of drugs, an article shall also be deemed to be misbranded (1) if it is an imitation of or offered for sale under the name of another article; (2) if it shall be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or if the package fails to bear a statement, on the label, of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide, phenacetine (acetphenetidine), antipyrine, belladonna or any derivative or preparation of any such substance contained therein; or (3) if its package or label shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article, or any of the ingredients or substances contained therein, which is false or fraudulent.

Source: Laws 1941, c. 141, § 10, p. 561; C.S.Supp.,1941, § 81-929; R.S.1943, § 81-621.

Cross References

Drug product selection, labeling requirements, see section 71-5406.

71-2403 Drugs, defined.

The term drugs, as used in sections 71-2401 to 71-2405, shall include all medicines and preparations recognized in the United States Pharmacopoeia or National Formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animals.

Source: Laws 1941, c. 141, § 11, p. 561; C.S.Supp.,1941, § 81-930; R.S.1943, § 81-622.

71-2404 Drugs; adulteration or misbranding; confiscation; destruction or sale; proceeds; disposition.

Any drug which is adulterated or misbranded within the meaning of sections 71-2401 and 71-2402, and which is sold, offered for sale or delivered within this state, shall be liable to be proceeded against where the same is found and seized for confiscation by a process of libel for condemnation. If such drug is condemned as being adulterated or misbranded or of a poisonous or deleterious character, within the meaning of said sections, the same shall be disposed of by destruction or sale as the court may direct, and the proceeds thereof, if sold, less the legal costs and charges, shall be paid into the treasury of this state, and such goods shall not be sold in any jurisdiction contrary to the provisions of said sections or the laws of that jurisdiction. Any libel proceeding in rem, under the provisions of this section, may be joined with any criminal prosecution in personam or may be prosecuted separately.

Source: Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-623.

71-2405 Drugs; manufacture or possession of adulterated or misbranded drugs; sale prohibited.

No person shall, within this state, manufacture for sale therein or have in his possession with intent to sell, offer or expose for sale, or sell any remedies, medicines or drugs which are adulterated or misbranded within the meaning of sections 71-2401 and 71-2402.

Source: Laws 1941, c. 141, § 12, p. 561; C.S.Supp.,1941, § 81-931; R.S.1943, § 81-624.

Cross References

Rules and regulations, see section 38-2899.
Violation, penalty, see section 71-2512.

(b) MAIL SERVICE PHARMACY LICENSURE ACT

71-2406 Act, how cited.

Sections 71-2406 to 71-2409 shall be known and may be cited as the Mail Service Pharmacy Licensure Act.

Source: Laws 1988, LB 350, § 1; Laws 2003, LB 667, § 7.

71-2407 Mail service pharmacy license; requirements; fee.

(1) Any person operating a mail service pharmacy outside of the State of Nebraska shall obtain a mail service pharmacy license prior to shipping,

mailing, or in any manner delivering dispensed prescription drugs as defined in section 38-2841 into the State of Nebraska.

(2) To be qualified to hold a mail service pharmacy license, a person shall:

(a) Hold a pharmacy license or permit issued by and valid in the state in which the person is located and from which such prescription drugs will be shipped, mailed, or otherwise delivered;

(b) Be located and operating in a state in which the requirements and qualifications for obtaining and maintaining a pharmacy license or permit are considered by the Department of Health and Human Services, with the approval of the Board of Pharmacy, to be substantially equivalent to the requirements of the Health Care Facility Licensure Act;

(c) Designate the Secretary of State as his, her, or its agent for service of process in this state; and

(d) Employ on a full-time basis at least one pharmacist who holds a current unrestricted pharmacist license issued under the Uniform Credentialing Act who shall be responsible for compliance by the mail service pharmacy with the Mail Service Pharmacy Licensure Act. The mail service pharmacy shall notify the department when such pharmacist is no longer employed by such pharmacy.

(3) To obtain a mail service pharmacy license, a person shall:

(a) File an application on a form developed by the department; and

(b) Pay a fee equivalent to the fee for a pharmacy license in the State of Nebraska pursuant to section 71-434.

(4) This section does not apply to prescription drugs mailed, shipped, or otherwise delivered by a pharmaceutical company to a laboratory for the purpose of conducting clinical research.

Source: Laws 1988, LB 350, § 2; Laws 1993, LB 536, § 81; Laws 1996, LB 1044, § 622; Laws 1999, LB 594, § 58; Laws 1999, LB 828, § 163; Laws 2001, LB 398, § 69; Laws 2003, LB 667, § 8; Laws 2007, LB296, § 537; Laws 2007, LB463, § 1193.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-2408 Department of Health and Human Services; disciplinary actions; violations; Attorney General; duties.

(1) The Department of Health and Human Services, after notice and an opportunity for a hearing, may deny, refuse renewal of, revoke, or otherwise discipline or restrict the license of a mail service pharmacy for (a) any discipline of the pharmacy license held by such pharmacy in another state pursuant to subdivision (2)(a) of section 71-2407, (b) any violation of the Mail Service Pharmacy Licensure Act or rules and regulations adopted and promulgated under the act, or (c) conduct by such pharmacy which in this state presents a threat to the public health and safety or a danger of death or physical harm.

(2) The department, upon the recommendation of the Board of Pharmacy, shall notify the Attorney General of any possible violations of the Mail Service Pharmacy Licensure Act. If the Attorney General has reason to believe that an

out-of-state person is operating in violation of the act, he or she shall commence an action in the district court of Lancaster County to enjoin any such person from further mailing, shipping, or otherwise delivering prescription drugs into the State of Nebraska.

Source: Laws 1988, LB 350, § 3; Laws 1996, LB 1044, § 623; Laws 1999, LB 828, § 164; Laws 2003, LB 667, § 9; Laws 2007, LB296, § 538.

71-2409 Rules and regulations.

The Department of Health and Human Services shall, upon the recommendation of the Board of Pharmacy, adopt and promulgate rules and regulations necessary to carry out the Mail Service Pharmacy Licensure Act.

Source: Laws 1988, LB 350, § 4; Laws 1996, LB 1044, § 624; Laws 1999, LB 828, § 165; Laws 2003, LB 667, § 10; Laws 2007, LB296, § 539.

Cross References

Minimum standards for rules and regulations, see section 38-2899.

(c) EMERGENCY BOX DRUG ACT

71-2410 Act, how cited.

Sections 71-2410 to 71-2417 shall be known and may be cited as the Emergency Box Drug Act.

Source: Laws 1994, LB 1210, § 182.

71-2411 Terms, defined.

For purposes of the Emergency Box Drug Act:

(1) Authorized personnel means any medical doctor, doctor of osteopathy, registered nurse, licensed practical nurse, nurse practitioner, pharmacist, or physician assistant;

(2) Department means the Department of Health and Human Services;

(3) Drug means any prescription drug or device or legend drug or device defined under section 38-2841, any nonprescription drug as defined under section 38-2829, any controlled substance as defined under section 28-405, or any device as defined under section 38-2814;

(4) Emergency box drugs means drugs required to meet the immediate therapeutic needs of patients when the drugs are not available from any other authorized source in time to sufficiently prevent risk of harm to such patients by the delay resulting from obtaining such drugs from such other authorized source;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Multiple dose vial means any bottle in which more than one dose of a liquid drug is stored or contained;

(7) Pharmacist means a pharmacist as defined in section 38-2832 who is employed by a supplying pharmacy or who has contracted with a long-term care facility to provide consulting services; and

(8) Supplying pharmacy means a pharmacy that supplies drugs for an emergency box located in a long-term care facility. Drugs in the emergency box are owned by the supplying pharmacy.

Source: Laws 1994, LB 1210, § 183; Laws 1996, LB 1044, § 625; Laws 1997, LB 608, § 16; Laws 2000, LB 819, § 106; Laws 2001, LB 398, § 70; Laws 2007, LB296, § 540; Laws 2007, LB463, § 1194; Laws 2009, LB195, § 69.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2412 Long-term care facility; emergency boxes; use; conditions.

Drugs may be administered to residents of a long-term care facility by authorized personnel of the long-term care facility from the contents of emergency boxes located within such long-term care facility if such drugs and boxes meet all of the following requirements:

(1) All emergency box drugs shall be provided by and all emergency boxes containing such drugs shall be sealed by a supplying pharmacy with the seal on such emergency box to be of such a nature that it can be easily identified if it has been broken;

(2) Emergency boxes shall be stored in a medication room or other secured area within the long-term care facility. Only authorized personnel of the long-term care facility or the supplying pharmacy shall obtain access to such room or secured area, by key or combination, in order to prevent unauthorized access and to ensure a proper environment for preservation of the emergency box drugs;

(3) The exterior of each emergency box shall be labeled so as to clearly indicate that it is an emergency box for use in emergencies only. The label shall contain a listing of the drugs contained in the box, including the name, strength, route of administration, quantity, and expiration date of each drug, and the name, address, and telephone number of the supplying pharmacy;

(4) All emergency boxes shall be inspected by a pharmacist designated by the supplying pharmacy at least once every thirty days or after a reported usage of any drug to determine the expiration date and quantity of the drugs in the box. Every inspection shall be documented and the record retained by the long-term care facility for a period of five years;

(5) An emergency box shall not contain multiple dose vials, shall not contain more than ten drugs which are controlled substances, and shall contain no more than a total of fifty drugs; and

(6) All drugs in emergency boxes shall be in the original manufacturer's or distributor's containers or shall be repackaged by the supplying pharmacy and shall include the manufacturer's or distributor's name, lot number, drug name, strength, dosage form, NDC number, route of administration, and expiration date on a typewritten label. Any drug which is repackaged shall contain on the label the calculated expiration date. For purposes of the Emergency Box Drug

Act, calculated expiration date has the same meaning as in subdivision (7)(b) of section 38-2884.

Source: Laws 1994, LB 1210, § 184; Laws 2002, LB 1062, § 52; Laws 2007, LB463, § 1195; Laws 2009, LB195, § 70.

71-2413 Drugs to be included in emergency boxes; requirements; removal; conditions; notification of supplying pharmacy; expired drugs; treatment; examination of emergency boxes; written procedures; establishment.

(1) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly determine the drugs, by identity and quantity, to be included in the emergency boxes. The supplying pharmacy shall maintain a list of emergency box drugs which is identical to the list on the exterior of the emergency box and shall make such list available to the department upon request. The supplying pharmacy shall obtain a receipt upon delivery of the emergency box to the long-term care facility signed by the director of nursing of the long-term care facility which acknowledges that the drugs initially placed in the emergency box are identical to the initial list on the exterior of the emergency box. The receipt shall be retained by the supplying pharmacy for a period of five years.

(2) Except for the removal of expired drugs as provided in subsection (4) of this section, drugs shall be removed from emergency boxes only pursuant to a prescription. Whenever access to the emergency box occurs, the prescription and proof of use shall be provided to the supplying pharmacy and shall be recorded on the resident's medical record by authorized personnel of the long-term care facility. Removal of any drug from an emergency box by authorized personnel of the long-term care facility shall be recorded on a form showing the name of the resident who received the drug, his or her room number, the name of the drug, the strength of the drug, the quantity used, the dose administered, the route of administration, the date the drug was used, the time of usage, the disposal of waste, if any, and the signature or signatures of authorized personnel. The form shall be maintained at the long-term care facility for a period of five years from the date of removal with a copy of the form to be provided to the supplying pharmacy.

(3) Whenever an emergency box is opened, the supplying pharmacy shall be notified by the charge nurse or the director of nursing of the long-term care facility within twenty-four hours and a pharmacist designated by the supplying pharmacy shall restock and refill the box, reseal the box, and update the drug listing on the exterior of the box.

(4) Upon the expiration of any drug in the emergency box, the supplying pharmacy shall replace the expired drug, reseal the box, and update the drug listing on the exterior of the box. Emergency box drugs shall be considered inventory of the supplying pharmacy until such time as they are removed for administration.

(5) Authorized personnel of the long-term care facility shall examine the emergency boxes once every twenty-four hours and shall immediately notify the supplying pharmacy upon discovering evidence of tampering with any emergency box. Proof of examination by authorized personnel of the long-term care facility shall be recorded and maintained at the long-term care facility for a period of five years from the date of examination.

(6) The supplying pharmacy and the medical director and quality assurance committee of the long-term care facility shall jointly establish written procedures for the safe and efficient distribution of emergency box drugs.

Source: Laws 1994, LB 1210, § 185; Laws 1999, LB 828, § 166; Laws 2001, LB 398, § 71; Laws 2009, LB195, § 71.

71-2414 Department; powers; grounds for disciplinary action.

The department shall have (1) the authority to inspect any emergency box and (2) access to the records of the supplying pharmacy and the long-term care facility for inspection. Refusal to allow the department to inspect an emergency box or to have access to records shall be grounds for a disciplinary action against the supplying pharmacy or the license of the long-term care facility.

Source: Laws 1994, LB 1210, § 186; Laws 2009, LB195, § 72.

71-2415 Repealed. Laws 2009, LB 195, § 111.

71-2416 Violations; department; powers; prohibited acts; violation; penalty.

(1) The department may limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility for any violation of the Emergency Box Drug Act. The department may limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box for any violation of the act. The taking of such action against the supplying pharmacy or the long-term care facility or both shall not prohibit the department from taking other disciplinary actions against the supplying pharmacy or the long-term care facility.

(2) If the department determines to limit, suspend, or revoke the authority of a supplying pharmacy to maintain emergency boxes in a long-term care facility or to limit, suspend, or revoke the authority of a long-term care facility to maintain an emergency box, it shall send to the supplying pharmacy or the long-term care facility a notice of such determination. The notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01. The limitation, suspension, or revocation shall become final thirty days after receipt of the notice unless the supplying pharmacy or the long-term care facility, within such thirty-day period, requests a hearing in writing. The supplying pharmacy or the long-term care facility shall be given a fair hearing before the department and may present such evidence as may be proper. On the basis of such evidence, the determination involved shall be affirmed, set aside, or modified, and a copy of such decision setting forth the findings of facts and the particular reasons on which it is based shall be sent to the supplying pharmacy or the long-term care facility. The parties may appeal the final decision in accordance with the Administrative Procedure Act. Witnesses may be subpoenaed by either party and shall be allowed a fee at the statutory rate.

(3) The procedure governing hearings authorized by the Emergency Box Drug Act shall be in accordance with rules and regulations adopted and promulgated by the department.

(4) The supplying pharmacy or the long-term care facility shall not maintain an emergency box after its authority to maintain such box has been revoked or

during the time such authority has been suspended. If the authority is suspended, the suspension shall be for a definite period of time. Such authority shall be automatically reinstated on the expiration of such period. If such authority has been revoked, such revocation shall be permanent, except that at any time after the expiration of two years, application for reinstatement of authority may be made to the department.

(5) Any person who commits any of the acts prohibited by the Emergency Box Drug Act shall be guilty of a Class II misdemeanor. The department may maintain an action in the name of the state against any person for maintaining an emergency box in violation of the act. Each day a violation continues shall constitute a separate violation.

Source: Laws 1994, LB 1210, § 188; Laws 1999, LB 828, § 167; Laws 2009, LB195, § 73.

Cross References

Administrative Procedure Act, see section 84-920.

71-2417 Controlled substance; exemption.

Any emergency box containing a controlled substance listed in section 28-405 and maintained at a long-term care facility shall be exempt from the provisions of subdivision (3)(g) of section 28-414.

Source: Laws 1994, LB 1210, § 189; Laws 1995, LB 406, § 38; Laws 1999, LB 594, § 59; Laws 2001, LB 398, § 72; Laws 2009, LB195, § 74.

(d) PAIN MANAGEMENT

71-2418 Legislative findings.

(1) The Legislature finds that many controlled substances have useful and legitimate medical and scientific purposes and are necessary to maintain the health and general welfare of the people of Nebraska. Principles of quality medical practice dictate that the people of Nebraska have access to appropriate and effective pain relief.

(2) The Legislature finds that the appropriate application of up-to-date knowledge and treatment modalities can serve to improve the quality of life for those patients who suffer from pain. The Legislature therefor encourages physicians to view effective pain management as a part of quality medical practice for all patients with pain, acute or chronic, including those patients who experience pain as a result of terminal illness.

(3) The Legislature finds that a physician should be able to prescribe, dispense, or administer a controlled substance in excess of the recommended dosage for the treatment of pain so long as such dosage is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason and so long as it conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

(4) The Legislature finds that a health care facility, hospice, or third-party payor should not forbid or restrict the use of controlled substances appropriately administered for the treatment of pain.

Source: Laws 1999, LB 226, § 1; Laws 2007, LB463, § 1196.

71-2419 Physician, nurse, or pharmacist; disciplinary action or criminal prosecution; limitation.

A physician licensed under the Medicine and Surgery Practice Act who prescribes, dispenses, or administers or a nurse licensed under the Nurse Practice Act or pharmacist licensed under the Pharmacy Practice Act who administers or dispenses a controlled substance in excess of the recommended dosage for the treatment of pain shall not be subject to discipline under the Uniform Credentialing Act or criminal prosecution under the Uniform Controlled Substances Act when: (1) In the judgment of the physician, appropriate pain management warrants such dosage; (2) the controlled substance is not administered for the purpose of causing, or the purpose of assisting in causing, death for any reason; and (3) the administration of the controlled substance conforms to policies and guidelines for the treatment of pain adopted by the Board of Medicine and Surgery.

Source: Laws 1999, LB 226, § 2; Laws 2001, LB 398, § 73; Laws 2007, LB463, § 1197.

Cross References

Medicine and Surgery Practice Act, see section 38-2001.
Nurse Practice Act, see section 38-2201.
Pharmacy Practice Act, see section 38-2801.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.

71-2420 Board of Medicine and Surgery; duties.

The Board of Medicine and Surgery shall adopt policies and guidelines for the treatment of pain to ensure that physicians who are engaged in the appropriate treatment of pain are not subject to disciplinary action, and the board shall consider policies and guidelines developed by national organizations with expertise in pain management for this purpose.

Source: Laws 1999, LB 226, § 3; Laws 2007, LB463, § 1198.

(e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421 Return of dispensed drugs and devices; conditions.

(1) To protect the public safety, dispensed drugs or devices may be returned to the dispensing pharmacy only under the following conditions:

(a) For immediate destruction by a pharmacist, except that drugs and devices dispensed to residents of a long-term care facility shall be destroyed on the site of the long-term care facility;

(b) In response to a recall by the manufacturer, packager, or distributor;

(c) If a device is defective or malfunctioning; or

(d) Return from a long-term care facility for credit, except that:

(i) No controlled substance may be returned;

(ii) The decision to accept the return of the dispensed drug or device shall rest solely with the pharmacist;

(iii) The dispensed drug or device shall have been in the control of the long-term care facility at all times;

(iv) The dispensed drug or device shall be in the original and unopened labeled container with a tamper-evident seal intact, as dispensed by the phar-

macy. Such container shall bear the expiration date or calculated expiration date and lot number; and

(v) Tablets or capsules shall have been dispensed in a unit dose with a tamper-evident container which is impermeable to moisture and approved by the Board of Pharmacy.

(2) Returned dispensed drugs or devices shall not be retained in inventory nor made available for subsequent dispensing, except as provided in subdivision (1)(d) of this section.

(3) For purposes of this section:

(a) Calculated expiration date means an expiration date on the prepackaged product which is not greater than twenty-five percent of the time between the date of repackaging and the expiration date of the bulk container nor greater than six months from the date of repackaging;

(b) Dispense, drugs, and devices are defined in the Pharmacy Practice Act; and

(c) Long-term care facility does not include an assisted-living facility as defined in section 71-406.

Source: Laws 1999, LB 333, § 1; Laws 2001, LB 398, § 74; Laws 2002, LB 1062, § 53; Laws 2007, LB247, § 51; Laws 2007, LB463, § 1199.

Cross References

Pharmacy Practice Act, see section 38-2801.

(f) CANCER DRUG REPOSITORY PROGRAM ACT

71-2422 Act, how cited.

Sections 71-2422 to 71-2430 shall be known and may be cited as the Cancer Drug Repository Program Act.

Source: Laws 2003, LB 756, § 1; Laws 2005, LB 331, § 1.

71-2423 Terms, defined.

For purposes of the Cancer Drug Repository Program Act:

(1) Cancer drug means a prescription drug used to treat (a) cancer or its side effects or (b) the side effects of a prescription drug used to treat cancer or its side effects;

(2) Department means the Department of Health and Human Services;

(3) Health care facility has the definition found in section 71-413;

(4) Health clinic has the definition found in section 71-416;

(5) Hospital has the definition found in section 71-419;

(6) Participant means a physician's office, pharmacy, hospital, or health clinic that has elected to voluntarily participate in the program and that accepts donated cancer drugs under the rules and regulations adopted and promulgated by the department for the program;

(7) Pharmacy has the definition found in section 71-425;

(8) Physician's office means the office of a person licensed to practice medicine and surgery or osteopathic medicine and surgery;

(9) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe cancer drugs;

(10) Prescription drug has the definition found in section 38-2841; and

(11) Program means the cancer drug repository program established pursuant to section 71-2424.

Source: Laws 2003, LB 756, § 2; Laws 2005, LB 331, § 2; Laws 2007, LB296, § 541; Laws 2007, LB463, § 1200.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2424 Cancer drug repository program; established.

The department shall establish a cancer drug repository program for accepting donated cancer drugs and dispensing such drugs to Nebraska residents. Participation in the program shall be voluntary.

Source: Laws 2003, LB 756, § 3.

71-2425 Cancer drug donation.

Any person or entity, including, but not limited to, a cancer drug manufacturer or health care facility, may donate cancer drugs to the program. Cancer drugs may be donated to a participant.

Source: Laws 2003, LB 756, § 4; Laws 2005, LB 331, § 3.

71-2426 Cancer drug; accepted or dispensed; conditions.

(1) A cancer drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. A cancer drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section. An injectable cancer drug may be accepted if it does not have temperature requirements other than controlled room temperature.

(2) A cancer drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation, (b) such drug is adulterated or misbranded as described in section 71-2401 or 71-2402, or (c) such drug has expired while in the repository.

(3) Subject to limitations provided in this section, unused cancer drugs dispensed under the medical assistance program established pursuant to the Medical Assistance Act may be accepted and dispensed under the program.

Source: Laws 2003, LB 756, § 5; Laws 2005, LB 331, § 4; Laws 2006, LB 1116, § 1; Laws 2006, LB 1248, § 77.

Cross References

Medical Assistance Act, see section 68-901.

71-2427 Participant; duties; fee authorized.

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated cancer drugs and shall inspect all such drugs prior to dispensing to determine if

they are adulterated or misbranded as described in section 71-2401 or 71-2402. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) A participant may charge a handling fee for distributing or dispensing cancer drugs under the program. Such fee shall be established in rules and regulations adopted and promulgated by the department. Cancer drugs donated under the program shall not be resold.

Source: Laws 2003, LB 756, § 6; Laws 2005, LB 331, § 5.

71-2428 Immunity.

(1) Any person or entity, including a cancer drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing cancer drugs under the Cancer Drug Repository Program Act or rules and regulations adopted and promulgated under the act shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Notwithstanding subsection (1) of this section, the donation of a cancer drug by a cancer drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such cancer drug manufacturer that would have existed but for the donation.

Source: Laws 2003, LB 756, § 7.

71-2429 Rules and regulations.

The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Cancer Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated cancer drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense cancer drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed;

(3) The maximum handling fee that may be charged by participants that accept and distribute or dispense donated cancer drugs;

(4)(a) Categories of cancer drugs that the program will accept for dispensing and (b) categories of cancer drugs that the program will not accept for dispensing and the reason that such drugs will not be accepted; and

(5) Maintenance and distribution of the participant registry established in section 71-2430.

Source: Laws 2003, LB 756, § 8; Laws 2005, LB 331, § 6; Laws 2006, LB 1116, § 2.

71-2430 Participant registry.

The department shall establish and maintain a participant registry for the program. The participant registry shall include the participant's name, address,

and telephone number and shall identify whether the participant is a physician's office, a pharmacy, a hospital, or a health clinic. The department shall make the participant registry available to any person or entity wishing to donate cancer drugs to the program.

Source: Laws 2005, LB 331, § 7.

(g) COMMUNITY HEALTH CENTER RELABELING AND REDISPENSING

71-2431 Community health center; relabeling and redispensing prescription drugs; requirements.

(1) Prescription drugs or devices which have been delivered to a community health center for dispensing to a patient of such health center pursuant to a valid prescription, but which are not dispensed or administered to such patient, may be delivered to a pharmacist or pharmacy under contract with the community health center for relabeling and redispensing to another patient of such health center pursuant to a valid prescription if:

(a) The decision to accept delivery of the drug or device for relabeling and redispensing rests solely with the contracting pharmacist or pharmacy;

(b) The drug or device has been in the control of the community health center at all times;

(c) The drug or device is in the original and unopened labeled container with a tamper-evident seal intact. Such container shall bear the expiration date or calculated expiration date and lot number; and

(d) The relabeling and redispensing is not otherwise prohibited by law.

(2) For purposes of this section:

(a) Administer has the definition found in section 38-2806;

(b) Calculated expiration date has the definition found in section 38-2884;

(c) Community health center means a community health center established pursuant to the Health Centers Consolidation Act of 1996, 42 U.S.C. 201 et seq., as such act existed on May 7, 2005;

(d) Deliver or delivery has the definition found in section 38-2813;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Prescription has the definition found in section 38-2840; and

(g) Prescription drug or device has the definition found in section 38-2841.

(3) The Department of Health and Human Services, in consultation with the Board of Pharmacy, may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2005, LB 382, § 14; Laws 2007, LB296, § 542; Laws 2007, LB463, § 1201.

(h) CLANDESTINE DRUG LABS

71-2432 Terms, defined.

For purposes of sections 71-2432 to 71-2435:

(1) Clandestine drug lab means any area where glassware, heating devices, or other equipment or precursors, solvents, or related articles or reagents are used to unlawfully manufacture methamphetamine;

(2) Contaminated property means an enclosed area of any property or portion thereof intended for human habitation or use which has been contaminated by chemicals, chemical residue, methamphetamine, methamphetamine residue, or other substances from a clandestine drug lab;

(3) Department means the Department of Health and Human Services;

(4) Law enforcement agency has the meaning found in section 81-1401;

(5) Local public health department has the meaning found in section 71-1626;

(6) Methamphetamine means methamphetamine, its salts, optical isomers, and salts of its isomers; and

(7) Rehabilitate or rehabilitation means all actions necessary to ensure that contaminated property is safe for human habitation or use.

Source: Laws 2006, LB 915, § 1; Laws 2007, LB296, § 543.

71-2433 Property owner; law enforcement agency; Nebraska State Patrol; duties.

A property owner with knowledge of a clandestine drug lab on his or her property shall report such knowledge and location as soon as practicable to the local law enforcement agency or to the Nebraska State Patrol. A law enforcement agency that discovers a clandestine drug lab in the State of Nebraska shall report the location of such lab to the Nebraska State Patrol within thirty days after making such discovery. Such report shall include the date of discovery of such lab, the county where the property containing such lab is located, and a legal description of the property or other description or address of such property sufficient to clearly establish its location. As soon as practicable after such discovery, the appropriate law enforcement agency shall provide the Nebraska State Patrol with a complete list of the chemicals, including methamphetamine, its precursors, solvents, and related reagents, found at or removed from the location of such lab. Upon receipt, the Nebraska State Patrol shall promptly forward a copy of such report and list to the department, the Department of Environmental Quality, the municipality or county where the lab is located, the director of the local public health department serving such municipality or county, and the property owner or owners.

Source: Laws 2006, LB 915, § 2.

71-2434 Local public health department; powers and duties; fees; release of property for human habitation; civil penalty.

(1) The local public health department serving the municipality or county where a clandestine drug lab has been discovered shall monitor the rehabilitation of any contaminated property at such location in accordance with standards and procedures established or approved by the department. The department shall adopt and promulgate rules and regulations to establish such standards and procedures no later than July 15, 2007. Such procedures shall include deadlines for completion of the various stages of rehabilitation and proper disposal of the contaminated property.

(2) A local public health department may charge and collect fees from the owner or owners of contaminated property to cover the costs directly associated with monitoring the rehabilitation of such property under this section as provided in rules and regulations of the department. A local public health

department may contract with other local public health departments or other appropriate entities to assist in the monitoring of such rehabilitation. Upon the completion of such rehabilitation, the local public health department shall release the property for human habitation and commercial or other use in a timely manner.

(3) The owner or owners of contaminated property shall not permit the human habitation or use of such property until the rehabilitation of such property has been completed and the property has been released for such habitation or use under this section. An owner who knowingly violates this subsection may be subject to a civil penalty not to exceed one thousand dollars. The department shall enforce this subsection.

Source: Laws 2006, LB 915, § 3.

71-2435 Leased property; termination of lease; notice.

Notwithstanding any other provision of law, if leased property contains a clandestine drug lab, an owner may terminate the lease agreement upon three days' written notice for the purpose of rehabilitating the contaminated property in accordance with the rules and regulations adopted and promulgated pursuant to section 71-2434.

Source: Laws 2006, LB 915, § 4.

(i) IMMUNOSUPPRESSANT DRUG REPOSITORY PROGRAM ACT

71-2436 Act, how cited.

Sections 71-2436 to 71-2443 shall be known and may be cited as the Immunosuppressant Drug Repository Program Act.

Source: Laws 2006, LB 994, § 42.

71-2437 Terms, defined.

For purposes of the Immunosuppressant Drug Repository Program Act:

(1) Department means the Department of Health and Human Services;

(2) Immunosuppressant drug means anti-rejection drugs that are used to reduce the body's immune system response to foreign material and inhibit a transplant recipient's immune system from rejecting a transplanted organ. Immunosuppressant drugs are available only as prescription drugs and come in tablet, capsule, and liquid forms. The recommended dosage depends on the type and form of immunosuppressant drug and the purpose for which it is being used. Immunosuppressant drug does not include drugs prescribed for inpatient use;

(3) Participant means a transplant center that has elected to voluntarily participate in the program, that has submitted written notification to the department of its intent to participate in the program, and that accepts donated immunosuppressant drugs under the rules and regulations adopted and promulgated by the department for the program;

(4) Prescribing practitioner means a health care practitioner licensed under the Uniform Credentialing Act who is authorized to prescribe immunosuppressant drugs;

(5) Prescription drug has the definition found in section 38-2841;

(6) Program means the immunosuppressant drug repository program established pursuant to section 71-2438;

(7) Transplant center means a hospital that operates an organ transplant program, including qualifying patients for transplant, registering patients on the national waiting list, performing transplant surgery, and providing care before and after transplant; and

(8) Transplant program means the organ-specific facility within a transplant center. A transplant center may have transplant programs for the transplantation of hearts, lungs, livers, kidneys, pancreata, or intestines.

Source: Laws 2006, LB 994, § 43; Laws 2007, LB296, § 544; Laws 2007, LB463, § 1202.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2438 Immunosuppressant drug repository program; established.

The department shall establish an immunosuppressant drug repository program for accepting donated immunosuppressant drugs and dispensing such drugs. Participation in the program shall be voluntary.

Source: Laws 2006, LB 994, § 44.

71-2439 Immunosuppressant drug donation.

Any person or entity, including, but not limited to, an immunosuppressant drug manufacturer or transplant center, may donate immunosuppressant drugs to a participant or return previously prescribed immunosuppressant drugs to the transplant center where they were originally prescribed.

Source: Laws 2006, LB 994, § 45.

71-2440 Immunosuppressant drug; accepted or dispensed; conditions.

(1) An immunosuppressant drug shall only be accepted or dispensed under the program if such drug is in its original, unopened, sealed, and tamper-evident packaging. An immunosuppressant drug packaged in single unit doses may be accepted and dispensed if the outside packaging is opened but the single-unit-dose packaging is unopened. There shall be no limitation on the number of doses that can be donated to the program as long as the donated drugs meet the requirements of this section.

(2) An immunosuppressant drug shall not be accepted or dispensed under the program if (a) such drug bears an expiration date prior to the date of donation or (b) such drug is adulterated or misbranded as described in section 71-2401 or 71-2402.

(3) Subject to limitations provided in this section, unused immunosuppressant drugs dispensed under the medical assistance program may be accepted and dispensed under the immunosuppressant drug repository program.

Source: Laws 2006, LB 994, § 46.

71-2441 Participant; duties; resale prohibited.

(1) A participant shall comply with all applicable provisions of state and federal law relating to the storage, distribution, and dispensing of donated immunosuppressant drugs and shall inspect all such drugs prior to dispensing

to determine if the drugs are adulterated or misbranded as described in section 71-2401 or 71-2402 or if the drugs bear an expiration date prior to the date of dispensing. Such drugs shall only be dispensed pursuant to a prescription issued by a prescribing practitioner. Such drugs may be distributed to another participant for dispensing.

(2) Immunosuppressant drugs donated under the program shall not be resold.

Source: Laws 2006, LB 994, § 47.

71-2442 Rules and regulations.

The department, upon the recommendation of the Board of Pharmacy, shall adopt and promulgate rules and regulations to carry out the Immunosuppressant Drug Repository Program Act. Such rules and regulations shall include, but not be limited to:

(1) Eligibility criteria and other standards and procedures for participants that accept and distribute or dispense donated immunosuppressant drugs;

(2) Necessary forms for administration of the program, including, but not limited to, forms for use by persons or entities that donate, accept, distribute, or dispense immunosuppressant drugs under the program. The forms shall include the name of the person to whom the drug was originally prescribed; and

(3)(a) Categories of immunosuppressant drugs that may be donated or returned under the program and (b) categories of immunosuppressant drugs that cannot be donated or returned under the program and the reason that such drugs cannot be donated or returned.

Source: Laws 2006, LB 994, § 48.

71-2443 Immunity.

(1) Any person or entity, including an immunosuppressant drug manufacturer, which exercises reasonable care in donating, accepting, distributing, or dispensing immunosuppressant drugs under the Immunosuppressant Drug Repository Program Act or rules and regulations adopted and promulgated under the act shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

(2) Notwithstanding subsection (1) of this section, the donation of an immunosuppressant drug by a drug manufacturer does not absolve the manufacturer of any criminal or civil liability that would have existed but for the donation, nor shall such donation increase the liability of such drug manufacturer that would have existed but for the donation.

Source: Laws 2006, LB 994, § 49.

(j) AUTOMATED MEDICATION SYSTEMS ACT

71-2444 Act, how cited.

Sections 71-2444 to 71-2452 shall be known and may be cited as the Automated Medication Systems Act.

Source: Laws 2008, LB308, § 1.

71-2445 Terms, defined.

For purposes of the Automated Medication Systems Act:

(1) Automated medication distribution machine means a type of automated medication system that stores medication to be administered to a patient by a person credentialed under the Uniform Credentialing Act;

(2) Automated medication system means a mechanical system that performs operations or activities, other than compounding, administration, or other technologies, relative to storage and packaging for dispensing or distribution of medications and that collects, controls, and maintains all transaction information and includes, but is not limited to, a prescription medication distribution machine or an automated medication distribution machine. An automated medication system may only be used in conjunction with the provision of pharmacist care;

(3) Chart order means an order for a drug or device issued by a practitioner for a patient who is in the hospital where the chart is stored or for a patient receiving detoxification treatment or maintenance treatment pursuant to section 28-412. Chart order does not include a prescription;

(4) Hospital has the definition found in section 71-419;

(5) Long-term care facility means an intermediate care facility, an intermediate care facility for the mentally retarded, a long-term care hospital, a mental health center, a nursing facility, or a skilled nursing facility, as such terms are defined in the Health Care Facility Licensure Act;

(6) Medical order means a prescription, a chart order, or an order for pharmaceutical care issued by a practitioner;

(7) Pharmacist means any person who is licensed by the State of Nebraska to practice pharmacy;

(8) Pharmacist care means the provision by a pharmacist of medication therapy management, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process;

(9) Pharmacist remote order entry means entering an order into a computer system or drug utilization review by a pharmacist licensed to practice pharmacy in the State of Nebraska and located within the United States, pursuant to medical orders in a hospital, long-term care facility, or pharmacy licensed under the Health Care Facility Licensure Act;

(10) Practice of pharmacy means (a) the interpretation, evaluation, and implementation of a medical order, (b) the dispensing of drugs and devices, (c) drug product selection, (d) the administration of drugs or devices, (e) drug utilization review, (f) patient counseling, (g) the provision of pharmaceutical care, and (h) the responsibility for compounding and labeling of dispensed or repackaged drugs and devices, proper and safe storage of drugs and devices, and maintenance of proper records. The active practice of pharmacy means the performance of the functions set out in this subdivision by a pharmacist as his or her principal or ordinary occupation;

(11) Practitioner means a certified registered nurse anesthetist, a certified nurse midwife, a dentist, an optometrist, a nurse practitioner, a physician assistant, a physician, a podiatrist, or a veterinarian;

(12) Prescription means an order for a drug or device issued by a practitioner for a specific patient, for emergency use, or for use in immunizations. Prescription does not include a chart order;

(13) Prescription medication distribution machine means a type of automated medication system that packages, labels, or counts medication in preparation for dispensing of medications by a pharmacist pursuant to a prescription; and

(14) Telepharmacy means the provision of pharmacist care, by a pharmacist located within the United States, using telecommunications, remote order entry, or other automations and technologies to deliver care to patients or their agents who are located at sites other than where the pharmacist is located.

Source: Laws 2008, LB308, § 2; Laws 2009, LB195, § 75.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-2446 Automated machine prohibited.

Any automated machine that dispenses, delivers, or makes available, other than by administration, prescription medication directly to a patient or caregiver is prohibited.

Source: Laws 2008, LB308, § 3.

71-2447 Hospital, long-term care facility, or pharmacy; use of automated medication system; policies and procedures required.

Any hospital, long-term care facility, or pharmacy that uses an automated medication system shall develop, maintain, and comply with policies and procedures developed in consultation with the pharmacist responsible for pharmacist care for that hospital, long-term care facility, or pharmacy. At a minimum, the policies and procedures shall address the following:

(1) The description and location within the hospital, long-term care facility, or pharmacy of the automated medication system or equipment being used;

(2) The name of the individual or individuals responsible for implementation of and compliance with the policies and procedures;

(3) Medication access and information access procedures;

(4) Security of inventory and confidentiality of records in compliance with state and federal laws, rules, and regulations;

(5) A description of how and by whom the automated medication system is being utilized, including processes for filling, verifying, dispensing, and distributing medications;

(6) Staff education and training;

(7) Quality assurance and quality improvement programs and processes;

(8) Inoperability or emergency downtime procedures;

(9) Periodic system maintenance; and

(10) Medication security and controls.

Source: Laws 2008, LB308, § 4; Laws 2009, LB195, § 76.

71-2448 Prescription medication distribution machine; requirements; location.

A prescription medication distribution machine:

(1) Is subject to the requirements of section 71-2447; and

(2) May be operated only in a licensed pharmacy where a pharmacist dispenses medications to patients for self-administration pursuant to a prescription.

Source: Laws 2008, LB308, § 5.

71-2449 Automated medication distribution machine; requirements; drugs; limitations; inventory; how treated.

(1) An automated medication distribution machine:

(a) Is subject to the requirements of section 71-2447; and

(b) May be operated in a hospital or long-term care facility for medication administration pursuant to a chart order or prescription by a licensed health care professional.

(2) Drugs placed in an automated medication distribution machine shall be in the manufacturer's original packaging or in containers repackaged in compliance with state and federal laws, rules, and regulations relating to repackaging, labeling, and record keeping.

(3) The inventory which is transferred to an automated medication distribution machine in a hospital or long-term care facility shall be excluded from the percent of total prescription drug sales revenue described in section 71-7454.

Source: Laws 2008, LB308, § 6; Laws 2009, LB195, § 77.

71-2450 Pharmacist providing pharmacist remote order entry; requirements.

A pharmacist providing pharmacist remote order entry shall:

(1) Be located within the United States;

(2) Maintain adequate security and privacy in accordance with state and federal laws, rules, and regulations;

(3) Be linked to one or more hospitals, long-term care facilities, or pharmacies for which services are provided via computer link, video link, audio link, or facsimile transmission;

(4) Have access to each patient's medical information necessary to perform via computer link, video link, or facsimile transmission a prospective drug utilization review as specified in section 38-2869; and

(5) Be employed by or have a contractual agreement to provide such services with the hospital, long-term care facility, or pharmacy where the patient is located.

Source: Laws 2008, LB308, § 7; Laws 2009, LB195, § 78.

71-2451 Repealed. Laws 2008, LB308, § 17.

71-2452 Violations; disciplinary action.

Any person who violates the Automated Medication Systems Act may be subject to disciplinary action by the Division of Public Health of the Department of Health and Human Services under the Health Care Facility Licensure Act, the Uniform Licensing Law, or the Uniform Credentialing Act.

Source: Laws 2008, LB308, § 8.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.
Uniform Licensing Law, see section 71-101.

(k) CORRECTIONAL FACILITIES AND JAILS RELABELING AND REDISPENSING

71-2453 Department of Correctional Services facilities, detention facilities, or jails; prescription drug or device; return for credit or relabeling and redispensing; requirements; liability; professional disciplinary action.

(1) Prescription drugs or devices which have been dispensed pursuant to a valid prescription and delivered to a Department of Correctional Services facility, a criminal detention facility, a juvenile detention facility, or a jail for administration to a prisoner or detainee held at such facility or jail, but which are not administered to such prisoner or detainee, may be returned to the dispensing pharmacy under contract with the facility or jail for credit or for relabeling and redispensing and administration to another prisoner or detainee held at such facility or jail pursuant to a valid prescription as provided in this section.

(2)(a) The decision to accept return of a dispensed prescription drug or device for credit or for relabeling and redispensing rests solely with the pharmacist at the contracting pharmacy.

(b) A dispensed prescription drug or device shall be properly stored and in the control of the facility or jail at all times prior to the return of the drug or device for credit or for relabeling and redispensing. The drug or device shall be returned in the original and unopened labeled container dispensed by the pharmacist with the tamper-evident seal intact, and the container shall bear the expiration date or calculated expiration date and lot number of the drug or device.

(c) A prescription drug or device shall not be returned or relabeled and redispensed under this section if the drug or device is a controlled substance or if the relabeling and redispensing is otherwise prohibited by law.

(3) For purposes of this section:

(a) Administration has the definition found in section 38-2807;

(b) Calculated expiration date has the definition found in subdivision (3)(a) of section 71-2421;

(c) Criminal detention facility has the definition found in section 83-4,125;

(d) Department of Correctional Services facility has the definition of facility found in section 83-170;

(e) Dispense or dispensing has the definition found in section 38-2817;

(f) Jail has the definition found in section 47-117;

(g) Juvenile detention facility has the definition found in section 83-4,125;

(h) Prescription has the definition found in section 38-2840; and

(i) Prescription drug or device has the definition found in section 38-2841.

(4) The Jail Standards Board, in consultation with the Board of Pharmacy, shall adopt and promulgate rules and regulations relating to the return of dispensed prescription drugs or devices for credit, relabeling, or redispensing under this section, including, but not limited to, rules and regulations relating

to (a) education and training of persons authorized to administer the prescription drug or device to a prisoner or detainee, (b) the proper storage and protection of the drug or device consistent with the directions contained on the label or written drug information provided by the pharmacist for the drug or device, (c) limits on quantity to be dispensed, (d) transferability of drugs or devices for prisoners or detainees between facilities, (e) container requirements, (f) establishment of a drug formulary, and (g) fees for the dispensing pharmacy to accept the returned drug or device.

(5) Any person or entity which exercises reasonable care in accepting, distributing, or dispensing prescription drugs or devices under this section or rules and regulations adopted and promulgated under this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any injury, death, or loss to person or property relating to such activities.

Source: Laws 2009, LB288, § 46.

ARTICLE 25

POISONS

Cross References

Asbestos Control Act, see section 71-6317.
Commercial feed, adulteration, see section 54-854.
Controlled substances, prohibited acts, Uniform Controlled Substances Act, see section 28-401.01.
Department of Health and Human Services:
Emergencies or epidemics, authority, see section 71-502 et seq.
Enforcement powers, see section 81-601.
Fish, use of poison for taking, prohibited, see section 37-554.
Hospitals, diagnosis code required for poisoning, see section 71-2080 et seq.
Murder by poisoning, see sections 28-303 to 28-305.
Pesticide Act, see section 2-2622.
Poison gas:
Criminal penalties, see sections 28-1213 to 28-1239.
Game Law, prohibited acts, see sections 37-531 and 37-561.
Rules and regulations, see section 38-2899.
Seeds, labeling, when required, see section 81-2,147.02.

(a) GENERAL PROVISIONS

Section

(b) LEAD POISONING

(a) GENERAL PROVISIONS

71-2501 Poison, defined; exceptions.

(1) For purposes of sections 71-2501 to 71-2510:

(a) Poison shall include: Arsenic, metallic or elemental, and all poisonous compounds and preparations thereof; corrosive sublimate; white precipitate; red precipitate, mercuric iodide; nitrate of mercury; hydrocyanic acid and all its salts and poisonous compounds; aconitine, arecoline, atropine, brucine, colchicine, coniine, daturine, delphinine, gelsemine, gelseminine, homatropine, hyoscine, hyoscyamine, lobeline, pelletierine, physostigmine, pilocarpine, sparteine, strychnine, veratrine, and all other poisonous alkaloids and their salts, poisonous compounds, and preparations; volatile or essential oil of bitter almonds, natural and artificial; aconite, belladonna, calabar bean, cantharides, colchicum, conium cotton root, cocculus indicum, datura, ergot, gelsemium, henbane, ignatia, lobelia, nux vomica, savin, scopolamine, solanum, stramonium, staphisagra, strophanthus, veratrum viride, and their pharmaceutical preparations and compounds; cantharidin, picrotoxin, elaterin, santonin, their poisonous chemical compounds and derivatives and preparations; ascaridol; volatile oil of mustard, natural and synthetic; oil of tansy; oil of savin, glacial acetic acid; trichloracetic acid; aniline oil; benzaldehyde; bromoform; carbolic acid; cresylic acid; chloral hydrate; chromic acid; croton oil; dinitrophenol; mineral acids; oxalic acid; nitrobenzene; phosphorous; paraldehyde; picric acid; salts of antimony; salts of barium, except the sulphate, salts of cobalt, salts of chromium; salts of lead; salts of thallium; salts of zinc; carbon tetrachloride, and silver nitrate; and

(b) Poison shall not include:

(i) Agricultural or garden spray, insecticides, concentrated lye, fungicides, rodent destroyers, and other preparations of whatever ingredients, preservative or otherwise for animal or poultry use, for commercial, industrial, manufacturing, fire protection purposes, or any combination of such purposes, and not for human use, when the same are properly packaged, prepared, and labeled with official poison labels in conformity with the terms and provisions of section 71-2502 or the Federal Food, Drug, and Cosmetic Act, as such act existed on May 1, 2001, or the Federal Insecticide, Fungicide, and Rodenticide Act, as such act existed on May 1, 2001;

(ii) Preparations prepared by or under the supervision of a governmental agency for use by it or under its direction in the suppression of injurious insect pests and plant diseases destructive to the agricultural and horticultural interests of the state; and

(iii) Preparations for the destruction of rodents, predatory animals, or noxious weeds.

(2) Sections 71-2501 to 71-2511 shall not apply to the sale of patent or proprietary medicines in the original package of the manufacturer, when labeled in conformity with section 71-2502.

Source: Laws 1941, c. 141, § 13, p. 562; C.S.Supp.,1941, § 81-932; R.S.1943, § 81-625; Laws 1957, c. 296, § 1, p. 1068; Laws 2001, LB 398, § 75.

71-2502 Poisons; sale; labeling required.

It shall be unlawful for any person to vend, sell, dispense, give away, furnish or otherwise dispose of, or cause to be vended, sold, dispensed, given away, furnished or otherwise disposed of, either directly or indirectly, any poison as defined in section 71-2501, without affixing, or causing to be affixed, to the bottle, box, vessel or package containing the same, a label, printed or plainly written, containing the name of the article, the word poison, the name and place of business of the seller, manufacturer, packer or distributor, and the date of sale; nor shall it be lawful for any person to deliver any of such poisons until he has satisfied himself that the person to whom delivery is made is aware of and understands the poisonous nature of the article, and that such poison is to be used for a legitimate purpose.

Source: Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-626.

71-2503 Poisons; sale; duty of vendor to record in Poison Register.

Every person who disposes of or sells at retail or furnishes any of the poisons in section 71-2501 or any other poisons which the Department of Health and Human Services may from time to time designate, as provided in section 71-2506, shall, before delivery, enter in a book kept for that purpose, to be known as the Poison Register, the date of sale, the name and address of the purchaser, the name and quantity of the poison, the purpose for which it is purchased, and the name of the dispenser, and such record shall be signed by the person to whom the poison is delivered. Such record shall be kept in the form prescribed by the department, and the book containing the same must be always open for inspection by the proper authorities, and must be preserved for at least two years after the last entry.

Source: Laws 1941, c. 141, § 14, p. 563; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-627; Laws 1996, LB 1044, § 626; Laws 2007, LB296, § 545.

71-2504 Poisons; sale; false representation or use of fictitious name by purchaser, prohibited.

It shall be unlawful for any person to give or sign a fictitious name or, in order to procure any poison, to make any false representation to the person from whom the same is procured; and it shall be unlawful for any person delivering any poison under the provision of section 71-2503 knowingly to make a fictitious, false or misleading entry in the Poison Register.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-628.

71-2505 Poisons; sale; restrictions not applicable to physicians.

The provisions of sections 71-2503 and 71-2504 shall not apply to the dispensing of poisons or preparation of medicines by those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-629; Laws 2007, LB463, § 1203.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2506 Poisons; sale; revised schedule of poisons; preparation; notice; hearing; appeal.

Whenever, in the judgment of the Department of Health and Human Services, it shall become necessary for the protection of the public, to add any poison, not specifically enumerated in section 71-2501, the department shall have printed a revised schedule of all poisons coming under section 71-2501. The department shall forward by mail one copy to each person registered upon its books and to every person applying for same, and the revised schedule shall carry an effective date for the new poisons added. No poison shall be added by the department under this section unless the same shall be as toxic in its effect as any of the poisons enumerated under section 71-2501. Whenever the department shall propose to bring any additional poisons under such section, the proposal shall be set down for hearing. At least ten days' notice of such hearing shall be given by the department. The notice shall designate the poison to be added and shall state the time and place of the hearing. Such notice shall be given by such means as the department shall determine to be reasonably calculated to notify the various interested parties. The department shall have the power to adopt and promulgate such rules and regulations with respect to the conduct of such hearings as may be necessary. Any person aggrieved by any order of the department passed pursuant to this section may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1941, c. 141, § 14, p. 564; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-630; Laws 1988, LB 352, § 127; Laws 1996, LB 1044, § 627; Laws 2007, LB296, § 546.

Cross References

Administrative Procedure Act, see section 84-920.
Rules and regulations, see section 38-2899.

71-2507 Poisons; sale by person not registered pharmacist prohibited; exception.

It shall be unlawful for any person, other than a duly registered pharmacist, to sell or dispense poisons as named in section 71-2501, except as otherwise provided in said section.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-631.

71-2508 Poisons; sale to minors and incompetents, prohibited.

It shall be unlawful for any person in this state to sell or deliver any poison to any minor under eighteen years of age or to any person known to be of unsound mind or under the influence of intoxicants.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-632.

71-2509 Poisons; restriction to sale upon prescription; power of Department of Health and Human Services.

The Department of Health and Human Services may, by regulation, whenever such action becomes necessary for the protection of the public, prohibit the

sale of any poison, subject to the provisions of this section, except upon the original written order or prescription of those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501. Whenever in the opinion of the department it is in the interest of the public health, the department is empowered to adopt rules and regulations, not inconsistent with sections 71-2501 to 71-2511, further restricting or prohibiting the retail sale of any poison. The rules and regulations must be applicable to all persons alike, and it shall be the duty of the department, upon request, to furnish any person, authorized by sections 71-2501 to 71-2511 to sell or dispense any poisons, with a list of all articles, preparations, and compounds the sale of which is prohibited or regulated by such sections.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-633; Laws 1996, LB 1044, § 628; Laws 2007, LB296, § 547; Laws 2007, LB463, § 1204.

Cross References

Rules and regulations, see section 38-2899.
Uniform Credentialing Act, see section 38-101.

71-2510 Poisons; sale upon prescription only; exceptions.

The provisions of sections 71-2502 to 71-2511 shall not apply to sales of poisons made to those practitioners credentialed under the Uniform Credentialing Act who are duly authorized by law to administer or professionally use those poisons specifically named in section 71-2501, to sales made by any manufacturer, wholesale dealer, or licensed pharmacist to another manufacturer, wholesale dealer, or licensed pharmacist, to a hospital, college, school, or scientific or public institution, or to any person using any of such poisons in the arts or for industrial, manufacturing, or agricultural purposes and believed to be purchasing any poison for legitimate use, or to the sales of pesticides used in agricultural and industrial arts or products used for the control of insect or animal pests or weeds or fungus diseases, if in all such cases, except sales for use in industrial arts, manufacturing, or processing, the poisons are labeled in accordance with the provisions of section 71-2502.

Source: Laws 1941, c. 141, § 14, p. 565; C.S.Supp.,1941, § 81-933; R.S.1943, § 81-634; Laws 1993, LB 588, § 36; Laws 2007, LB463, § 1205.

Cross References

Uniform Credentialing Act, see section 38-101.

71-2511 Poisons; sale; violations; penalty.

Any person, partnership, limited liability company, association, or corporation violating any of the provisions of sections 71-2502 to 71-2511 or any of the rules or regulations adopted and promulgated by the Department of Health and Human Services pursuant to sections 71-2502 to 71-2511 shall be deemed guilty of a Class V misdemeanor.

Source: Laws 1941, c. 141, § 14, p. 566; C.S.Supp.,1941, § 81-993; R.S.1943, § 81-635; Laws 1977, LB 39, § 166; Laws 1993, LB 121, § 431; Laws 1996, LB 1044, § 629; Laws 2007, LB296, § 548.

Cross References

Rules and regulations, see section 38-2899.

71-2512 Violations; penalty.

Any person violating any of the provisions of sections 71-2401 to 71-2405 and 71-2501 to 71-2511, except as specific penalties are otherwise imposed, shall be guilty of a Class III misdemeanor. Any person, for a second violation of any of the provisions of such sections, when another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1941, c. 141, § 17, p. 567; C.S.Supp.,1941, § 81-935; R.S.1943, § 81-636; Laws 1972, LB 1067, § 3; Laws 1977, LB 39, § 167; Laws 1988, LB 1100, § 131; Laws 1988, LB 1012, § 12.

(b) LEAD POISONING

71-2513 Act, how cited.

Sections 71-2513 to 71-2517 shall be known and may be cited as the Childhood Lead Poisoning Prevention Act.

Source: Laws 1993, LB 536, § 14.

71-2514 Legislative findings.

The Legislature hereby finds and declares that:

(1) Childhood environmental lead poisoning constitutes a serious threat to the public health of the children of this state and the identification, treatment, and prevention of childhood environmental lead poisoning is a goal of the people;

(2) The effectiveness of distinguishing and abating lead hazards in the environment and thereby providing a safer environment to prevent childhood lead poisoning has been well documented;

(3) Childhood environmental lead poisoning prevention programs have had a tremendous impact on reducing the occurrence of lead poisoning in the United States;

(4) The United States Department of Health and Human Services, Public Health Service, has as its Healthy People 2000 objective the identification, treatment, and reduction of childhood environmental lead poisoning; and

(5) There is a national effort to institute environmental lead hazard awareness action plan programs and to provide funds to implement the Healthy People 2000 objective.

Source: Laws 1993, LB 536, § 15.

71-2515 Legislative intent.

It is the intent of the Legislature that the citizens of Nebraska benefit by participation in national efforts to take innovative action to provide lead analysis of our children and the environment in which they are cared for, live, and learn.

Source: Laws 1993, LB 536, § 16.

71-2516 Department of Health and Human Services; statewide environmental lead hazard awareness action plan; powers.

The Department of Health and Human Services may participate in national efforts and may develop a statewide environmental lead hazard awareness action plan which is comprehensive in scope and reflects contributions from a broad base of providers and consumers. In order to implement the statewide environmental lead hazard awareness action plan, the department may:

(1) Actively seek the participation and commitment of the public, health care professionals and facilities, the educational community, and community organizations in a comprehensive program to ensure that the state's children are appropriately protected from environmental lead hazards;

(2) Apply for and receive public and private awards to develop and administer a statewide comprehensive environmental lead hazard awareness action plan program;

(3) Provide environmental lead hazard information and education to the public, parents, health care providers, and educators to establish and maintain a high level of awareness;

(4) Assist parents, health care providers, and communities in developing systems, including demonstration and pilot projects, which emphasize the protection of children from environmental lead poisoning and the use of private practitioners; and

(5) Evaluate the effectiveness of these statewide efforts, identify children at special risk for environmental lead hazard exposure, and report on the activities of the statewide program annually to the Legislature and the citizens of Nebraska.

Source: Laws 1993, LB 536, § 17; Laws 1996, LB 1044, § 630.

71-2517 Entitlement not created; funding.

The Childhood Lead Poisoning Prevention Act is not intended to create an entitlement to any activities described in the act, and the Department of Health and Human Services may perform the activities described in the act to the extent funds are available.

Source: Laws 1993, LB 536, § 18; Laws 1996, LB 1044, § 631.

ARTICLE 26

STATE BOARD OF HEALTH

Section

Section
71-2612. Repealed. Laws 1981, LB 249, § 8.
71-2613. Repealed. Laws 1981, LB 249, § 8.
71-2614. Repealed. Laws 1981, LB 249, § 8.
71-2615. Repealed. Laws 1981, LB 249, § 8.
71-2616. Repealed. Laws 1981, LB 249, § 8.
71-2617. Health and Human Services Reimbursement Fund; created; purpose.
71-2618. Repealed. Laws 1996, LB 1044, § 985.
71-2618.01. Repealed. Laws 1999, LB 13, § 1.
71-2619. Fees; establish; disposition.
71-2620. Agreements for laboratory tests; contents.
71-2621. Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.
71-2622. Private water supply; private sewage disposal facilities; inspection; fees.
71-2623. Repealed. Laws 1992, LB 860, § 8.

71-2601 State Board of Health; members; appointment; qualifications.

(1) The State Board of Health shall promote and protect the health and safety of all people in Nebraska.

(2) The board shall consist of seventeen members to be appointed by the Governor with the consent of a majority of the members of the Legislature. Two members shall be licensed to practice medicine and surgery in this state, one member shall be licensed to practice dentistry in this state, one member shall be licensed to practice optometry in this state, one member shall be licensed to practice veterinary medicine in this state, one member shall be licensed to practice pharmacy in this state, two members shall be licensed to practice nursing in this state, one member shall be licensed to practice osteopathic medicine and surgery or as an osteopathic physician in this state, one member shall be licensed to practice podiatry in this state, one member shall be licensed to practice chiropractic in this state, one member shall be licensed to practice physical therapy in this state, one member shall be a professional engineer in this state, one member shall be an administrator of a hospital in this state which is licensed under the Health Care Facility Licensure Act, one member shall be a credentialed mental health professional, and two members shall be public members who at all times are public-spirited citizens of Nebraska interested in the health of the people of the State of Nebraska and not less than twenty-one years of age. If a member fails at any time to meet the qualifications for the position for which he or she was appointed, such member may be removed by the Governor pursuant to section 71-2603.

(3) The Governor shall also be an ex officio member of such board but shall be permitted to vote on matters before the board only when necessary to break a tie.

Source: Laws 1953, c. 335, § 7, p. 1102; Laws 1959, c. 327, § 1, p. 1191; Laws 1967, c. 454, § 1, p. 1405; Laws 1969, c. 574, § 1, p. 2320; Laws 1971, LB 279, § 1; Laws 1978, LB 575, § 1; Laws 1989, LB 342, § 30; Laws 1993, LB 375, § 2; Laws 1995, LB 563, § 46; Laws 1997, LB 622, § 105; Laws 1999, LB 828, § 168; Laws 2000, LB 819, § 107; Laws 2003, LB 56, § 1.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-2602 Board; members; term; vacancy; appointment.

The Governor shall appoint the members of the State Board of Health. Each member of the board serving on October 1, 2003, shall hold office until August 1 of the calendar year in which his or her term would otherwise expire. Appointments made for the succeeding members shall be for terms of five years. The term of office of each member of the board shall expire on August 1 of the appropriate year. If a vacancy occurs prior to the expiration of a term, the Governor shall appoint a successor with similar qualifications for the remainder of the unexpired term. No member of the board shall serve more than two consecutive, full terms. If the Legislature is not in session when an appointment is made by the Governor, the member shall take office and act as a recess appointee until the Legislature convenes.

Source: Laws 1953, c. 335, § 8, p. 1102; Laws 1959, c. 327, § 2, p. 1191; Laws 1972, LB 1067, § 4; Laws 1993, LB 375, § 3; Laws 2003, LB 56, § 2.

71-2602.01 Repealed. Laws 1993, LB 375, § 7.

71-2603 Board; members; removal; grounds; procedure.

Members of the State Board of Health may be removed by the Governor for inefficiency, neglect of duty, failure to maintain the qualifications for the position for which appointed, or misconduct in office, but only after delivering to the member a copy of the charges and affording the member an opportunity of being publicly heard in person or by counsel in his or her own defense, upon not less than ten days' notice. Such hearing shall be held before the Governor. If such member is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against such member and the Governor's findings thereon, together with a complete record of the proceedings.

Source: Laws 1953, c. 335, § 9, p. 1103; Laws 2003, LB 56, § 3.

71-2604 Repealed. Laws 1981, LB 249, § 8.

71-2605 Board; members; per diem; expenses.

The members of the State Board of Health shall receive the sum of twenty dollars per diem, while actually engaged in the business of the board, and shall be reimbursed for the necessary expenses incurred in the performance of their duties as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1953, c. 335, § 11, p. 1103; Laws 1981, LB 204, § 123.

71-2606 Board; members; chairperson; officers; election.

In the last calendar quarter of each year, the members of the State Board of Health shall meet and elect a chairperson of the board from the members and such other officers, including a vice-chairperson and a secretary, as the board deems necessary. In case of the death, resignation, or other permanent absence of the chairperson of the board, the vice-chairperson shall assume the office of chairperson and the members of the board at the next regular meeting of the board, or at a special meeting of the board pursuant to a call signed by five members of which the other members shall have at least three days' notice,

shall elect a new chairperson of the board from the members and such other new officers as the board deems necessary.

Source: Laws 1953, c. 335, § 12, p. 1103; Laws 1969, c. 575, § 1, p. 2321; Laws 2003, LB 56, § 4.

71-2607 Board; meetings; notice; open to public.

The State Board of Health shall meet at least once each quarter and at such other times as it deems necessary. Special meetings may be held upon the call of the chairperson or pursuant to a call signed by five other members of which the chairperson and the other members of the board shall have at least three days' notice. All regular meetings shall be held in suitable offices to be provided in the state office building described in section 81-1108.37 or elsewhere. A majority of the members of the board shall constitute a quorum for the transaction of business. Every act of a majority of the members of the board shall be deemed to be the act of the board. All meetings shall be open to the public. The minutes of the meetings shall show the action of the board on matters presented and shall be open to public inspection.

Source: Laws 1953, c. 335, § 13, p. 1103; Laws 1969, c. 575, § 2, p. 2322; Laws 2003, LB 56, § 5.

71-2608 Repealed. Laws 1981, LB 249, § 8.

71-2609 Repealed. Laws 1996, LB 1044, § 985.

71-2610 Board; advise Division of Public Health of the Department of Health and Human Services.

The State Board of Health shall advise the Division of Public Health of the Department of Health and Human Services regarding:

(1) Rules and regulations for the government of the division;

(2) The policies of the division as they relate to support provided to the board;

(3) The policies of the division concerning the professions and occupations described in section 71-2610.01;

(4) Communication and cooperation among the professional boards; and

(5) Plans of organization or reorganization of the division.

Source: Laws 1953, c. 335, § 16, p. 1104; Laws 1981, LB 249, § 2; Laws 1982, LB 449, § 8; Laws 1982, LB 450, § 7; Laws 1982, LB 448, § 7; Laws 1987, LB 473, § 41; Laws 1996, LB 1044, § 632; Laws 2003, LB 56, § 6; Laws 2007, LB296, § 549.

71-2610.01 Board; powers and duties.

The State Board of Health shall:

(1) Adopt and promulgate rules and regulations for the government of the professions and occupations licensed, certified, registered, or issued permits by the Division of Public Health of the Department of Health and Human Services, including rules and regulations necessary to implement laws enforced by the division. These professions and occupations are those subject to the Asbestos Control Act, the Radiation Control Act, the Residential Lead-Based Paint Professions Practice Act, the Uniform Controlled Substances Act, the Uniform Credentialing Act, or the Wholesale Drug Distributor Licensing Act;

(2) Serve in an advisory capacity for other rules and regulations adopted and promulgated by the division, including those for health care facilities and environmental health services;

(3) Carry out its powers and duties under the Nebraska Regulation of Health Professions Act;

(4) Appoint and remove for cause members of health-related professional boards as provided in sections 38-158 to 38-167;

(5) At the discretion of the board, help mediate issues related to the regulation of health care professions except issues related to the discipline of health care professionals; and

(6) Have the authority to participate in the periodic review of the regulation of health care professions.

All funds rendered available by law may be used by the board in administering and effecting such purposes.

Source: Laws 1981, LB 249, § 3; Laws 1992, LB 1019, § 78; Laws 1996, LB 1044, § 633; Laws 1997, LB 307, § 186; Laws 1998, LB 1073, § 124; Laws 2000, LB 1115, § 71; Laws 2003, LB 56, § 7; Laws 2005, LB 256, § 93; Laws 2007, LB296 § 550; Laws 2007, LB463, § 1206.

Cross References

Asbestos Control Act, see section 71-6317.
Boards:
Appointment, see section 38-158 et seq.
Enumerated, see section 38-167.
Nebraska Regulation of Health Professions Act, see section 71-6201.
Radiation Control Act, see section 71-3519.
Residential Lead-Based Paint Professions Practice Act, see section 71-6318.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Wholesale Drug Distributor Licensing Act, see section 71-7427.

71-2611 Board; immunity.

No member of the State Board of Health shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board while acting as an agent of the state if such board member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 2003, LB 56, § 8.

71-2612 Repealed. Laws 1981, LB 249, § 8.

71-2613 Repealed. Laws 1981, LB 249, § 8.

71-2614 Repealed. Laws 1981, LB 249, § 8.

71-2615 Repealed. Laws 1981, LB 249, § 8.

71-2616 Repealed. Laws 1981, LB 249, § 8.

71-2617 Health and Human Services Reimbursement Fund; created; purpose.

There is hereby created in the Department of Health and Human Services a cash fund to be known as the Health and Human Services Reimbursement Fund. Any money in the Department of Health and Human Services Regulation and Licensure Reimbursement Fund on July 1, 2007, shall be transferred to the Health and Human Services Reimbursement Fund. The fund shall be used for payment of services performed for the department for inspection and licensing of hospitals and nursing homes under Title XIX of the federal Social Security 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.

Source: Laws 1971, LB 224, § 1; Laws 1996, LB 1044, § 634; Laws 2007, LB296, § 551.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-2618 Repealed. Laws 1996, LB 1044, § 985.

71-2618.01 Repealed. Laws 1999, LB 13, § 1.

71-2619 Fees; establish; disposition.

(1) The Department of Health and Human Services may by regulation establish fees to defray the costs of providing specimen containers, shipping outfits, and related supplies and fees to defray the costs of certain laboratory examinations as requested by individuals, firms, corporations, or governmental agencies in the state. Fees for the provision of certain classes of shipping outfits or specimen containers shall be no more than the actual cost of materials, labor, and delivery. Fees for the provision of shipping outfits may be made when no charge is made for service.

(2) Fees may be established by regulation for chemical or microbiological examinations of various categories of water samples. Fees established for examination of water to ascertain qualities for domestic, culinary, and associated uses shall be set to defray no more than the actual cost of the tests in the following categories: (a) Inorganic chemical assays; (b) organic pollutants; and (c) bacteriological examination to indicate sanitary quality as coliform density by membrane filter test or equivalent test.

(3) Fees for examinations of water from lakes, streams, impoundments, or similar sources, from wastewaters, or from ground water for industrial or agricultural purposes may be charged in amounts established by regulation but shall not exceed one and one-half times the limits set by regulation for examination of domestic waters.

(4) Fees may be established by regulation for chemical or microbiological examinations of various categories of samples to defray no more than the actual cost of testing. Such fees may be charged for:

(a) Any specimen submitted for radiochemical analysis or characterization;

(b) Any material submitted for chemical characterization or quantitation; and

(c) Any material submitted for microbiological characterization.

(5) Fees may be established by regulation for the examinations of certain categories of biological and clinical specimens to defray no more than the

actual costs of testing. Such fees may be charged for examinations pursuant to law or regulation of:

(a) Any specimen submitted for chemical examination for assessment of health status or functional impairment;

(b) Any specimen submitted for microbiological examination which is not related to direct human contact with the microbiological agent; and

(c) A specimen submitted for microbiological examination or procedure by an individual, firm, corporation, or governmental unit other than the department.

(6) The department shall not charge fees for tests that include microbiological isolation, identification examination, or other laboratory examination for the following:

(a) A contagious disease when the department is authorized by law or regulation to directly supervise the prevention, control, or surveillance of such contagious disease;

(b) Any emergency when the health of the people of any part of the state is menaced or exposed pursuant to section 71-502; and

(c) When adopting or enforcing special quarantine and sanitary regulations authorized by the department.

(7) Combinations of different tests or groups of tests submitted together may be offered at rates less than those set for individual tests as allowed in this section and shall defray the actual costs.

(8) Fees may be established by regulation to defray no more than the actual costs of certifying laboratories, inspecting laboratories, and making laboratory agreements between the department and laboratories other than the Department of Health and Human Services, Division of Public Health, Environmental Laboratory for the purpose of conducting analyses of drinking water as prescribed in section 71-5306. For each laboratory applying for certification, fees shall include (a) an annual fee not to exceed one thousand eight hundred dollars per laboratory and (b) an inspection fee not to exceed three thousand dollars per certification period for each laboratory located in this state.

(9) All fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 2; Laws 1983, LB 617, § 21; Laws 1986, LB 1047, § 4; Laws 1996, LB 1044, § 636; Laws 2007, LB296, § 552; Laws 2008, LB928, § 20.

71-2620 Agreements for laboratory tests; contents.

The Division of Public Health of the Department of Health and Human Services may enter into agreements, not exceeding one year in duration, with any other governmental agency relative to the provision of certain laboratory tests and services to the agency. Such services shall be provided as stipulated in the agreement and for such fee, either lump sum or by the item, as is mutually agreed upon and as complies with the provisions of section 71-2619. All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has require-

ments that are substantially equivalent to or more comprehensive than those of the college.

Source: Laws 1973, LB 583, § 3; Laws 1996, LB 1044, § 637; Laws 2001, LB 432, § 11; Laws 2007, LB296, § 553; Laws 2008, LB928, § 21.

71-2621 Fees; laboratory tests and services; credited to Health and Human Services Cash Fund.

All fees collected for laboratory tests and services pursuant to sections 71-2619 and 71-2620 shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund, which shall be used to partially defray the costs of labor, operations, supplies, and materials in the operations of the Department of Health and Human Services, Division of Public Health, Environmental Laboratory.

Source: Laws 1973, LB 583, § 4; Laws 1996, LB 1044, § 638; Laws 2007, LB296, § 554; Laws 2008, LB928, § 22.

71-2622 Private water supply; private sewage disposal facilities; inspection; fees.

The Department of Health and Human Services shall collect a fee of not less than sixty nor more than one hundred dollars, as determined by regulation, for each inspection of private water supply or private sewage disposal facilities requested of and made by the department in order for the person requesting the inspection to qualify for any type of commercial loan, guarantee, or other type of payment or benefit from any commercial agency or enterprise to the person applying for or receiving the same or to meet the requirements of any federal governmental agency, including, but not limited to, the Farmers Home Administration, the Federal Housing Administration, and the United States Department of Veterans Affairs, that such an inspection be conducted as a condition of applying for or receiving any type of grant, loan, guarantee, or other type of payment or benefit from such agency to the person applying for or receiving the same. All fees so collected shall be paid into the state treasury and by the State Treasurer credited to the Health and Human Services Cash Fund.

Source: Laws 1973, LB 583, § 5; Laws 1978, LB 814, § 1; Laws 1983, LB 617, § 22; Laws 1991, LB 2, § 13; Laws 1996, LB 1044, § 639; Laws 2007, LB296, § 555.

71-2623 Repealed. Laws 1992, LB 860, § 8.

ARTICLE 27
PRACTICE OF MASSAGE

Section
71-2701. Transferred to section 71-1,278.
71-2702. Transferred to section 71-1,279.
71-2703. Repealed. Laws 1988, LB 1100, § 184.
71-2704. Repealed. Laws 1988, LB 1100, § 184.
71-2704.01. Repealed. Laws 1988, LB 1100, § 184.
71-2705. Transferred to section 71-1,281.
71-2706. Repealed. Laws 1988, LB 1100, § 184.
71-2707. Repealed. Laws 1988, LB 1100, § 184.

Section
71-2708. Repealed. Laws 1988, LB 1100, § 184.
71-2709. Repealed. Laws 1988, LB 1100, § 184.
71-2710. Repealed. Laws 1988, LB 1100, § 184.
71-2711. Repealed. Laws 1988, LB 1100, § 184.
71-2712. Transferred to section 71-1,280.
71-2713. Repealed. Laws 1988, LB 1100, § 184.
71-2714. Repealed. Laws 1988, LB 1100, § 184.
71-2715. Repealed. Laws 1988, LB 1100, § 184.
71-2716. Repealed. Laws 1988, LB 1100, § 184.
71-2717. Repealed. Laws 1988, LB 1100, § 184.
71-2718. Repealed. Laws 1988, LB 1100, § 184.
71-2719. Repealed. Laws 1988, LB 1100, § 184.

71-2701 Transferred to section 71-1,278.

71-2702 Transferred to section 71-1,279.

71-2703 Repealed. Laws 1988, LB 1100, § 184.

71-2704 Repealed. Laws 1988, LB 1100, § 184.

71-2704.01 Repealed. Laws 1988, LB 1100, § 184.

71-2705 Transferred to section 71-1,281.

71-2706 Repealed. Laws 1988, LB 1100, § 184.

71-2707 Repealed. Laws 1988, LB 1100, § 184.

71-2708 Repealed. Laws 1988, LB 1100, § 184.

71-2709 Repealed. Laws 1988, LB 1100, § 184.

71-2710 Repealed. Laws 1988, LB 1100, § 184.

71-2711 Repealed. Laws 1988, LB 1100, § 184.

71-2712 Transferred to section 71-1,280.

71-2713 Repealed. Laws 1988, LB 1100, § 184.

71-2714 Repealed. Laws 1988, LB 1100, § 184.

71-2715 Repealed. Laws 1988, LB 1100, § 184.

71-2716 Repealed. Laws 1988, LB 1100, § 184.

71-2717 Repealed. Laws 1988, LB 1100, § 184.

71-2718 Repealed. Laws 1988, LB 1100, § 184.

71-2719 Repealed. Laws 1988, LB 1100, § 184.

ARTICLE 28
PHYSICAL THERAPY

Cross References

Physical Therapy Practice Act, see section 38-2901.
Uniform Credentialing Act, see section 38-101.

Section
71-2801. Repealed. Laws 2006, LB 994, § 162.
71-2802. Repealed. Laws 2006, LB 994, § 162.
71-2803. Transferred to section 71-1,383.
71-2803.01. Repealed. Laws 2006, LB 994, § 162.
71-2804. Transferred to section 71-1,388.
71-2805. Repealed. Laws 2006, LB 994, § 162.
71-2806. Repealed. Laws 1988, LB 1100, § 185.
71-2807. Transferred to section 71-1,389.
71-2808. Repealed. Laws 2006, LB 994, § 162.
71-2809. Repealed. Laws 2006, LB 994, § 162.
71-2810. Transferred to section 71-1,385.
71-2811. Repealed. Laws 2006, LB 994, § 162.
71-2812. Repealed. Laws 2006, LB 994, § 162.
71-2813. Repealed. Laws 1988, LB 1100, § 185.
71-2814. Repealed. Laws 2006, LB 994, § 162.
71-2815. Repealed. Laws 2006, LB 994, § 162.
71-2816. Repealed. Laws 2006, LB 994, § 162.
71-2817. Repealed. Laws 2006, LB 994, § 162.
71-2818. Repealed. Laws 1988, LB 1100, § 185.
71-2819. Repealed. Laws 2006, LB 994, § 162.
71-2820. Repealed. Laws 2006, LB 994, § 162.
71-2821. Repealed. Laws 2006, LB 994, § 162.
71-2822. Repealed. Laws 2006, LB 994, § 162.
71-2823. Repealed. Laws 2006, LB 994, § 162.

71-2801 Repealed. Laws 2006, LB 994, § 162.

71-2802 Repealed. Laws 2006, LB 994, § 162.

71-2803 Transferred to section 71-1,383

71-2803.01 Repealed. Laws 2006, LB 994, § 162.

71-2804 Transferred to section 71-1,388

71-2805 Repealed. Laws 2006, LB 994, § 162.

71-2806 Repealed. Laws 1988, LB 1100, § 185.

71-2807 Transferred to section 71-1,389

71-2808 Repealed. Laws 2006, LB 994, § 162.

71-2809 Repealed. Laws 2006, LB 994, § 162.

71-2810 Transferred to section 71-1,385

71-2811 Repealed. Laws 2006, LB 994, § 162.

71-2812 Repealed. Laws 2006, LB 994, § 162.

71-2813 Repealed. Laws 1988, LB 1100, § 185.

71-2814 Repealed. Laws 2006, LB 994, § 162.

71-2815 Repealed. Laws 2006, LB 994, § 162.

71-2816 Repealed. Laws 2006, LB 994, § 162.

71-2817 Repealed. Laws 2006, LB 994, § 162.

71-2818 Repealed. Laws 1988, LB 1100, § 185.

71-2819 Repealed. Laws 2006, LB 994, § 162.

71-2820 Repealed. Laws 2006, LB 994, § 162.

71-2821 Repealed. Laws 2006, LB 994, § 162.

71-2822 Repealed. Laws 2006, LB 994, § 162.

71-2823 Repealed. Laws 2006, LB 994, § 162.

ARTICLE 29
MOSQUITO ABATEMENT

Section

71-2901 Repealed. Laws 1983, LB 367, § 1.

71-2902 Repealed. Laws 1983, LB 367, § 1.

71-2903 Repealed. Laws 1983, LB 367, § 1.

71-2904 Repealed. Laws 1983, LB 367, § 1.

71-2905 Repealed. Laws 1983, LB 367, § 1.

71-2906 Repealed. Laws 1983, LB 367, § 1.

71-2907 Repealed. Laws 1983, LB 367, § 1.

71-2908 Repealed. Laws 1983, LB 367, § 1.

71-2909 Repealed. Laws 1983, LB 367, § 1.

71-2910 Repealed. Laws 1983, LB 367, § 1.

71-2911 Repealed. Laws 1983, LB 367, § 1.

71-2912 Repealed. Laws 1983, LB 367, § 1.

71-2913 Repealed. Laws 1983, LB 367, § 1.

71-2914 Repealed. Laws 1983, LB 367, § 1.

71-2915 Repealed. Laws 1983, LB 367, § 1.

71-2916 Repealed. Laws 1983, LB 367, § 1.

71-2917 Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; powers.

Any county and any city of the primary class located therein shall have the power jointly or severally to take all necessary and proper steps for the extermination of mosquitoes, flies, or other insects of public health importance within their respective areas of jurisdiction and shall have the following powers:

(1) To abate as nuisances all stagnant pools of water and other breeding places for mosquitoes, flies, or other insects of public health importance within their areas;

(2) To purchase such supplies and materials and to employ such labor as may be necessary or proper in furtherance of the objectives set forth in sections 71-2917 and 71-2918;

(3) To make contracts to indemnify or compensate the owner of land or other property for any injury or damage necessarily caused by the exercise of these powers or arising out of the using, taking, or damaging of property for any of the purposes set forth in sections 71-2917 and 71-2918;

(4) To exercise the power of eminent domain and to take private property for public use within their respective areas of jurisdiction for the purpose of carrying out the provisions of this section, and all damages sustained by the owners of the property taken shall be ascertained and paid for in the manner set forth in sections 76-704 to 76-724, and amendments thereto;

(5) Generally to do any and all things necessary or incidental to the powers granted in sections 71-2917 and 71-2918, including but not limited to the right to enter upon private property for all necessary inspections and to carry out the objectives set forth in sections 71-2917 and 71-2918; and

(6) To appropriate the necessary funds to carry out the objectives contained in sections 71-2917 and 71-2918.

Source: Laws 1961, c. 344, § 1, p. 1096.

71-2918 Extermination of mosquitoes, flies, insects; county and city of the primary class; jointly or severally; nuisance; abatement; expenses; lien.

Any county and any city of the primary class located therein shall have the powers, jointly or severally:

(1) To declare as a nuisance any stagnant pool of water or other breeding place for mosquitoes, flies, or other insects of public health importance within their areas;

(2) To direct the owner or user of the property upon which such nuisance exists to abate such nuisance; and

(3) If such owner or user refuses, fails, or neglects to abate such nuisance, after proper notice and lapse of a reasonable time for complying, to take any necessary and proper steps to abate such nuisance. Any such county and city

shall have and acquire a lien for the expense thereof against the property upon which the expense was incurred, which lien shall be enforceable in the same manner as liens are enforced against buildings and lots for labor and material furnished by contract with the owner.

Source: Laws 1961, c. 344, § 2, p. 1097.

ARTICLE 30

WATER POLLUTION CONTROL

Cross References

Environmental Protection Act, see section 81-1532.
Remedial Action Plan Monitoring Act, see section 81-15,181.

Section

71-3001 Repealed. Laws 1971, LB 939, § 35.

71-3002 Repealed. Laws 1971, LB 939, § 35.

71-3003 Repealed. Laws 1971, LB 939, § 35.

71-3004 Repealed. Laws 1971, LB 939, § 35.

71-3005 Repealed. Laws 1971, LB 939, § 35.

71-3006 Repealed. Laws 1971, LB 939, § 35.

71-3007 Repealed. Laws 1971, LB 939, § 35.

71-3008 Repealed. Laws 1971, LB 939, § 35.

71-3009 Repealed. Laws 1971, LB 939, § 35.

71-3010 Repealed. Laws 1971, LB 939, § 35.

71-3011 Repealed. Laws 1971, LB 939, § 35.

71-3012 Repealed. Laws 1971, LB 939, § 35.

71-3013 Repealed. Laws 1972, LB 1044, § 1.

71-3014 Repealed. Laws 1972, LB 1044, § 1.

71-3015 Repealed. Laws 1972, LB 1044, § 1.

71-3016 Repealed. Laws 1972, LB 1044, § 1.

ARTICLE 31
RECREATION CAMPS

Cross References

Membership Campground Act, see section 76-2101.

Section
71-3101. Terms, defined.
71-3102. Permit; application; issuance; fees; disposition.
71-3103. Annual inspection; duty of department.
71-3104. Permit; revocation; grounds.
71-3105. Rules and regulations.
71-3106. Plans; submit to department.
71-3107. Violations; penalty.

71-3101 Terms, defined.

As used in sections 71-3101 to 71-3107, unless the context otherwise requires:

(1) Recreation camp shall mean one or more temporary or permanent tents, buildings, structures, or site pads, together with the tract of land appertaining thereto, established or maintained for more than a forty-eight-hour period as living quarters or sites used for purposes of sleeping or the preparation and the serving of food extending beyond the limits of a family group for children or adults, or both, for recreation, education, or vacation purposes, and including facilities located on either privately or publicly owned lands except hotels or inns;

(2) Person shall mean any individual or group of individuals, association, partnership, limited liability company, or corporation; and

(3) Department shall mean the Department of Health and Human Services.

Source: Laws 1959, c. 328, § 1, p. 1193; Laws 1993, LB 121, § 432; Laws 1996, LB 1044, § 641; Laws 1997, LB 622, § 106; Laws 2007, LB296, § 556.

71-3102 Permit; application; issuance; fees; disposition.

Before any person shall directly or indirectly operate a recreation camp he or she shall make an application to the department and receive a valid permit for the operation of such camp. Application for such a permit shall be made at least thirty days prior to the proposed operation of the camp and shall be on forms supplied by the department upon request. The application shall be in such form and contain such information as the department may deem necessary to its determination that the recreation camp will be operated and maintained in such a manner as to protect and preserve the health and safety of the persons using the camp and shall be accompanied by an annual fee. The department may establish fees by regulation to defray the actual costs of issuing the permit, conducting inspections, and other expenses incurred by the department in carrying out this section. If the applicant is an individual, the application shall include the applicant's social security number. Where a person operates or is seeking to operate more than one recreation camp, a separate application shall be made for each camp. Such a permit shall not be transferable or assignable. It shall expire one year from the date of its issuance, upon a change of operator of the camp, or upon revocation. If the department finds,

after investigation, that the camp or the proposed operation thereof conforms, or will conform, to the minimum standards for recreation camps, a permit on a form prescribed by the department shall be issued for operation of the camp. All fees shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund.

Source: Laws 1959, c. 328, § 2, p. 1193; Laws 1965, c. 419, § 7, p. 1345; Laws 1978, LB 813, § 2; Laws 1996, LB 1044, § 642; Laws 1997, LB 622, § 107; Laws 1997, LB 752, § 179; Laws 2007, LB296, § 557.

71-3103 Annual inspection; duty of department.

It shall be the duty of the department to make at least one annual inspection of each recreation camp. The duly authorized representatives of the department shall have the right of entry and access to any such camp at any reasonable time.

Where, upon inspection it is found that there is failure to protect the health and safety of the persons using the camp, or a failure to comply with the camp regulations prescribed by the department, the department shall give notice to the camp operator of such failure, which notice shall set forth the reason or reasons for such failure.

Source: Laws 1959, c. 328, § 3, p. 1194.

71-3104 Permit; revocation; grounds.

(1) A permit may be temporarily suspended by the department for failure to protect the health and safety of the occupants of the camp or failure to comply with the camp regulations prescribed by the department.

(2) A permit may be revoked at any time, after notice and opportunity for a fair hearing held by the department, if it is found that the camp for which the permit is issued is maintained or operated in violation of law or of any regulations applicable to a camp or in violation of the conditions stated in the permit. A new permit shall not be issued until the department is satisfied that the camp will be operated in compliance with the law and regulations.

Source: Laws 1959, c. 328, § 4, p. 1194; Laws 1996, LB 1044, § 643; Laws 2007, LB296, § 558.

71-3105 Rules and regulations.

The department is authorized to and shall formulate, adopt, publish, promulgate, and enforce such reasonable rules and regulations as it deems necessary to enforce the provisions of sections 71-3101 to 71-3107 and to protect the health and welfare of persons in attendance at recreation camps.

Source: Laws 1959, c. 328, § 5, p. 1194.

71-3106 Plans; submit to department.

Properly prepared plans for all recreation camps which are hereafter constructed, reconstructed, or extensively altered shall be submitted to the department before such work is begun. Signed approval shall be obtained from the department.

Source: Laws 1959, c. 328, § 6, p. 1194.

71-3107 Violations; penalty.

Any person who shall violate any of the provisions of sections 71-3101 to 71-3107 or of the regulations or standards promulgated hereunder shall be guilty of a Class V misdemeanor.

Source: Laws 1959, c. 328, § 7, p. 1195; Laws 1977, LB 39, § 170.

ARTICLE 32

PRIVATE DETECTIVES

Section
71-3201. Terms, defined.
71-3202. License required; false representation of employment by licensee.
71-3203. Applicability of sections.
71-3204. Secretary of State; rules and regulations; fees.
71-3205. License; application; criminal history record check; investigation; qualifications; fee.
71-3206. Applicant for license; disqualification.
71-3207. License; bond; conditions.
71-3208. License; renewal; form and content; posting.
71-3209. License; renewal; term; renewal fee; renewal application.
71-3210. Secretary of State; denial, suspension, or revocation of license; grounds.
71-3211. Appeal; procedure.
71-3212. Licensee; agents and employees; compliance required.
71-3213. Violations; penalty.

71-3201 Terms, defined.

As used in sections 71-3201 to 71-3213, unless the context otherwise requires:

(1) Applicant shall mean any person who makes application for a license under such sections;

(2) License shall mean a license to engage in the private detective business as a private detective, as a private detective agency, or as a plain clothes investigator in the State of Nebraska;

(3) Licensee shall mean any person licensed under such sections;

(4) Person shall mean and include any individual, firm, partnership, limited liability company, association, company, corporation, or other legal entity;

(5) Plain clothes investigator shall mean and include any individual, other than a private detective, who as an employee and on behalf of a private detective agency without any identifying uniform performs services consisting wholly or partially of detective or investigative activity within the scope of the private detective business;

(6) Private detective shall mean any individual who as a sole proprietor engages in the private detective business without the assistance of any employee;

(7) Private detective agency shall mean any person who as other than a private detective or a plain clothes investigator engages in the private detective business;

(8) Private detective business shall mean and include any private business engaged in by any person defined in subdivision (4) of this section who advertises or holds himself or herself out to the public, in any manner, as being engaged in the secret service or private policing business; and

(9) Secretary shall mean the Secretary of State.

Source: Laws 1959, c. 329, § 1, p. 1195; Laws 1993, LB 121, § 433.

71-3202 License required; false representation of employment by licensee.

No person shall, in the State of Nebraska after July 1, 1959, by any direct or indirect means, engage in the private detective business, as a private detective, as a private detective agency, or as a plain clothes investigator, act or assume to act as a licensee, or represent himself to be a licensee unless such person is duly licensed and holds a valid license under the provisions of sections 71-3201 to 71-3213; and no person shall in the State of Nebraska falsely represent that he is employed by or represents a licensee.

Source: Laws 1959, c. 329, § 2, p. 1196.

71-3203 Applicability of sections.

The provisions of sections 71-3201 to 71-3213 shall not prevent the proper local authorities of any city or village, by ordinance or other proper manner within the exercise of the police power of such city or village, from appointing special policemen for such purposes and subject to such proper and reasonable restrictions, terms, and conditions as such local authorities may prescribe; but such police power shall not be so exercised as to infringe upon or nullify any license duly issued and held under the provisions of sections 71-3201 to 71-3213.

Source: Laws 1959, c. 329, § 3, p. 1197.

71-3204 Secretary of State; rules and regulations; fees.

(1) The secretary shall have power and authority to adopt and promulgate and to alter from time to time rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 71-3201 to 71-3213.

(2) The secretary shall establish fees for initial and renewal applications for applicants at rates sufficient to cover the costs of administering sections 71-3201 to 71-3213.

Source: Laws 1959, c. 329, § 4, p. 1197; Laws 2002, Second Spec. Sess., LB 25, § 1.

71-3205 License; application; criminal history record check; investigation; qualifications; fee.

(1) Any person desiring to engage in the private detective business in the State of Nebraska and desiring to be licensed under sections 71-3201 to 71-3213 shall file with the secretary an application for a license. The application shall be made on a suitable form prescribed by the secretary; shall include the applicant's social security number if the applicant is an individual; shall be accompanied when filed by an application fee established pursuant to section 71-3204; shall be signed and verified by each individual connected with the applicant to whom the requirements of subsection (2) of this section apply; and may contain such information as may be required by the secretary. The applicant shall also submit two legible sets of fingerprints to the Nebraska State Patrol for a national criminal history record check through the Federal Bureau of Investigation.

(2) The secretary shall issue to the person if qualified therefor a nontransferable license to engage in the private detective business as a private detective, as a private detective agency, or as a plain clothes investigator in the State of Nebraska as follows: If the applicant is an individual, the individual; if the applicant is a corporation, each of its individual officers performing the duties of the president, the secretary, and the treasurer of the corporation and the duties of the manager of the business of the corporation in the State of Nebraska; or if the applicant is any person other than an individual or a corporation, each of the individual partners, members, managers, officers, or other individuals having a right to participate in the management of the applicant's business in the State of Nebraska.

(3) The applicant shall be at least twenty-one years of age, a citizen of the United States, and of good moral character, temperate habits, and good reputation for truth, honesty, and integrity and shall have such experience and competence in the detective business or otherwise as the secretary may determine to be reasonably necessary for the individual to perform the duties of his or her position in a manner consistent with the public interest and welfare.

(4) No license issued under sections 71-3201 to 71-3213 shall be issued or renewed to any person who in any manner engages in the business of debt collection in the State of Nebraska as licensee or employee of a licensee as provided in the Collection Agency Act. If any collection agency, or any person in the employ of such agency with knowledge of the owner or operator of such agency, engages in the business of a private detective or represents to others that he or she is engaged in such business, it shall be cause for suspension or revocation of such agency's license as a collection agency.

(5) Prior to the issuance of the license, the secretary shall notify the Nebraska State Patrol, and the patrol shall investigate the character and reputation of the applicant respecting his or her fitness to engage in the business of a private detective. Upon completion of the investigation, the patrol shall notify the secretary of the results of the investigation within ninety days after the date of the application. The license shall be issued by the secretary unless he or she has received within ninety days after the application is made for the license a report of investigation from the patrol stating that the applicant is not of the proper character and reputation to engage in the business of a private detective.

Source: Laws 1959, c. 329, § 5, p. 1197; Laws 1965, c. 426, § 1, p. 1363; Laws 1967, c. 457, § 1, p. 1425; Laws 1982, LB 928, § 54; Laws 1987, LB 175, § 1; Laws 1993, LB 261, § 21; Laws 1997, LB 752, § 180; Laws 2002, Second Spec. Sess., LB 25, § 2; Laws 2003, LB 267, § 2.

Cross References

Collection Agency Act, see section 45-601.

71-3206 Applicant for license; disqualification.

No license shall be issued to any individual applicant, or to any applicant other than an individual, if such individual applicant or if any one or more of those individuals participating or intending to participate directly in the management of such other applicant's business in the State of Nebraska has been convicted in the State of Nebraska or in any other state or territory of the United States of any felony or any misdemeanor involving a sex offense or

involving moral turpitude; *Provided,* this section shall not apply when a full pardon has been given.

Source: Laws 1959, c. 329, § 6, p. 1198.

71-3207 License; bond; conditions.

Before the license may be issued or renewed, the applicant shall file and the licensee shall continuously maintain with the secretary a surety bond executed by a surety company authorized to do business in the State of Nebraska in the sum of ten thousand dollars conditioned for the faithful and honest conduct and compliance with the provisions of sections 71-3201 to 71-3213 upon the part of such applicant or licensee and upon the part of any plain clothes investigator employed by such applicant or licensee; and any person injured by the willful, malicious, or wrongful act of such applicant or licensee or any employee thereof within the scope of the license may bring an action on such bond in his own name to recover his damages; *Provided,* that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the sum of said bond. The surety on such bond shall have a right to cancel such bond upon giving thirty days' notice to the secretary; *Provided,* that such cancellation shall not affect any liability on the bond which accrued prior thereto.

Source: Laws 1959, c. 329, § 7, p. 1198.

71-3208 License; renewal; form and content; posting.

The license when issued or renewed shall be of such form and content as the secretary may prescribe, shall be posted and prominently displayed in the licensee's principal place of engaging in the private detective business in the State of Nebraska, and shall include the name of the licensee, the name or names under which the licensee is licensed to engage in the private detective business in the State of Nebraska, and the number, date of issue or reissue and expiration date of the license.

Source: Laws 1959, c. 329, § 8, p. 1199.

71-3209 License; renewal; term; renewal fee; renewal application.

Each license issued or renewed by the secretary shall expire on June 30 of the first even-numbered year following its issuance and may be renewed by the secretary upon the payment by the licensee, not later than the expiration date, of the license renewal fee established pursuant to section 71-3204 and upon the submission by such licensee of such a license renewal application as the secretary may prescribe as reasonably necessary to ascertain such licensee's continued compliance with the provisions of sections 71-3201 to 71-3213.

Source: Laws 1959, c. 329, § 9, p. 1199; Laws 1965, c. 426, § 2, p. 1364; Laws 1982, LB 928, § 55; Laws 2002, Second Spec. Sess., LB 25, § 3.

71-3210 Secretary of State; denial, suspension, or revocation of license; grounds.

The secretary may from time to time, upon first giving the applicant or licensee an opportunity for a hearing on the matter, (1) deny any application for a license, (2) refuse to renew any license, (3) suspend any license for a time

or upon a condition having a reasonable relation to the administration of the provisions of sections 71-3201 to 71-3213, or (4) revoke any license issued or renewed under the provisions of sections 71-3201 to 71-3213 (a) upon a determination that there has been a significant change in those individuals participating directly in the management of the applicant's or licensee's business in the State of Nebraska or that, (b) by reason of such applicant's or licensee's failure to comply with the provisions of sections 71-3201 to 71-3213, insolvency, bankruptcy or other bad or improper conduct upon the part of such applicant or licensee or upon the part of any officer, agent, or employee of such applicant or licensee within the scope of the office, authority, or employment of such officer, agent or employee, or (c) when for any other suitable reason the granting of a license to such applicant or the continuation of such licensee's license is not consistent with the public interest and welfare.

Source: Laws 1959, c. 329, § 10, p. 1199.

71-3211 Appeal; procedure.

Any applicant, licensee, or other person directly and adversely affected by any order of the secretary may appeal such order, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1959, c. 329, § 11, p. 1200; Laws 1988, LB 352, § 130.

Cross References

Administrative Procedure Act, see section 84-920.

71-3212 Licensee; agents and employees; compliance required.

It shall be the duty of every licensee and, so far as applicable, of every officer, agent, and employee of every licensee to comply with the provisions of sections 71-3201 to 71-3213 and with every applicable rule and regulation made and adopted by the secretary.

Source: Laws 1959, c. 329, § 12, p. 1200.

71-3213 Violations; penalty.

Any person who violates any provision of sections 71-3201 to 71-3213 or fails to perform any duty imposed upon such person by the provisions of sections 71-3201 to 71-3213 shall be guilty of a Class II misdemeanor.

Source: Laws 1959, c. 329, § 13, p. 1200; Laws 1977, LB 39, § 171.

ARTICLE 33
FLUORIDATION

Section
71-3301. Repealed. Laws 1973, LB 449, § 4.
71-3302. Repealed. Laws 1973, LB 449, § 4.
71-3303. Repealed. Laws 1973, LB 449, § 4.
71-3304. Repealed. Laws 1973, LB 449, § 4.
71-3305. Political subdivision; fluoride added to water supply; exception.
71-3306. Other entity; fluoride added to water supply; rules and regulations.

71-3301 Repealed. Laws 1973, LB 449, § 4.

71-3302 Repealed. Laws 1973, LB 449, § 4.

71-3303 Repealed. Laws 1973, LB 449, § 4.

71-3304 Repealed. Laws 1973, LB 449, § 4.

71-3305 Political subdivision; fluoride added to water supply; exception.

(1) Except as otherwise provided in subsection (2) of this section, any city or village having a population of one thousand or more inhabitants shall, no later than June 1, 2010, add fluoride to the water supply for human consumption for such city or village as provided in the rules and regulations of the Department of Health and Human Services unless such water supply has sufficient amounts of naturally occurring fluoride as provided in such rules and regulations.

(2) In any city or village which is required to add fluoride to its water supply under subsection (1) of this section and in which fluoride is not added to such water supply as of January 1, 2008, the voters of the city or village may adopt an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply. The ordinance may be placed on the ballot by a majority vote of the governing body of the city or village or by initiative pursuant to sections 18-2501 to 18-2538.

(3) Any rural water district organized under sections 46-1001 to 46-1020 that supplies water for human consumption to any city or village which is required to add fluoride to such water supply under this section shall not be responsible for any costs, equipment, testing, or maintenance related to such fluoridation unless such district has agreed with the city or village to assume such responsibilities.

Source: Laws 1973, LB 449, § 1; Laws 1975, LB 245, § 2; Laws 1982, LB 807, § 45; Laws 1996, LB 1044, § 644; Laws 2007, LB296, § 559; Laws 2008, LB245, § 1.

71-3306 Other entity; fluoride added to water supply; rules and regulations.

Any public or private entity not included in section 71-3305 which provides a water supply for human consumption and which is not required to add fluoride to such water supply may add fluoride to such water supply in the amount and manner prescribed by the rules and regulations of the Department of Health and Human Services.

Source: Laws 1973, LB 449, § 2; Laws 1996, LB 1044, § 645; Laws 2007, LB296, § 560.

ARTICLE 34

REDUCTION IN MORBIDITY AND MORTALITY

(a) GENERAL PROVISIONS

Section
71-3401. Information, statements, and data; furnish without liability.
71-3402. Publication of material; purpose; identity of person confidential.
71-3403. Information, interviews, reports, statements, data; privileged communications; not received in evidence.

(b) CHILD DEATHS

71-3404. Child deaths; legislative findings and intent.
71-3405. Terms, defined.
71-3406. State Child Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.
71-3407. Team; purposes; duties.
71-3408. Chairperson; duties.
71-3409. Review of child deaths; phases.

Section
71-3410. Provision of information and records; subpoenas.
71-3411. Information and records; confidentiality; use prohibited.

(a) GENERAL PROVISIONS

71-3401 Information, statements, and data; furnish without liability.

Any person, hospital, sanitarium, nursing home, rest home, or other organization may provide information, interviews, reports, statements, memoranda, or other data relating to the condition and treatment of any person to the Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any inhospital staff committee, or any joint venture of such entities to be used in the course of any study for the purpose of reducing morbidity or mortality, and no liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided such information or material, by reason of having released or published the findings and conclusions of such groups to advance medical research and medical education, or by reason of having released or published generally a summary of such studies.

Source: Laws 1961, c. 347, § 1, p. 1105; Laws 1992, LB 860, § 4; Laws 1994, LB 1223, § 44; Laws 1996, LB 1044, § 646; Laws 2007, LB296, § 561.

71-3402 Publication of material; purpose; identity of person confidential.

The Department of Health and Human Services, the Nebraska Medical Association or any of its allied medical societies, the Nebraska Association of Hospitals and Health Systems, any inhospital staff committee, or any joint venture of such entities shall use or publish the material specified in section 71-3401 only for the purpose of advancing medical research or medical education in the interest of reducing morbidity or mortality, except that a summary of such studies may be released by any such group for general publication. In all events the identity of any person whose condition or treatment has been studied shall be confidential and shall not be revealed under any circumstances.

Source: Laws 1961, c. 347, § 2, p. 1106; Laws 1992, LB 860, § 5; Laws 1994, LB 1223, § 45; Laws 1996, LB 1044, § 647; Laws 2007, LB296, § 562.

71-3403 Information, interviews, reports, statements, data; privileged communications; not received in evidence.

All information, interviews, reports, statements, memoranda, or other data furnished by reason of sections 71-3401 to 71-3403 and any findings or conclusions resulting from such studies are declared to be privileged communications which may not be used or offered or received in evidence in any legal proceeding of any kind or character, and any attempt to use or offer any such information, interviews, reports, statements, memoranda or other data, findings or conclusions or any part thereof, unless waived by the interested parties, shall constitute prejudicial error resulting in a mistrial in any such proceeding.

Source: Laws 1961, c. 347, § 3, p. 1106.

(b) CHILD DEATHS

71-3404 Child deaths; legislative findings and intent.

The Legislature finds and declares that it is in the best interests of the state, its citizens, and especially the children of this state that the number and causes of death of children in this state be examined. There is a need for a comprehensive integrated review of all child deaths in Nebraska and a system for statewide retrospective review of existing records relating to each child death.

It is the intent of the Legislature by enactment of Laws 1993, LB 431, to: (1) Identify trends from the review of past records to prevent future deaths from similar causes when applicable; (2) recommend systematic changes for the creation of a cohesive method for responding to certain child deaths; and (3) when appropriate, cause referral to be made to those agencies as required in section 28-711 or as otherwise required by state law.

Source: Laws 1993, LB 431, § 1.

71-3405 Terms, defined.

For purposes of sections 71-3404 to 71-3411:

(1) Child shall mean a person from birth to eighteen years of age;

(2) Investigation shall mean a review of existing records and other information regarding the child from relevant agencies, professionals, and providers of medical, dental, prenatal, and mental health care. The records to be reviewed may include, but not be limited to, medical records, coroner's reports, autopsy reports, social services records, emergency and paramedic records, and law enforcement reports;

(3) Preventable child death shall mean the death of any child which reasonable medical, social, legal, psychological, or educational intervention may have prevented. Preventable child death shall include, but not be limited to, the death of a child from (a) intentional and unintentional injuries, (b) medical misadventures, including untoward results, malpractice, and foreseeable complications, (c) lack of access to medical care, (d) neglect and reckless conduct, including failure to supervise and failure to seek medical care for various reasons, and (e) preventable premature birth;

(4) Reasonable shall mean taking into consideration the condition, circumstances, and resources available; and

(5) Team shall mean the State Child Death Review Team.

Source: Laws 1993, LB 431, § 2.

71-3406 State Child Death Review Team; core members; terms; chairperson; not considered public body; meetings; expenses.

(1) The chief executive officer of the Department of Health and Human Services shall appoint a minimum of eight and a maximum of twelve members to the State Child Death Review Team. The core members shall be (a) a physician employed by the department, who shall be a permanent member and shall serve as the chairperson of the team, (b) a senior staff member with child protective services of the department, (c) a forensic pathologist, (d) a law enforcement representative, and (e) an attorney. The remaining members appointed may be, but shall not be limited to, the following: A county attorney; a Federal Bureau of Investigation agent responsible for investigations on Native

American reservations; a social worker; and members of organizations which represent hospitals or physicians.

(2) Members shall serve four-year terms with the exception of the chairperson. In the absence of the chairperson, the chief executive officer may appoint another member of the core team to serve as chairperson.

(3) The team shall not be considered a public body for purposes of the Open Meetings Act. The team shall meet a minimum of four times a year. Members of the team shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1993, LB 431, § 3; Laws 1996, LB 1044, § 648; Laws 1997, LB 307, § 187; Laws 1998, LB 1073, § 125; Laws 2003, LB 467, § 1; Laws 2004, LB 821, § 17; Laws 2007, LB296, § 563.

Cross References

Open Meetings Act, see section 84-1407.

71-3407 Team; purposes; duties.

(1) The purposes of the team shall be to (a) develop an understanding of the causes and incidence of child deaths in this state, (b) develop recommendations for changes within relevant agencies and organizations which may serve to prevent child deaths, and (c) advise the Governor, the Legislature, and the public on changes to law, policy, and practice which will prevent child deaths.

(2) The team shall:

(a) Undertake annual statistical studies of the causes and incidence of child deaths in this state. The studies shall include, but not be limited to, an analysis of the records of community, public, and private agency involvement with the children and their families prior to and subsequent to the deaths;

(b) Develop a protocol for retrospective investigation of child deaths by the team;

(c) Develop a protocol for collection of data regarding child deaths by the team;

(d) Consider training needs, including cross-agency training, and service gaps;

(e) Include in its annual report recommended changes to any law, rule, regulation, or policy needed to decrease the incidence of preventable child deaths;

(f) Educate the public regarding the incidence and causes of child deaths, the public role in preventing child deaths, and specific steps the public can undertake to prevent child deaths. The team may enlist the support of civic, philanthropic, and public service organizations in the performance of its educational duties;

(g) Provide the Governor, the Legislature, and the public with annual written reports which shall include the team's findings and recommendations for each of its duties; and

(h) When appropriate, make referrals to those agencies as required in section 28-711 or as otherwise required by state law.

Source: Laws 1993, LB 431, § 4.

71-3408 Chairperson; duties.

The chairperson of the team shall:

(1) Have the necessary information from investigative reports, medical records, coroner's reports, autopsy reports, and other relevant items made available to the team;

(2) Ensure timely notification of the team members of an upcoming meeting;

(3) Chair meetings of the team;

(4) Ensure that all team reporting and data-collection requirements are met;

(5) Ensure identification of strategies to prevent child deaths;

(6) Oversee adherence to the review process established by sections 71-3404 to 71-3411; and

(7) Perform such other duties as the team deems appropriate.

Source: Laws 1993, LB 431, § 5.

71-3409 Review of child deaths; phases.

(1) The team shall review all child deaths occurring on or after January 1, 1993. The review process shall be conducted in three phases.

(2) Phase one shall be conducted by the core members. The core members shall review the death certificate, birth certificate, coroner's report or autopsy report if done, and indicators of child or family involvement with the Department of Health and Human Services. The core members shall classify the nature of the death, whether accidental, homicide, suicide, undetermined, or natural causes, determine the completeness of the death certificate, and identify discrepancies and inconsistencies. The core members may select cases from phase one for review in phase two.

(3) Phase two shall be completed by the core members and shall not be conducted on any child death under active investigation by a law enforcement agency or under criminal prosecution. The core members may seek additional records described in section 71-3410. The core members shall identify the preventability of death, the possibility of child abuse or neglect, the medical care issues of access and adequacy, and the nature and extent of interagency communication. The core members may select cases from phase two for review by the team in phase three.

(4) Phase three shall be a review by the team of those cases selected by the core members for further discussion, review, and analysis.

Source: Laws 1993, LB 431, § 6; Laws 1996, LB 1044, § 649.

71-3410 Provision of information and records; subpoenas.

Upon request the team shall be immediately provided:

(1) Information and records maintained by a provider of medical, dental, prenatal, and mental health care, including medical reports, autopsy reports, and emergency and paramedic records; and

(2) All information and records maintained by any state, county, or local government agency, including, but not limited to, birth and death certificates, law enforcement investigative data and reports, coroner investigative data and reports, parole and probation information and records, and information and records of any social services agency that provided services to the child or the child's family.

The Department of Health and Human Services shall have the authority to issue subpoenas to compel production of any of the records and information specified in subdivisions (1) and (2) of this section, except records and information on any child death under active investigation by a law enforcement agency or which is at the time the subject of a criminal prosecution, and shall provide such records and information to the team.

Source: Laws 1993, LB 431, § 7; Laws 1996, LB 1044, § 650; Laws 1998, LB 1073, § 126; Laws 2007, LB296, § 564.

71-3411 Information and records; confidentiality; use prohibited.

(1) All information and records acquired by the team in the exercise of its purposes and duties pursuant to sections 71-3404 to 71-3411 shall be confidential and exempt from disclosure and may only be disclosed as necessary to carry out the team's purposes and duties. Statistical compilations of data made by the team which do not contain any information that would permit the identification of any person to be ascertained shall be public records.

(2) Except as necessary to carry out a team's purposes and duties, members of a team and persons attending a team meeting may not disclose what transpired at a meeting and shall not disclose any information the disclosure of which is prohibited by this section.

(3) Members of a team and persons attending a team meeting shall not testify in any civil, administrative, licensure, or criminal proceeding, including depositions, regarding information reviewed in or opinions formed as a result of a team meeting. This subsection shall not be construed to prevent a person from testifying to information obtained independently of the team or which is public information.

(4) Information, documents, and records of the team shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that information, documents, and records otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because they were presented during proceedings of the team or are maintained by the team.

Source: Laws 1993, LB 431, § 8.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.
Medical Radiography Practice Act, see section 38-1901.
Radon, credentialing provisions, see sections 38-1,119 to 38-1,123.
Regional Radiation Health Center, see section 85-805 et seq.
State Board of Health, duties, see section 71-2610.01.
Uniform Credentialing Act, see section 38-101.

(a) RADIATION CONTROL ACT

Section
71-3501. Public policy.
71-3502. Purpose of act; programs provided.
71-3502.01. Radon mitigation program; authorized.
71-3503. Terms, defined.
71-3504. Radiation control activities; Department of Health and Human Services; powers and duties.

(a) RADIATION CONTROL ACT

71-3501 Public policy.

It is the policy of the State of Nebraska in furtherance of its responsibility to protect occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of radiation so as to provide for:

(a) Compatibility and equivalency with the standards and regulatory programs of the federal government;

(b) A single effective system of regulation within the state; and

(c) A system consonant insofar as possible with those of other states;

(2) To institute and maintain a program to permit development and utilization of sources of radiation for peaceful purposes consistent with the protection of occupational and public health and safety and the environment;

(3) To provide for the availability of capacity either within or outside the state for the management of low-level radioactive waste generated within the state, except for waste generated as a result of defense or federal research and development activities, and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis; and

(4) To maximize the protection practicable for the citizens of Nebraska from radon or its decay products by establishing requirements for (a) appropriate qualifications for persons providing measurement and mitigation services of radon or its decay products and (b) radon mitigation system installations.

Source: Laws 1963, c. 406, § 1, p. 1296; Laws 1975, LB 157, § 1; Laws 1984, LB 716, § 1; Laws 1987, LB 390, § 2; Laws 1993, LB 536, § 82; Laws 1995, LB 406, § 40; Laws 2007, LB463, § 1207.

71-3502 Purpose of act; programs provided.

It is the purpose of the Radiation Control Act to effectuate the policies set forth in section 71-3501 by providing for:

(1) A program of effective regulation of sources of radiation for the protection of occupational and public health and safety and the environment;

(2) A program to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to sources of radiation; and

(4) A program to permit maximum utilization of sources of radiation consistent with the health and safety of the public.

Source: Laws 1963, c. 406, § 2, p. 1296; Laws 1975, LB 157, § 2; Laws 1984, LB 716, § 2; Laws 1987, LB 390, § 3; Laws 1995, LB 406, § 41; Laws 2007, LB463, § 1208.

71-3502.01 Radon mitigation program; authorized.

The department may establish an alternative maximum contaminant level for radon in drinking water by establishing a multimedia radon mitigation pro-

gram as provided under federal law which may include public education, testing, training, technical assistance, remediation grants, and loan or incentive programs. The purpose of the radon mitigation program shall be to achieve health risk reduction benefits equal to or greater than the health risk reduction benefits that would be achieved if each public water system in the state complied with the maximum contaminant level of three hundred picocuries per liter.

Source: Laws 2001, LB 668, § 1; Laws 2007, LB296, § 565.

71-3503 Terms, defined.

For purposes of the Radiation Control Act, unless the context otherwise requires:

(1) Radiation means ionizing radiation and nonionizing radiation as follows:

(a) Ionizing radiation means gamma rays, X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or nuclear particles or rays but does not include sound or radio waves or visible, infrared, or ultraviolet light; and

(b) Nonionizing radiation means (i) any electromagnetic radiation which can be generated during the operations of electronic products to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment, other than ionizing electromagnetic radiation, and (ii) any sonic, ultrasonic, or infrasonic waves which are emitted from an electronic product as a result of the operation of an electronic circuit in such product and to such energy density levels as to present a biological hazard to occupational and public health and safety and the environment;

(2) Radioactive material means any material, whether solid, liquid, or gas, which emits ionizing radiation spontaneously. Radioactive material includes, but is not limited to, accelerator-produced material, byproduct material, naturally occurring material, source material, and special nuclear material;

(3) Radiation-generating equipment means any manufactured product or device, component part of such a product or device, or machine or system which during operation can generate or emit radiation except devices which emit radiation only from radioactive material;

(4) Sources of radiation means any radioactive material, any radiation-generating equipment, or any device or equipment emitting or capable of emitting radiation or radioactive material;

(5) Undesirable radiation means radiation in such quantity and under such circumstances as determined from time to time by rules and regulations adopted and promulgated by the department;

(6) Person means any individual, corporation, partnership, limited liability company, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing;

(7) Registration means registration with the department pursuant to the Radiation Control Act;

(8) Department means the Department of Health and Human Services;

(9) Administrator means the administrator of radiation control designated pursuant to section 71-3504;

(10) Electronic product means any manufactured product, device, assembly, or assemblies of such products or devices which, during operation in an electronic circuit, can generate or emit a physical field of radiation;

(11) License means:

(a) A general license issued pursuant to rules and regulations adopted and promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing radioactive materials;

(b) A specific license, issued to a named person upon application filed with the department pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to the act, to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing radioactive materials; or

(c) A license issued to a radon measurement specialist, radon mitigation specialist, radon measurement business, or radon mitigation business;

(12) Byproduct material means:

(a) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by such solution extraction operations do not constitute byproduct material;

(13) Source material means:

(a) Uranium or thorium or any combination thereof in any physical or chemical form; or

(b) Ores which contain by weight one-twentieth of one percent or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material;

(14) Special nuclear material means:

(a) Plutonium, uranium 233, or uranium enriched in the isotope 233 or in the isotope 235 and any other material that the United States Nuclear Regulatory Commission pursuant to the provisions of section 51 of the federal Atomic Energy Act of 1954, as amended, determines to be special nuclear material but does not include source material; or

(b) Any material artificially enriched by any material listed in subdivision (14)(a) of this section but does not include source material;

(15) Users of sources of radiation means:

(a) Physicians using radioactive material or radiation-generating equipment for human use;

(b) Natural persons using radioactive material or radiation-generating equipment for education, research, or development purposes;

(c) Natural persons using radioactive material or radiation-generating equipment for manufacture or distribution purposes;

(d) Natural persons using radioactive material or radiation-generating equipment for industrial purposes; and

(e) Natural persons using radioactive material or radiation-generating equipment for any other similar purpose;

(16) Civil penalty means any monetary penalty levied on a licensee or registrant because of violations of statutes, rules, regulations, licenses, or registration certificates but does not include criminal penalties;

(17) Closure means all activities performed at a waste handling, processing, management, or disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance, and monitoring are necessary at the site following termination of licensed operation;

(18) Decommissioning means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for postoperational care;

(19) Disposal means the permanent isolation of low-level radioactive waste pursuant to the Radiation Control Act and rules and regulations adopted and promulgated pursuant to such act;

(20) Generate means to produce low-level radioactive waste when used in relation to low-level radioactive waste;

(21) High-level radioactive waste means:

(a) Irradiated reactor fuel;

(b) Liquid wastes resulting from the operation of the first cycle solvent extraction system or equivalent and the concentrated wastes from subsequent extraction cycles or the equivalent in a facility for reprocessing irradiated reactor fuel; and

(c) Solids into which such liquid wastes have been converted;

(22) Low-level radioactive waste means radioactive waste not defined as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in subdivision (12)(b) of this section;

(23) Management of low-level radioactive waste means the handling, processing, storage, reduction in volume, disposal, or isolation of such waste from the biosphere in any manner;

(24) Source material mill tailings or mill tailings means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes, but not including underground ore bodies depleted by such solution extraction processes;

(25) Source material milling means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material and source material mill tailings;

(26) Spent nuclear fuel means irradiated nuclear fuel that has undergone at least one year of decay since being used as a source of energy in a power

reactor. Spent nuclear fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies;

(27) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram;

(28) Licensed practitioner means a person licensed to practice medicine, dentistry, podiatry, chiropractic, osteopathic medicine and surgery, or as an osteopathic physician;

(29) X-ray system means an assemblage of components for the controlled production of X-rays, including, but not limited to, an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system;

(30) Licensed facility operator means any person or entity who has obtained a license under the Low-Level Radioactive Waste Disposal Act to operate a facility, including any person or entity to whom an assignment of a license is approved by the Department of Environmental Quality; and

(31) Deliberate misconduct means an intentional act or omission by a person that (a) would intentionally cause a licensee, registrant, or applicant for a license or registration to be in violation of any rule, regulation, or order of or any term, condition, or limitation of any license or registration issued by the department under the Radiation Control Act or (b) constitutes an intentional violation of a requirement, procedure, instruction, contract, purchase order, or policy under the Radiation Control Act by a licensee, a registrant, an applicant for a license or registration, or a contractor or subcontractor of a licensee, registrant, or applicant for a license or registration.

Source: Laws 1963, c. 406, § 3, p. 1297; Laws 1975, LB 157, § 3; Laws 1978, LB 814, § 3; Laws 1984, LB 716, § 3; Laws 1987, LB 390, § 4; Laws 1989, LB 342, § 32; Laws 1990, LB 1064, § 17; Laws 1993, LB 121, § 434; Laws 1993, LB 536, § 83; Laws 1995, LB 406, § 42; Laws 1996, LB 1044, § 651; Laws 1996, LB 1201, § 1; Laws 2002, LB 93, § 12; Laws 2002, LB 1021, § 71; Laws 2005, LB 301, § 42; Laws 2006, LB 994, § 103; Laws 2007, LB296 § 566; Laws 2007, LB463, § 1209; Laws 2008, LB928, § 23.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

71-3504 Radiation control activities; Department of Health and Human Services; powers and duties.

(1) The Department of Health and Human Services shall coordinate radiation control activities and may designate an administrator of radiation control. The administrator shall:

(a) Advise the Governor and agencies of the state on matters relating to radiation; and

(b) Coordinate regulatory activities of the state relating to radiation, including cooperation with other states and the federal government.

(2) The administrator shall:

(a) Review before and after the holding of any public hearing required under the Administrative Procedure Act, prior to promulgation, the proposed rules and regulations of all agencies of the state relating to use and control of radiation to assure that such rules and regulations are consistent with rules and regulations of other agencies of the state;

(b) When he or she determines that proposed rules or regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state, make an effort to resolve such inconsistencies. Upon notification that such inconsistencies have not been resolved, the Governor may, after consultation with the department, find that the proposed rules and regulations or parts thereof are inconsistent with rules and regulations of other agencies of the state or the federal government and may issue an order to that effect, in which event the proposed rules and regulations or parts thereof shall not become effective. The Governor may, in the alternative, upon a similar determination, direct the appropriate agency or agencies to amend or repeal existing rules and regulations to achieve consistency with the proposed rules and regulations;

(c) Advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation; and

(d) Collect and disseminate information relating to the control of sources of radiation and maintain (i) a file of all registrants, license applications, issuances, denials, amendments, transfers, renewals, modifications, inspections, recommendations pertaining to radiation, suspensions, and revocations, (ii) a file of registrants possessing or using sources of radiation requiring registration under the Radiation Control Act and any administrative or judicial action pertaining to such registration, and (iii) a file of all rules and regulations relating to the regulation of sources of radiation, pending or promulgated, and proceedings on such rules and regulations thereon.

(3) The several agencies of the state and political subdivisions shall keep the administrator fully and currently informed as to their activities relating to development of new uses and regulation of sources of radiation.

Source: Laws 1963, c. 406, § 4, p. 1298; Laws 1975, LB 157, § 4; Laws 1987, LB 390, § 5; Laws 1996, LB 1044, § 652; Laws 2002, LB 93, § 13; Laws 2007, LB296, § 567.

Cross References

Administrative Procedure Act, see section 84-920.

71-3505 Department; powers and duties.

Matters relative to radiation as they relate to occupational and public health and safety and the environment shall be a responsibility of the department. The department shall:

(1) Develop comprehensive policies and programs for the evaluation and determination of undesirable radiation associated with the production, use, storage, or disposal of radiation sources and formulate, adopt, promulgate, and repeal rules and regulations which may provide (a) for registration or licensure under section 71-3507 or 71-3509, (b) for registration or licensure of (i) any other source of radiation, (ii) persons providing services for collection, detection, measurement, or monitoring of sources of radiation, including, but not limited to, radon and its decay products, (iii) persons providing services to

reduce the effects of sources of radiation, and (iv) persons practicing industrial radiography, and (c) for fingerprinting and a federal criminal background check on persons with unescorted access to radionuclides of concern, as specified by rule, regulation, or order so as to reasonably protect occupational and public health and safety and the environment in a manner compatible with regulatory programs of the federal government. The department for identical purposes may also adopt and promulgate rules and regulations for the issuance of licenses, either general or specific, to persons for the purpose of using, manufacturing, producing, transporting, transferring, receiving, acquiring, owning, or possessing any radioactive material. Such rules and regulations may prohibit the use of radiation for uses found by the department to be detrimental to occupational and public health or safety or the environment and shall carry out the purposes and policies set out in sections 71-3501 and 71-3502. Such rules and regulations shall not prohibit or limit the kind or amount of radiation purposely prescribed for or administered to a patient by doctors of medicine and surgery, dentistry, osteopathic medicine, chiropractic, podiatry, and veterinary medicine, while engaged in the lawful practice of such profession, or administered by other professional personnel, such as allied health personnel, medical radiographers, limited radiographers, nurses, and laboratory workers, acting under the supervision of a licensed practitioner. Violation of rules and regulations adopted and promulgated by the department pursuant to the Radiation Control Act shall be due cause for the suspension, revocation, or limitation of a license issued by the department. Any licensee may request a hearing before the department on the issue of such suspension, revocation, or limitation. Procedures for notice and opportunity for a hearing before the department shall be pursuant to the Administrative Procedure Act. The decision of the department may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act;

(2) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private;

(3) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation;

(4) Collect and disseminate health education information relating to radiation protection;

(5) Make its facilities available so that any person or any agency may request the department to review and comment on plans and specifications of installations submitted by the person or agency with respect to matters of protection and safety for the control of undesirable radiation;

(6) Be empowered to inspect radiation sources and their shieldings and surroundings for the determination of any possible undesirable radiation or violations of rules and regulations adopted and promulgated by the department and provide the owner, user, or operator with a report of any known or suspected deficiencies; and

(7) Collect a fee for emergency response or environmental surveillance, or both, offsite from each nuclear power plant equal to the cost of completing the emergency response or environmental surveillance and any associated report. In no event shall the fee for any nuclear power plant exceed the lesser of the actual costs of such activities or fifty-three thousand dollars per annum. Commencing July 1, 1997, the accounting division of the Department of

Administrative Services shall recommend an inflationary adjustment equivalent which shall be based upon the Consumer Price Index for All Urban Consumers of the United States Department of Labor, Bureau of Labor Statistics, and shall not exceed five percent per annum. Such adjustment shall be applied to the annual fee for nuclear power plants. The fee collected shall be credited to the Health and Human Services Cash Fund. This fee shall be used solely for the purpose of defraying the direct costs of the emergency response and environmental surveillance at Cooper Nuclear Station and Fort Calhoun Station conducted by the department. The department may charge additional fees when mutually agreed upon for services, training, or equipment that are a part of or in addition to matters in this section.

Source: Laws 1963, c. 406, § 5, p. 1299; Laws 1969, c. 577, § 1, p. 2324; Laws 1975, LB 157, § 5; Laws 1978, LB 814, § 4; Laws 1987, LB 390, § 6; Laws 1988, LB 352, § 131; Laws 1989, LB 342, § 33; Laws 1990, LB 1064, § 18; Laws 1995, LB 406, § 43; Laws 1996, LB 1044, § 653; Laws 1997, LB 658, § 13; Laws 2000, LB 1115, § 72; Laws 2002, LB 93, § 14; Laws 2007, LB296, § 568; Laws 2007, LB463, § 1210; Laws 2008, LB928, § 24.

Cross References

Administrative Procedure Act, see section 84-920.

71-3506 Repealed. Laws 2002, LB 93, § 27.

71-3507 Licenses or registration; rules and regulations; exemptions; reciprocity; department; right of entry; surveys and inspections.

(1) The department shall adopt and promulgate rules and regulations for the issuance, amendment, suspension, and revocation of general and specific licenses. Such licenses shall be for byproduct material, source material, special nuclear material, and radioactive material not under the authority of the federal Nuclear Regulatory Commission and for devices or equipment utilizing such materials. The rules and regulations shall provide:

(a) For written applications for a specific license which include the technical, financial, and other qualifications determined by the department to be reasonable and necessary to protect occupational and public health and safety and the environment;

(b) For additional written statements and inspections, as required by the department, at any time after filing an application for a specific license and before the expiration of the license to determine whether the license should be issued, amended, suspended, or revoked;

(c) That all applications and statements be signed by the applicant or licensee;

(d) The form, terms, and conditions of general and specific licenses;

(e) That no license or right to possess or utilize sources of radiation granted by a license shall be assigned or in any manner disposed of without the written consent of the department; and

(f) That the terms and conditions of all licenses are subject to amendment by rules, regulations, or orders issued by the department.

(2) The department may require registration or licensing of radioactive material not enumerated in subsection (1) of this section in order to maintain compatibility and equivalency with the standards and regulatory programs of

the federal government or to protect the occupational and public health and safety and the environment.

(3)(a) The department shall require licensure of persons providing measurement and mitigation services of radon or its decay products in order to protect the occupational and public health and safety and the environment.

(b) The department shall adopt and promulgate rules and regulations establishing education, experience, training, examination, and continuing competency requirements for radon measurement specialists and radon mitigation specialists. Application for such licenses shall be made as provided in the Uniform Credentialing Act. Such persons shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to disciplinary action pursuant to section 71-3517. Continuing competency requirements may include, but not be limited to, one or more of the continuing competency activities listed in section 38-145. Any radon measurement technician license issued prior to December 1, 2008, shall remain valid as a radon measurement specialist license on and after such date until the date such radon measurement technician license would have expired. Such radon measurement specialist license shall be subject to rules and regulations adopted and promulgated by the department.

(c) The department shall adopt and promulgate rules and regulations establishing staffing, proficiency, quality control, reporting, worker health and safety, equipment, and record-keeping requirements for radon measurement businesses and radon mitigation businesses and mitigation system installation requirements for radon mitigation businesses.

(4) The department may exempt certain sources of radiation or kinds of uses or users from licensing or registration requirements established under the Radiation Control Act when the department finds that the exemption will not constitute a significant risk to occupational and public health and safety and the environment.

(5) The department may provide by rule and regulation for the recognition of other state or federal licenses compatible and equivalent with the standards established by the department for Nebraska licensees.

(6) The department may accept accreditation for an industrial radiographer by a recognized independent accreditation body, a public agency, or the federal Nuclear Regulatory Commission, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the industrial radiographer complies with the rules and regulations adopted and promulgated pursuant to the act. The department may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that meet this standard.

(7) The department may enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with the act and rules and regulations adopted and promulgated pursuant to the act, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

(8) The department shall cause to be registered with the department such sources of radiation as the department determines to be reasonably necessary to protect occupational and public health and safety and the environment as follows:

(a) The department shall, by public notice, establish a date on or before which date such sources of radiation shall be registered with the department. An application for registration shall be either in writing or by electronic means and shall state such information as the department by rules or regulations may determine to be necessary and reasonable to protect occupational and public health and safety and the environment;

(b) Registration of sources of radiation shall be an initial registration with appropriate notification to the department in the case of alteration of equipment, acquisition of new sources of radiation, or the transfer, loss, or destruction of sources of radiation and shall include the registration of persons installing or servicing sources of radiation;

(c) Failure to register or reregister sources of radiation in accordance with rules and regulations adopted and promulgated by the department shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars; and

(d) The department may provide by rule and regulation for reregistration of sources of radiation.

(9) The results of any surveys or inspections of sources of radiation conducted by the department shall be public records subject to sections 84-712 to 84-712.09. In addition, the following information shall be deemed confidential:

(a) The names of individuals in dosimetry reports;

(b) Emergency response procedures which would present a clear threat to security or disclose names of individuals; and

(c) Any other information that is likely to present a clear threat to the security of radioactive material. The department shall make such reports of results of surveys or inspections available to the owner or operator of the source of radiation together with any recommendations of the department regarding deficiencies noted.

(10) The department shall have the right to survey or inspect again any source of radiation previously surveyed without limitation of the number of surveys or inspections conducted on a given source of radiation.

(11) The department may enter into contracts with persons or corporations to perform the inspection of X-ray radiation-generating equipment or devices which emit radiation from radioactive materials and to aid the department in the administration of the act.

Source: Laws 1963, c. 406, § 7, p. 1301; Laws 1975, LB 157, § 7; Laws 1978, LB 814, § 5; Laws 1987, LB 390, § 7; Laws 1990, LB 1064, § 19; Laws 1993, LB 536, § 84; Laws 1995, LB 406, § 44; Laws 1999, LB 800, § 11; Laws 2000, LB 1115, § 73; Laws 2002, LB 1021, § 72; Laws 2007, LB463, § 1211; Laws 2008, LB928, § 26.

Cross References

Uniform Credentialing Act, see section 38-101.

71-3508 Radiation; possession or use; records; contents; user of sources of radiation; qualifications; exemptions.

(1) The department shall require each person who possesses or uses a source of radiation to maintain records relating to its receipt, storage, transfer, or disposal and such other records as the department may require subject to such

exemptions as may be provided by rules or regulations. These records shall be made available for inspection by or copies shall be submitted to the department on request.

(2) The department shall require each person who possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules and regulations of the department. Copies of these records and those required to be kept by subsection (1) of this section shall be submitted to the department on request. Any person possessing or using a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of each employee's personal exposure record at any time such employee has received exposure in excess of the amount specified in the rules and regulations of the department and upon termination of employment. A copy of the annual exposure record shall be furnished to the employee as required under rules and regulations adopted under the Radiation Control Act.

(3) The department may adopt and promulgate rules and regulations establishing qualifications pertaining to the education, knowledge of radiation safety procedures, training, experience, utilization, facilities, equipment, and radiation protection program that an individual user of sources of radiation shall possess prior to using any source of radiation or radiation-generating equipment. Individuals who are currently licensed in the State of Nebraska as podiatrists, chiropractors, dentists, physicians and surgeons, osteopathic physicians, physician assistants, and veterinarians shall be exempt from the rules and regulations of the department pertaining to the qualifications of persons for the use of X-ray radiation-generating equipment operated for diagnostic purposes.

Source: Laws 1963, c. 406, § 8, p. 1303; Laws 1975, LB 157, § 8; Laws 1978, LB 814, § 6; Laws 1980, LB 816, § 1; Laws 1987, LB 390, § 8; Laws 1989, LB 342, § 35; Laws 1995, LB 406, § 45; Laws 1996, LB 1108, § 21.

71-3508.01 Radioactive materials license; terms and conditions; termination of license; transfer of land; effect; department; powers and duties.

(1) Any radioactive materials license issued or renewed after August 30, 1987, for any activity which results in the production of byproduct material as defined in subdivision (12)(b) of section 71-3503 shall contain such terms and conditions as the department determines to be necessary to assure that prior to termination of such license:

(a) The licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the department which shall be equivalent, to the extent practicable, or more stringent than those of the federal Nuclear Regulatory Commission for sites (i) at which ores are processed primarily for their source material content and (ii) at which such byproduct material or mill tailings are deposited; and

(b) Ownership of any disposal site and such byproduct material or mill tailings which resulted from the licensed activity will, subject to subsection (2) of this section, be transferred to (i) the United States or (ii) this state if the state exercises the option to acquire land used for the disposal of such byproduct material or mill tailings. Any license which is in effect on August 30, 1987, and which is subsequently terminated without renewal shall comply with subdivisions (1)(a) and (b) of this section upon termination.

(2)(a) The department shall require by rule, regulation, or order that prior to the termination of any license which is issued after August 30, 1987, title to the land, including any interests therein, other than land held in trust by the United States for any Indian tribe or owned by an Indian tribe subject to a restriction against alienation imposed by the United States or land already owned by the United States or by the state, which is used pursuant to such license for the disposal of byproduct material or source material mill tailings will be transferred to (i) the United States or (ii) this state, unless the federal Nuclear Regulatory Commission determines prior to such termination that transfer of title to such land and such byproduct material or mill tailings is not necessary or desirable to protect the occupational and public health and safety and the environment or to minimize danger to life or property.

(b) If transfer to the state of title to such byproduct material or mill tailings and land is required, the state may assume title, following the federal Nuclear Regulatory Commission's determination that the licensee has complied with applicable standards and requirements under the license, and the department shall maintain the byproduct material or mill tailings and land in such manner as will protect the occupational and public health and safety and the environment.

(c) The department may undertake such monitoring, maintenance, and emergency measures as are necessary to protect the occupational and public health and safety and the environment for those materials and property to which the state has assumed title pursuant to this section.

(d) The transfer of title to the United States or this state shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(e) Title transferred pursuant to this section shall be transferred without cost to the United States or this state other than the administrative and legal costs incurred in carrying out such transfer.

(3) In the licensing and regulation of byproduct material and source material mill tailings or of any activity which results in the production of byproduct material or mill tailings, the department shall require compliance with applicable standards adopted and promulgated by the department which are equivalent, to the extent practicable, or more stringent than standards adopted and enforced by the federal Nuclear Regulatory Commission for the same purpose, including requirements and standards promulgated by the federal Environmental Protection Agency.

Source: Laws 1987, LB 390, § 9; Laws 2002, LB 93, § 15.

71-3508.02 Acquisition of sites; use; management.

(1) Lands and appurtenances which are used for the management of low-level radioactive waste shall be acquired and held in fee simple absolute by the licensed facility operator so long as such ownership does not preclude licensure or operation of the facility under federal law and until title to the land and appurtenances is transferred to the state pursuant to subsection (1) of section 81-15,102. Such lands and appurtenances shall be used exclusively for the disposal of low-level radioactive waste until the department determines that such exclusive use is not required to protect the occupational and public health and safety or the environment. Before such site is leased for other use, the

radioactive waste history of the site shall be recorded in the permanent land records of the site.

(2) The department may contract with third parties for management of a low-level radioactive waste site. A contractor shall be subject to the surety and long-term care funding provisions of section 71-3508.04 and to appropriate licensing by the federal Nuclear Regulatory Commission or by the department.

Source: Laws 1987, LB 390, § 10; Laws 1994, LB 72, § 1; Laws 1996, LB 1201, § 2.

71-3508.03 Fees; costs; use; exemptions; failure to pay; effect.

(1) The department shall establish by rule and regulation annual fees for the radioactive materials licenses, for inspections of radioactive materials, for the registration and inspection of radiation-generating equipment and other sources of radiation, and for radon measurement and mitigation business licenses and inspections of radon mitigation systems installations under the Radiation Control Act. The annual fee for registration and inspection of X-ray radiation generating equipment used to diagnose conditions in humans or animals shall not exceed four hundred dollars per X-ray machine. The department shall also establish by rule and regulation additional fees for environmental surveillance activities performed by the department to assess the radiological impact of activities conducted by licensees and registrants. Such activities shall not duplicate surveillance programs approved by the federal Nuclear Regulatory Commission and conducted by entities licensed by such commission. No fee shall exceed the actual cost to the department for administering the act. The fees collected shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund and shall be used solely for the purpose of defraying the direct and indirect costs of administering the act. The department shall collect such fees.

(2) The department may, upon application by an interested person or on its own initiative, grant such exemptions from the requirements of this section as it determines are in the public interest. Applications for exemption under this subsection may include, but shall not be limited to, the use of licensed materials for educational or noncommercial displays or scientific collections.

(3) When a registrant or licensee fails to pay the applicable fee, the department may suspend or revoke the registration or license or may issue an appropriate order.

(4) The department shall establish and collect fees for licenses for individuals engaged in radon detection, measurement, and mitigation as provided in sections 38-151 to 38-157.

Source: Laws 1987, LB 390, § 11; Laws 1990, LB 1064, § 20; Laws 1993, LB 536, § 85; Laws 1996, LB 1044, § 654; Laws 2002, LB 1021, § 73; Laws 2003, LB 242, § 114; Laws 2007, LB296 § 569; Laws 2007, LB463, § 1212; Laws 2008, LB928, § 27.

71-3508.04 Licensee; surety; long-term site surveillance and care; funds; disposition; powers and duties.

(1) For licensed activities involving source material milling, source material mill tailings, and management of low-level radioactive waste, the department shall, and for other classes of licensed activities the department may, adopt and

promulgate rules and regulations which establish standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the licensure, regulation, decontamination, closure, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with such licensed activity in case the licensee should default for any reason in performing such requirements. All sureties required which are forfeited shall be paid to the department and remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money in such fund remitted pursuant to this subsection shall be expended by the department as necessary to complete the closure and reclamation requirements and shall not be used for normal operating expenses of the department.

(2) For licensed activities involving the disposal of source material mill tailings and management of low-level radioactive waste, the department shall, and for other classes of licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease the department may, adopt and promulgate rules and regulations which establish standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care. All such funds collected from licensees shall be paid to the department and remitted to the State Treasurer for credit to the fund. All funds accrued as interest on money credited to the fund pursuant to this subsection may be expended by the department for the continuing long-term surveillance, maintenance, and other care of facilities from which such funds are collected as necessary for protection of the occupational and public health and safety and the environment. If title to and custody of any radioactive material and its disposal site are transferred to the United States upon termination of any license for which funds have been collected for such long-term care, the collected funds and interest accrued thereon shall be transferred to the United States.

(3) The sureties or other financial arrangements and funds required by this section shall be established in amounts sufficient to ensure compliance with standards, if any, established by the department pertaining to licensure, regulation, closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(4) To provide for the proper care and surveillance of sites subject to subsection (2) of this section which are not subject to section 71-3508.01 or 71-3508.02, the state may acquire by gift or transfer from another governmental agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer shall be subject to approval and acceptance by the Legislature.

(5) The department may by contract, agreement, lease, or license with any person, including another state agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(6) If a person licensed by any governmental agency other than the department desires to transfer a site to the state for the purpose of administering or providing long-term care, a lump-sum deposit shall be made to the department and remitted to the State Treasurer for credit to the Health and Human

Services Cash Fund. The amount of such deposit shall be determined by the department taking into account the factors stated in subsections (1) and (2) of this section.

Source: Laws 1987, LB 390, § 12; Laws 1991, LB 703, § 37; Laws 1996, LB 1044, § 655; Laws 2007, LB296, § 570.

71-3509 Sources of radiation; agreements with federal agency; Governor; license; expiration.

(1) The Governor, on behalf of this state, may enter into agreements with the federal Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274b, as amended, providing for discontinuance of certain of such commission's licensing and related regulatory authority with respect to byproduct material, source material, and special nuclear material and the assumption of regulatory authority for such materials by this state.

(2) The department may, upon discontinuance of certain of such commission's licensing and related regulatory authority with respect to byproduct material, source material, and special nuclear material and the assumption of regulatory authority for such materials by the state, cause to be licensed by the department such materials over which the state has assumed licensing and related regulatory authority under the terms of the agreement authorized in subsection (1) of this section.

(3) Any person who, on the effective date of an agreement under subsection (1) of this section, possesses a license issued by the federal Nuclear Regulatory Commission for radioactive material subject to the agreement shall be deemed to possess a license like those issued under the Radiation Control Act. Such license shall expire either ninety days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the federal Nuclear Regulatory Commission license, whichever is the earlier.

Source: Laws 1963, c. 406, § 9, p. 1303; Laws 1975, LB 157, § 9; Laws 1987, LB 390, § 13.

71-3510 Federal government; other states; agreements; control of sources of radiation; department; powers.

(1) The department may enter into an agreement or agreements with the federal Nuclear Regulatory Commission pursuant to the federal Atomic Energy Act of 1954, section 274i, as amended, other federal governmental agencies as authorized by law, other states, or interstate agencies whereby this state will perform on a cooperative basis with the federal Nuclear Regulatory Commission, other federal governmental agencies, other states, or interstate agencies inspections or other functions relating to control of sources of radiation.

(2) The department may institute training programs for the purpose of qualifying personnel to carry out the Radiation Control Act and may make such personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of such act.

Source: Laws 1963, c. 406, § 10, p. 1304; Laws 1975, LB 157, § 10; Laws 1987, LB 390, § 14.

71-3511 Radiation; ordinance, resolution, or regulation; superseded; when.

Any ordinance, resolution, or regulation, now or hereafter in effect, of the governing body of a municipality, county, or state agency relating to sources of radiation that is inconsistent with the Radiation Control Act, amendments thereto, or rules and regulations adopted and promulgated pursuant to the act is superseded by the act.

Source: Laws 1963, c. 406, § 11, p. 1304; Laws 1975, LB 157, § 11; Laws 1984, LB 716, § 4; Laws 1987, LB 390, § 15.

71-3512 Transferred to section 38-1914.

71-3513 Rules and regulations; licensure; department; powers; duties; appeal.

(1) In any proceeding for the issuance or modification of rules or regulations relating to control of sources of radiation, the department shall provide an opportunity for public participation through written comments and a public hearing.

(2) In any proceeding for the denial of an application for a license or for the amendment, suspension, or revocation of a license, the department shall provide the applicant or licensee an opportunity for a hearing on the record.

(3) In any proceeding for licensing ores processed primarily for their source material content and management of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall provide:

(a) An opportunity, after public notice, for written comments and a public hearing with a transcript;

(b) An opportunity for cross-examination; and

(c) A written determination of the action to be taken which is based upon findings included in the determination and upon evidence presented during the public comment period.

(4) In any proceeding for licensing ores processed primarily for their source material content and disposal of byproduct material and source material mill tailings, or for licensing management of low-level radioactive waste, the department shall prepare, for each licensed activity which has a significant impact on the occupational or public health and safety or the environment, a written analysis of the impact of such licensed activity. The analysis shall be available to the public before the commencement of the hearing and shall include:

(a) An assessment of the radiological and nonradiological impacts to the public health;

(b) An assessment of any impact on any waterway and ground water;

(c) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted; and

(d) Consideration of the long-term impacts, including decommissioning, decontamination, and reclamation of facilities and sites associated with the licensed activities and management of any radioactive materials which will remain on the site after such decommissioning, decontamination, and reclamation.

(5) The department shall prohibit any major construction with respect to any activity for which an environmental impact analysis is required by this section prior to completion of such analysis.

(6) Whenever the department finds that an emergency exists with respect to radiation requiring immediate action to protect occupational or public health and safety or the environment, the department may, without notice, hearing, or submission to the administrator, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provisions of the Radiation Control Act, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply immediately, but on application to the department shall be afforded a hearing not less than fifteen days and not more than thirty days after filing of the application. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within thirty days after such hearing, and the department shall mail the applicant a copy of its findings of fact and determination.

(7) Any final department action or order entered pursuant to subsection (1), (2), (3), or (6) of this section may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1963, c. 406, § 13, p. 1305; Laws 1975, LB 157, § 12; Laws 1987, LB 390, § 16; Laws 1988, LB 352, § 132; Laws 2007, LB296, § 571.

Cross References

Administrative Procedure Act, see section 84-920.

71-3513.01 Fingerprinting and federal criminal background check; rules and regulations; department; duties.

The department shall adopt and promulgate rules and regulations providing for fingerprinting and a federal criminal background check on persons with unescorted access to radionuclides of concern, as specified by rule, regulation, or order so as to reasonably protect occupational and public health and safety and the environment in a manner compatible with regulatory programs of the federal government.

This section terminates on December 1, 2008.

Source: Laws 2008, LB928, § 25.
Termination date December 1, 2008.

71-3514 Violation of act; remedies.

Whenever, in the judgment of the department, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to the act, the Attorney General or any county attorney may make application to the district court for an order enjoining such acts or practices or for an order directing compliance, and upon a showing by the department that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

Source: Laws 1963, c. 406, § 14, p. 1305; Laws 1987, LB 390, § 17.

71-3514.01 Deliberate misconduct; intentional misinformation; prohibited.

(1) Any licensee, registrant, applicant for a license or registration, employee of a licensee or registrant, contractor or subcontractor of a licensee, registrant, or applicant for a license or registration, or employee of any contractor or subcontractor of a licensee, registrant, or applicant for a license or registration, who knowingly provides to any licensee, registrant, applicant, contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's, or applicant's activities covered by the Radiation Control Act, shall not (a) engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, registrant, or applicant to be in violation of any rule, regulation, or order or any term, condition, or limitation of any license or registration issued by the department or (b) intentionally submit to the department, a licensee, a registrant, an applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the department.

(2) Any person who violates this section is subject to section 71-3517.

Source: Laws 2002, LB 1021, § 74.

71-3515 Radiation; acts; registration or license required.

It shall be unlawful for any person to use, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless registered with or licensed by the department as required by the Medical Radiography Practice Act or section 71-3505, 71-3507, or 71-3509.

Source: Laws 1963, c. 406, § 15, p. 1306; Laws 1975, LB 157, § 13; Laws 1978, LB 814, § 7; Laws 1984, LB 716, § 5; Laws 1987, LB 390, § 18; Laws 2007, LB463, § 1213.

Cross References

Medical Radiography Practice Act, see section 38-1901.

71-3515.01 Transferred to section 38-1915.

71-3515.02 Transferred to section 38-1918.

71-3516 Emergency; impounding sources of radiation; department; powers.

(1) The department shall have the authority in the event of an emergency affecting occupational or public health and safety or the environment to impound or order the impounding of sources of radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of the Radiation Control Act or any rules or regulations issued pursuant to such act.

(2) Any source of radiation impounded by the department is declared to be a common nuisance and cannot be subject to a replevin action.

(3) Possession of an impounded source of radiation shall be determined by section 71-3516.01.

Source: Laws 1963, c. 406, § 16, p. 1306; Laws 1975, LB 157, § 14; Laws 1987, LB 390, § 19; Laws 2006, LB 994, § 106.

71-3516.01 Impounded source of radiation; disposition; procedure; expenses.

(1) The department shall keep any source of radiation impounded under section 71-3516 for as long as it is needed as evidence for any hearing.

(2) Prior to the issuance of an order of disposition for an impounded source of radiation, the department shall notify in writing any person, known by the department to claim an interest in the source of radiation, that the department intends to dispose of the source of radiation. Notice shall be served by personal service, by certified or registered mail to the last-known address of the person, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated.

(3) Within fifteen days after service of the notice under subsection (2) of this section, any person claiming an interest in the impounded source of radiation may request, in writing, a hearing before the department to determine possession of the source of radiation. The hearing shall be held in accordance with rules and regulations adopted and promulgated by the department. If the department determines that the person claiming an interest in the source of radiation has proven by a preponderance of the evidence that such person (a) had not used or intended to use the source of radiation in violation of the Radiation Control Act, (b) has an interest in the source of radiation acquired in good faith as an owner, a lien holder, or otherwise, and (c) has the authority under the act to possess such source of radiation, the department shall order that possession of the source of radiation be given to such person. If possession of the impounded source of radiation is not given to the person requesting the hearing, such person may appeal the decision of the department, and the appeal shall be in accordance with the Administrative Procedure Act. If possession of the impounded source of radiation is not given to the person so appealing, the department shall order such person to pay for the costs of the hearing, storage fees, and any other reasonable and necessary expenses related to the impounded source of radiation.

(4) If possession of the impounded source of radiation is not given to the person requesting the hearing under subsection (3) of this section, the department shall issue an order of disposition for the source of radiation and shall dispose of the source of radiation as directed in the order. Disposition methods are at the discretion of the department and may include, but are not limited to, (a) sale of the source of radiation to a person authorized to possess the source of radiation under the act, (b) transfer to the manufacturer of the source of radiation, or (c) destruction of the source of radiation. The order of disposition shall be considered a transfer of title of the source of radiation.

(5) If expenses related to the impounded source of radiation are not paid under subsection (3) of this section, the department shall pay such expenses from:

(a) Proceeds from the sale of the source of radiation, if sold; or

(b) Available funds in the Health and Human Services Cash Fund.

Source: Laws 2006, LB 994, § 107; Laws 2007, LB296, § 572.

Cross References

Administrative Procedure Act, see section 84-920.

71-3517 Violations; civil and criminal penalties; appeal.

(1) Any person who violates any of the provisions of the Radiation Control Act shall be guilty of a Class IV misdemeanor.

(2) In addition to the penalty provided in subsection (1) of this section, any person who violates any provision of the Radiation Control Act or any rule, regulation, or order issued pursuant to such act or any term, condition, or limitation of any license or registration certificate issued pursuant to such act shall be subject to:

(a) License revocation, suspension, modification, condition, or limitation;

(b) The imposition of a civil penalty; or

(c) The terms of any appropriate order issued by the department.

(3) Whenever the department proposes to subject a person to the provisions of subsection (2) of this section, the department shall notify the person in writing (a) setting forth the date, facts, and nature of each act or omission with which the person is charged, (b) specifically identifying the particular provision or provisions of the section, rule, regulation, order, license, or registration certificate involved in the violation, and (c) of the sanction or order to be imposed. If a civil penalty is imposed, the notice shall include a statement that it can be collected by civil action. The notice shall be delivered to each alleged violator by personal service, by certified or registered mail to his or her last-known address, or by publication. Notice by publication shall only be made if personal service or service by mail cannot be effectuated. The sanction or order in the notice shall become final thirty days after the mailing of the notice unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department. If the notice is served by personal service or publication, the sanction or order shall become final thirty days after completion of such service unless the applicant, registrant, or licensee, within the thirty-day period, requests, in writing, a hearing before the department.

(4) Hearings held pursuant to subsection (3) of this section shall be held in accordance with rules and regulations adopted and promulgated by the department and shall provide for the alleged violator to present such evidence as may be proper. Witnesses may be subpoenaed by either party and shall be allowed fees at a rate prescribed by the rules and regulations of the department. A full and complete record shall be kept of the proceedings.

(5) Following the hearing, the department shall determine whether the charges are true or not, and if true, the department may (a) issue a declaratory order finding the charges to be true, (b) revoke, suspend, modify, condition, or limit the license, (c) impose a civil penalty in an amount not to exceed ten thousand dollars for each violation, or (d) enter an appropriate order. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty and the amount of the penalty shall be based on the severity of the violation. A copy of such decision setting forth the finding of facts and the particular reasons upon which it is based shall be sent by either certified or registered mail to the alleged violator. The decision may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) Any civil penalty assessed and unpaid under subsection (5) of this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, remit any collected civil penalty to the State Treasurer for

distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

(7) In addition to the provisions of this section, radon measurement specialists and radon mitigation specialists shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued to a specialist may be disciplined for any violation of the Radiation Control Act or the rules and regulations adopted and promulgated under the act.

Source: Laws 1963, c. 406, § 17, p. 1306; Laws 1977, LB 39, § 172; Laws 1987, LB 390, § 20; Laws 1988, LB 352, § 133; Laws 2002, LB 1021, § 77; Laws 2007, LB296, § 573; Laws 2007, LB463, § 1214; Laws 2008, LB928, § 28.

Cross References

Administrative Procedure Act, see section 84-920.
Uniform Credentialing Act, see section 38-101.

71-3518 License or registration; common carrier exempt.

Nothing in the Radiation Control Act shall be deemed to require the licensing or registration by any common carrier, contract carrier, private carrier, railway freight carrier, or railway express carrier transporting, storing, or handling any of the materials described in such act in the ordinary course of such carrier's business.

Source: Laws 1963, c. 406, § 18, p. 1306; Laws 1987, LB 390, § 21.

71-3518.01 Existing rules, regulations, licenses, forms of approval, suits, other proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Radiation Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses or other forms of approval issued prior to December 1, 2008, in accordance with the Radiation Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Radiation Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1215.

71-3519 Act, how cited.

Sections 71-3501 to 71-3520 shall be known and may be cited as the Radiation Control Act.

Source: Laws 1963, c. 406, § 20, p. 1306; Laws 1987, LB 390, § 22; Laws 2001, LB 668, § 2; Laws 2002, LB 1021, § 78; Laws 2005, LB 453, § 1; Laws 2006, LB 994, § 108; Laws 2007, LB463, § 1216; Laws 2008, LB928, § 29.

71-3520 Act, how construed.

Nothing in the Radiation Control Act shall be construed to allow the department to duplicate regulation by the federal government.

Source: Laws 1987, LB 390, § 25.

(b) CENTRAL INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

71-3521 Repealed. Laws 1999, LB 530, § 2.

71-3522 Compact; withdrawal.

The State of Nebraska hereby withdraws from the Central Interstate Low-Level Radioactive Waste Compact. The Governor shall notify in writing each of the governors of the other compact states and the chairperson of the Central Interstate Low-Level Radioactive Waste Compact Commission that the withdrawal of the State of Nebraska from the compact is effective.

Source: Laws 1999, LB 530, § 1.

(c) HIGH-LEVEL RADIOACTIVE WASTE AND TRANSURANIC WASTE

71-3523 Legislative intent.

It is the intent of the Legislature that costs incurred by the State of Nebraska attributable to the shipment of high-level radioactive waste and transuranic waste in or through the state shall be borne by the shipper.

Source: Laws 2003, LB 165, § 1.

71-3524 Terms, defined.

For purposes of sections 71-3523 to 71-3528:

(1) Department means the Department of Health and Human Services;

(2) High-level radioactive waste has the definition found in section 81-1589; and

(3) Transuranic waste means radioactive waste material containing alpha-emitting radioactive elements, with radioactive half-lives greater than five years, having an atomic number greater than 92 in concentrations in excess of one hundred nanocuries per gram.

Source: Laws 2003, LB 165, § 2; Laws 2005, LB 301, § 43; Laws 2007, LB296, § 574.

71-3525 Fees.

Until January 1, 2005, a fee of two thousand dollars shall be assessed on each cask of high-level radioactive waste or transuranic waste shipped in or through the state, whether shipped by motor carrier or rail. On and after January 1, 2005, the department shall establish and assess fees on all high-level radioactive waste and transuranic waste shipped by any means in or through the state. Such fees shall be equitable and shall be used for purposes related to (1) shipping of high-level radioactive waste and transuranic waste, including, but not limited to, inspections, escorts, and security for waste shipment, planning, and maintenance, (2) coordination of emergency response capability, (3) education and training, (4) purchase of necessary equipment, and (5) administrative costs attributable to the state agencies which are incurred as related to the shipping of high-level radioactive waste and transuranic waste. Fees assessed

pursuant to this section shall be paid in advance of shipment by the shipper. Fees collected by the department under this section shall be remitted to the State Treasurer for credit to the Radiation Transportation Emergency Response Cash Fund.

Source: Laws 2003, LB 165, § 3.

71-3526 Radiation Transportation Emergency Response Cash Fund; created; use; investment; changes in fees; when.

The Radiation Transportation Emergency Response Cash Fund is created. The fund shall consist of fees credited pursuant to section 71-3525. The fund shall be used for the purposes stated in such section. The Director-State Engineer, the Superintendent of Law Enforcement and Public Safety, the chief executive officer of the department, the Adjutant General as director of the Nebraska Emergency Management Agency, and the executive director of the Public Service Commission, or their designees, shall meet at least annually to recommend changes in the fees charged and allocation of the fees collected among participating agencies based upon their respective costs in carrying out such section. 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.

Source: Laws 2003, LB 165, § 4; Laws 2007, LB296, § 575.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-3527 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out sections 71-3523 to 71-3526.

Source: Laws 2003, LB 165, § 5.

71-3528 Applicability of sections.

Sections 71-3523 to 71-3527 do not apply to high-level radioactive waste or transuranic waste shipped by or for the United States Government for military, national security, or national defense purposes. Sections 71-3523 to 71-3527 do not require disclosure of defense information or restricted data as defined in the federal Atomic Energy Act of 1954.

Source: Laws 2003, LB 165, § 6.

(d) RADIOLOGICAL INSTRUMENTS

71-3529 Legislative intent.

It is the intent of the Legislature that costs incurred by the State of Nebraska attributable to the calibration of radiological instruments be borne by the responsible agency and to provide state and local governmental agencies a cost-effective source for the calibration of radiological instruments without infringing on commercial resources within the State of Nebraska.

Source: Laws 2006, LB 787, § 1.

71-3530 Terms, defined.

For purposes of sections 71-3529 to 71-3536:

(1) Department means the Radiological Emergency Preparedness Division within the Nebraska Emergency Management Agency under the Military Department;

(2) Radiological instrument includes, but is not limited to, radiological meters, radiological detectors and probes, radiological dosimeters, and radiological kits; and

(3) Responsible agency means any state or local governmental entity or private agency which owns radiological instruments or has agreed to be responsible for the replacement, repair, or calibration of such instruments.

Source: Laws 2006, LB 787, § 2.

71-3531 Fees; use.

(1) Until January 1, 2008, a fee shall be assessed on each radiological instrument calibrated by the department as follows: Direct reading dosimeters, twenty-two dollars; electronic dosimeters, thirty-one dollars; CD V-700 meters, thirty-six dollars; CD V-715 meters, twenty-five dollars; CD V-718 meters, thirty-nine dollars; thermo-electron FH-40 GL and ASP-2 meters, sixty-six dollars; all electron detectors, forty-six dollars; and all other meters, sixty-six dollars. If any of such instruments form a kit, the fees shall be: CD V-777 kits, one hundred forty-nine dollars; thermo-electron FH-40 GL kits, two hundred thirty dollars; and thermo-electron ASP-2 kits, two hundred twenty-four dollars. Fees for minor repairs shall be at a base rate of sixteen dollars per hour plus the cost of parts. Beginning January 1, 2008, the department shall periodically adopt and promulgate rules and regulations that establish or adjust replacement, repair, or calibration fees and the department shall assess such fees on all radiological instruments replaced, repaired, or calibrated by the department. The fees shall be equitable and the Adjutant General and the assistant director of the Nebraska Emergency Management Agency or their designees shall meet at least annually to recommend changes in the fees charged and allocation of fees collected for expenses incurred under this section.

(2) Such fees shall be used for purposes related to (a) inspection, repair, and calibration of radiological instruments, (b) repair, replacement, upgrade, and calibration of radiological calibrators, (c) security of calibration sources, (d) training of calibration technician personnel, (e) purchase of necessary tools and equipment related to radiological calibration, (f) payment of radiological licensing fees, and (g) if funds are available, administrative costs of the department and subsidizing the salary of calibration technician personnel and part-time employees.

(3) Fees for calibration shall be paid in advance. Other fees shall be paid when receipted from the department by the responsible agency. Fees shall be remitted to the State Treasurer for credit to the Nebraska Emergency Management Agency Cash Fund.

Source: Laws 2006, LB 787, § 3; Laws 2009, LB24, § 1.

71-3532 Nebraska Emergency Management Agency Cash Fund; created; use; investment.

The Nebraska Emergency Management Agency Cash Fund is created. The fund shall be administered by the director of the Nebraska Emergency Manage-

ment Agency. The fund shall consist of all non-federal-fund revenue received by the Nebraska Emergency Management Agency. The fund shall only be used to pay for eligible costs of the Nebraska Emergency Management Agency. 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.

Source: Laws 2006, LB 787, § 4; Laws 2007, LB322, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-3533 Delivery and receipt of radiological instruments.

The responsible agency shall be responsible for delivery and receipt of radiological instruments to and from the department.

Source: Laws 2006, LB 787, § 5.

71-3534 Forfeiture of instrument; when; procedure.

If a replaced, repaired, or calibrated radiological instrument has not been receipted from the department by the responsible agency sixty days after the completed replacement, repair, or calibration date, the department shall provide written notification to the responsible agency that failure to receipt such instrument within ninety days after the completion date shall result in forfeiture of such instrument. Written notification to the responsible agency shall be made a total of three times with not less than five working days between notifications. If, after proper notification and ninety days after the completion date, such instrument has not been receipted from the department by the responsible agency, the instrument shall become the property of the State of Nebraska and shall be available for issue by the department to other responsible agencies who agree to be responsible for the replacement, repair, and calibration of the radiological instrument or the instrument shall be turned in as surplus property.

Source: Laws 2006, LB 787, § 6; Laws 2009, LB24, § 2.

71-3535 Applicability of sections.

Sections 71-3529 to 71-3536 shall not apply to a radiological instrument owned and replaced, repaired, or calibrated by the department, except when a responsible agency has been issued a radiological instrument and, by agreement, has consented to be responsible for the replacement, repair, and calibration of such instrument.

Source: Laws 2006, LB 787, § 7; Laws 2009, LB24, § 3.

71-3536 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out sections 71-3529 to 71-3536.

Source: Laws 2006, LB 787, § 8.

ARTICLE 36

TUBERCULOSIS DETECTION AND PREVENTION ACT

Section

71-3601 Terms, defined.

For purposes of the Tuberculosis Detection and Prevention Act:

(1) Communicable tuberculosis means tuberculosis manifested by a laboratory report of sputum or other body fluid or excretion found to contain tubercle bacilli or by chest X-ray findings interpreted as active tuberculosis by competent medical authority;

(2) Department means the Department of Health and Human Services;

(3) Directed health measure means any measure, whether prophylactic or remedial, intended and directed to prevent, treat, or limit the spread of tuberculosis;

(4) Facility means a structure in which suitable isolation for tuberculosis can be given and which is approved by the department for the detention of recalcitrant tuberculous persons;

(5) Local health officer means (a) the health director of a local public health department as defined in section 71-1626 or (b) the medical advisor to the board of health of a county, city, or village;

(6) Recalcitrant tuberculous person means a person affected with tuberculosis in an active stage who by his or her conduct or mode of living endangers the health and well-being of other persons, by exposing them to tuberculosis, and who refuses to accept adequate treatment; and

(7) State health officer means the chief medical officer as described in section 81-3115.

Source: Laws 1963, c. 399, § 1, p. 1273; Laws 1982, LB 566, § 6; Laws 1996, LB 1044, § 657; Laws 2004, LB 1005, § 88; Laws 2007, LB296, § 576; Laws 2009, LB195, § 79.

71-3601.01 Act, how cited.

Sections 71-3601 to 71-3614 shall be known and may be cited as the Tuberculosis Detection and Prevention Act.

Source: Laws 2004, LB 1005, § 87.

71-3602 Communicable tuberculosis; orders authorized; refusal; state health officer or local health officer; powers and duties.

(1) When there are reasonable grounds to believe that a person has communicable tuberculosis and the person refuses to submit to the examination necessary to determine the existence of communicable tuberculosis, the state health officer or local health officer may order such person to submit to such examination. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

(2) When a person with communicable tuberculosis conducts himself or herself in such a way as to expose another person to the danger of infection, the state health officer or local health officer may order such person to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease. If such person refuses to comply with such order, the state health officer or a local health officer shall institute proceedings for commitment, returnable to the county court of the county in which the person resides or, if the person is a nonresident or has no permanent residence, in the county in which the person is found. Strictness of pleading is not required, and a general allegation that the public health requires commitment of the person is sufficient.

Source: Laws 1963, c. 399, § 2, p. 1274; Laws 1992, LB 860, § 6; Laws 1996, LB 1044, § 658; Laws 2004, LB 1005, § 89; Laws 2009, LB195, § 80.

71-3603 Petition; hearing; notice; costs.

The county attorney of the county in which the proceedings are to be held as provided in section 71-3602 shall act for the department or local board of health. Either the state health officer or local health officer shall advise the county attorney in writing of the violation. Within three days of such notification, the county attorney shall file a petition with the county court.

Upon filing of the petition, the court shall set the matter for a hearing, which time shall be not less than five days nor more than ten days subsequent to filing. A copy of the petition together with a summons stating the time and place of hearing shall be served upon the person three days or more prior to the time set for the hearing.

Summons shall be served by the sheriff of the county in which the hearing is to be held, and return thereof shall be made as in other civil cases.

The court costs incurred in proceedings under the Tuberculosis Detection and Prevention Act, including medical examinations required by order of the

court but excluding examinations procured by the person named in the petition, shall be borne by the county in which the proceedings are held.

Source: Laws 1963, c. 399, § 3, p. 1274; Laws 1996, LB 1044, § 659; Laws 2004, LB 1005, § 90.

71-3604 Hearing; procedure; order.

(1) Upon the hearing set in the order, the person named in the order shall have a right to be represented by counsel, to confront and cross-examine witnesses against him or her, and to have compulsory process for the securing of witnesses and evidence in his or her own behalf.

(2) Upon a consideration of the petition and evidence:

(a) If the court finds that there are reasonable grounds to believe that the person named in the petition has communicable tuberculosis and has refused to submit to an examination to determine the existence of communicable tuberculosis, the court shall order such person to submit to such examination. If after such examination is completed it is determined that the person has communicable tuberculosis, the court shall order directed health measures necessary for the treatment of the person and to prevent the transmission of the disease; or

(b) If the court finds that the person named in the petition has communicable tuberculosis and conducts himself or herself in such a way as to be a danger to the public health, an order shall be issued committing the person named to a facility and directing the sheriff to take him or her into custody and deliver him or her to the facility or to submit to directed health measures necessary for the treatment of the person and to prevent the transmission of the disease.

(3) If the court does not so find, the petition shall be dismissed. The cost of transporting such person to the facility shall be paid from county general funds.

Source: Laws 1963, c. 399, § 4, p. 1275; Laws 2009, LB195, § 81.

71-3605 Appeal; procedure.

Any person aggrieved by a final decision in a contested case, whether such decision is affirmative or negative in form, is entitled to judicial review under the provisions of sections 25-2728 to 25-2738.

Source: Laws 1963, c. 399, § 5, p. 1275; Laws 1981, LB 42, § 25.

71-3606 Commitment; length of time.

Upon commitment, the person shall be confined until such time as the responsible attending physician determines that the patient no longer has communicable tuberculosis or that his discharge will not endanger public health.

Source: Laws 1963, c. 399, § 6, p. 1276.

71-3607 Commitment; release; procedure.

Any time beyond sixty days after commitment, the person or any friend or relative believing that the patient no longer has communicable tuberculosis or that his discharge will not endanger public health may institute proceedings by petition in the county court of the county wherein the confinement exists, whereupon the court shall set the matter down for a hearing before him within fifteen days, requiring the physician in attendance to show cause on a day

certain why the patient should not be released. The court shall also require that the patient be allowed the right to be examined prior to the hearing by a physician of his own choice, if so desired and at his own expense. Thereafter all proceedings shall be conducted the same as on proceedings for commitment with the right of appeal by either party; *Provided,* such petition for discharge shall not be brought or renewed more often than once every ninety days.

Source: Laws 1963, c. 399, § 7, p. 1276.

71-3608 Commitment; voluntary hospitalization.

No person having communicable tuberculosis who in his or her home or elsewhere obeys the rules, regulations, and orders of the department for the control of tuberculosis or who voluntarily accepts hospitalization or treatment in a health care facility which is licensed and approved for such use under the Health Care Facility Licensure Act by the department and obeys the rules, regulations, and orders of the department for the control of communicable tuberculosis shall be committed under the Tuberculosis Detection and Prevention Act.

Source: Laws 1963, c. 399, § 8, p. 1276; Laws 1972, LB 1492, § 1; Laws 1996, LB 1044, § 660; Laws 2000, LB 819, § 108; Laws 2004, LB 1005, § 91.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-3609 Commitment; medical or surgical treatment; consent required.

No person committed under the Tuberculosis Detection and Prevention Act shall be required to submit to medical or surgical treatment without his or her consent or, if incompetent, without the consent of his or her legal guardian, or, if a minor, without the consent of a parent or next of kin.

Source: Laws 1963, c. 399, § 9, p. 1276; Laws 2004, LB 1005, § 92.

71-3610 Commitment; treatment; expenses; payment by state.

The expenses incurred in the care, maintenance, and treatment of patients committed under the Tuberculosis Detection and Prevention Act shall be paid from state funds appropriated to the department for the purpose of entering into agreements with qualified health care facilities so as to provide for the care, maintenance, and treatment of such patients and those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment.

Source: Laws 1963, c. 399, § 10, p. 1277; Laws 1972, LB 1492, § 2; Laws 1996, LB 1044, § 661; Laws 2004, LB 1005, § 93; Laws 2007, LB296, § 577.

71-3611 Commitment; consent to leave hospital; violation; return; costs paid by county.

Any person committed under the Tuberculosis Detection and Prevention Act who leaves the facility without having been discharged by the attending physician or by court order shall be taken into custody and returned to the facility by the sheriff of any county where such person is found, upon an affidavit being filed with the sheriff by the administrator of the facility or duly

authorized officer in charge thereof acting as the duly appointed agent and representative of the department in the matter. The costs of such transportation shall be paid from county general funds of the patient's county of residence. If the person is a nonresident of Nebraska or has no permanent residence, the costs shall be paid from county general funds of the county of commitment.

Source: Laws 1963, c. 399, § 11, p. 1277; Laws 1972, LB 1492, § 4; Laws 1996, LB 1044, § 662; Laws 2004, LB 1005, § 94.

71-3612 Communicable tuberculosis; examination required; expense; payment.

The state health officer and each local health officer shall use all available means to detect persons with communicable tuberculosis in his or her jurisdiction. If he or she has reasonable grounds based upon medical science for believing that a person has communicable tuberculosis and if this person refuses to submit to the examination necessary for determining the existence of communicable tuberculosis, the state health officer or local health officer shall issue an order to the person to obtain the appropriate examination. Thereafter, if the person does not comply within seven days, the state health officer or local health officer may institute commitment procedures as described in sections 71-3601 to 71-3604, the purpose of commitment under this section being to determine whether or not the person has communicable tuberculosis.

The costs of voluntary examination made upon request of the state health officer or local health officer and the cost of examination made upon order of the state health officer or local health officer shall be paid from county general funds of the person's county of residence. If the person is a nonresident or has no permanent residence, the costs shall be paid from the county general funds of the county of commitment. The costs of examination and maintenance while under commitment shall be paid from state funds appropriated to the department therefor. The costs of transportation under the commitment procedure for examination shall be paid from county general funds of the county of residence. If the person is not a resident of Nebraska or has no permanent residence, they shall be paid from the county general funds of the county of commitment.

Source: Laws 1963, c. 399, § 12, p. 1277; Laws 1972, LB 1492, § 5; Laws 1996, LB 1044, § 663; Laws 2004, LB 1005, § 95.

71-3613 Department; powers and duties.

The department shall have and may exercise the following powers and duties in its administration of the Tuberculosis Detection and Prevention Act:

(1) To contract with qualified hospitals or other health care facilities which are licensed and approved for such use under the Health Care Facility Licensure Act by the department for the purpose of caring for, maintaining, and treating patients committed under the Tuberculosis Detection and Prevention Act, and for those other persons having communicable tuberculosis who voluntarily agree to and accept care and treatment in such a health care facility on either an inpatient or an outpatient basis;

(2) To inspect and supervise to the extent necessary the facilities, operations, and administration of those health care facilities under contract to or otherwise receiving support from the department for the purpose of providing care, treatment, or maintenance for persons infected with communicable tuberculosis;

(3) To provide visiting nursing services to those persons having communicable tuberculosis who are being treated on an outpatient basis;

(4) To adopt rules and regulations, and issue orders based thereon, relative to reports and statistics on tuberculosis from counties and the care, treatment, and maintenance of persons having tuberculosis, especially of those in the communicable or contagious stage thereof; and

(5) To set standards by rule and regulation for the types and level of medical care and treatment to be used by those health care facilities caring for tuberculous persons and to set standards by rule and regulation governing contracts mentioned in subdivision (1) of this section dealing with such matters as program standards, maximum and minimum costs and rates, administrative procedures to be followed and reports to be made, and arbitration by third parties.

Rules, regulations, and orders in effect under this section prior to July 16, 2004, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1972, LB 1492, § 3; Laws 1996, LB 1044, § 664; Laws 2000, LB 819, § 109; Laws 2004, LB 1005, § 96.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-3614 Cost of drugs and patient care; transportation; payment.

(1) When any person who has communicable tuberculosis and who has relatives, friends, or a private or public agency or organization willing to undertake the obligation to support him or her or to aid in supporting him or her in any other state or country, the department may furnish him or her with the cost of transportation to such other state or country if it finds that the interest of the State of Nebraska and the welfare of such person will be promoted thereby. The expense of such transportation shall be paid by the department out of funds appropriated to it for the purpose of carrying out the Tuberculosis Detection and Prevention Act.

(2) No funds appropriated to the department for the purpose of carrying out the act shall be used for meeting the cost of the care, maintenance, or treatment of any person who has communicable tuberculosis in a health care facility on either an inpatient or an outpatient basis, or otherwise, for directed health measures, or for transportation to another state or country, to the extent that such cost is covered by an insurer or other third-party payor or any other entity under obligation to such person by contract, policy, certificate, or any other means whatsoever. The department in no case shall expend any such funds to the extent that any such person is able to bear the cost of such care, maintenance, treatment, or transportation. To protect the health and safety of the public, the department may pay, in part or in whole, the cost of drugs and medical care used to treat any person for or to prevent the spread of communicable tuberculosis and for evaluation and diagnosis of persons who have been identified as contacts of a person with communicable tuberculosis. The department shall determine the ability of a person to pay by consideration of the following factors: (a) The person's age, (b) the number of his or her dependents and their ages and physical condition, (c) the person's length of care, maintenance, or treatment, (d) his or her liabilities, (e) the extent that such cost is covered by an insurer or other third-party payor, and (f) his or her assets.

Pursuant to the Administrative Procedure Act, the department shall adopt and promulgate rules and regulations for making the determinations required by this subsection.

Rules, regulations, and orders in effect under this section prior to July 16, 2004, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 1972, LB 1492, § 6; Laws 1996, LB 1044, § 665; Laws 2004, LB 1005, § 97; Laws 2009, LB195, § 82.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 37
ENVIRONMENTAL HEALTH SPECIALISTS

Cross References

Environmental Health Specialists Practice Act, see section 38-1301.
Pure Food Act, Nebraska, perform inspections, see section 81-2,239.
State Board of Health, duties, see section 71-2610.01.
Uniform Credentialing Act, see section 38-101.

Section
71-3701. Transferred to section 71-3705.01.
71-3702. Transferred to section 38-1302.
71-3703. Transferred to section 38-1308.
71-3704. Transferred to section 38-1309.
71-3705. Repealed. Laws 2007, LB 463, § 1319.
71-3705.01. Repealed. Laws 2007, LB 463, § 1319.
71-3706. Transferred to section 38-1307.
71-3707. Repealed. Laws 2007, LB 463, § 1319.
71-3708. Repealed. Laws 2007, LB 463, § 1319.
71-3708.01. Repealed. Laws 2007, LB 463, § 1319.
71-3709. Repealed. Laws 2007, LB 463, § 1319.
71-3710. Transferred to section 38-1310.
71-3711. Repealed. Laws 2007, LB 463, § 1319.
71-3712. Repealed. Laws 2007, LB 463, § 1319.
71-3713. Transferred to section 38-1314.
71-3714. Transferred to section 38-1315.
71-3715. Repealed. Laws 2007, LB 463, § 1319.

71-3701 Transferred to section 71-3705.01.

71-3702 Transferred to section 38-1302.

71-3703 Transferred to section 38-1308.

71-3704 Transferred to section 38-1309.

71-3705 Repealed. Laws 2007, LB 463, § 1319.

71-3705.01 Repealed. Laws 2007, LB 463, § 1319.

71-3706 Transferred to section 38-1307.

71-3707 Repealed. Laws 2007, LB 463, § 1319.

71-3708 Repealed. Laws 2007, LB 463, § 1319.

71-3708.01 Repealed. Laws 2007, LB 463, § 1319.

71-3709 Repealed. Laws 2007, LB 463, § 1319.

71-3710 Transferred to section 38-1310.

71-3711 Repealed. Laws 2007, LB 463, § 1319.

71-3712 Repealed. Laws 2007, LB 463, § 1319.

71-3713 Transferred to section 38-1314.

71-3714 Transferred to section 38-1315.

71-3715 Repealed. Laws 2007, LB 463, § 1319.

ARTICLE 38
PRACTICE OF PSYCHOLOGY

Section

71-3801 Transferred to section 71-1,206.

71-3802 Transferred to section 71-1,207.

71-3803 Repealed. Laws 1984, LB 481, § 45.

71-3804 Repealed. Laws 1984, LB 481, § 45.

71-3805 Repealed. Laws 1984, LB 481, § 45.

71-3806 Transferred to section 71-1,208.

71-3807 Transferred to section 71-1,209.

71-3808 Transferred to section 71-1,210.

71-3809 Repealed. Laws 1984, LB 481, § 45.

71-3810 Transferred to section 71-1,211.

71-3811 Transferred to section 71-1,212.

71-3812 Repealed. Laws 1984, LB 481, § 45.

71-3813 Transferred to section 71-1,213.

71-3814 Transferred to section 71-1,214.

71-3815 Repealed. Laws 1974, LB 811, § 21.

71-3816 Repealed. Laws 1984, LB 481, § 45.

71-3817 Transferred to section 71-1,215.

71-3818 Transferred to section 71-1,216.

71-3819 Transferred to section 71-1,217.

71-3820 Repealed. Laws 1984, LB 481, § 45.

71-3821 Repealed. Laws 1984, LB 481, § 45.

71-3822 Repealed. Laws 1984, LB 481, § 45.

71-3823 Repealed. Laws 1984, LB 481, § 45.

71-3824 Repealed. Laws 1984, LB 481, § 45.

71-3825 Transferred to section 71-1,218.

71-3826 Repealed. Laws 1975, LB 279, § 75.

71-3827 Transferred to section 71-1,219.

71-3828 Transferred to section 71-1,220.

71-3829 Transferred to section 71-1,221.

71-3830 Repealed. Laws 1981, LB 545, § 52.

71-3831 Repealed. Laws 1984, LB 481, § 45.

71-3832 Transferred to section 71-1,222.

71-3833 Transferred to section 71-1,223.

71-3834 Transferred to section 71-1,224.

71-3835 Transferred to section 71-1,225.

71-3836 Transferred to section 71-1,226.

ARTICLE 39
MENTAL RETARDATION

Section
71-3901. Repealed. Laws 1969, c. 580, § 7.
71-3902. Repealed. Laws 1969, c. 580, § 7.
71-3903. Repealed. Laws 1969, c. 580, § 7.

71-3901 Repealed. Laws 1969, c. 580, § 7.

71-3902 Repealed. Laws 1969, c. 580, § 7.

71-3903 Repealed. Laws 1969, c. 580, § 7.

ARTICLE 40
TRANSACTIONS RELATING TO BLOOD AND HUMAN TISSUES

Cross References

Organ and tissue donations:
Bone marrow, see section 71-4819 et seq.
Coroner, duties, see sections 23-1825 to 23-1832.
Hospitals, protocol required, see sections 71-4814 to 71-4818.
Uniform Anatomical Gift Act, see section 71-4812.

Section
71-4001. Transactions, defined.

71-4001 Transactions, defined.

Procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, blood derivatives, and other human tissues such as corneas, bones, or organs for the purpose of injecting, transfusing, or transplanting any of them in the human body is declared for all purposes to be the rendition of a service by every person participating therein and whether or not any remuneration is paid therefor is declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, or other human tissues.

Source: Laws 1967, c. 434, § 1, p. 1323.

ARTICLE 41
REFUSE, GARBAGE, AND RUBBISH

Section
71-4101. Repealed. Laws 1971, LB 939, § 35.
71-4102. Repealed. Laws 1971, LB 939, § 35.
71-4103. Repealed. Laws 1971, LB 939, § 35.
71-4104. Repealed. Laws 1971, LB 939, § 35.
71-4105. Repealed. Laws 1971, LB 939, § 35.
71-4106. Repealed. Laws 1971, LB 939, § 35.
71-4107. Repealed. Laws 1971, LB 939, § 35.
71-4108. Repealed. Laws 1971, LB 939, § 35.
71-4109. Repealed. Laws 1971, LB 939, § 35.

71-4101 Repealed. Laws 1971, LB 939, § 35.

71-4102 Repealed. Laws 1971, LB 939, § 35.

71-4103 Repealed. Laws 1971, LB 939, § 35.

71-4104 Repealed. Laws 1971, LB 939, § 35.

71-4105 Repealed. Laws 1971, LB 939, § 35.

71-4106 Repealed. Laws 1971, LB 939, § 35.

71-4107 Repealed. Laws 1971, LB 939, § 35.

71-4108 Repealed. Laws 1971, LB 939, § 35.

71-4109 Repealed. Laws 1971, LB 939, § 35.

ARTICLE 42
NEBRASKA CLEAN WATERS COMMISSION

Cross References

Natural Resources Commission, Nebraska, see Chapter 2, article 15.

Section
71-4201. Repealed. Laws 1971, LB 96, § 1.
71-4202. Repealed. Laws 1971, LB 96, § 1.
71-4203. Repealed. Laws 1971, LB 96, § 1.
71-4204. Repealed. Laws 1971, LB 96, § 1.
71-4205. Repealed. Laws 1971, LB 96, § 1.
71-4206. Repealed. Laws 1971, LB 96, § 1.
71-4207. Repealed. Laws 1971, LB 96, § 1.
71-4208. Repealed. Laws 1971, LB 96, § 1.
71-4209. Repealed. Laws 1971, LB 96, § 1.
71-4210. Repealed. Laws 1971, LB 96, § 1.
71-4211. Repealed. Laws 1971, LB 96, § 1.
71-4212. Repealed. Laws 1971, LB 96, § 1.
71-4213. Repealed. Laws 1971, LB 96, § 1.
71-4214. Repealed. Laws 1971, LB 96, § 1.
71-4215. Repealed. Laws 1971, LB 96, § 1.
71-4216. Repealed. Laws 1971, LB 96, § 1.
71-4217. Repealed. Laws 1971, LB 96, § 1.
71-4218. Repealed. Laws 1971, LB 96, § 1.
71-4219. Repealed. Laws 1971, LB 96, § 1.
71-4220. Repealed. Laws 1971, LB 96, § 1.
71-4221. Repealed. Laws 1971, LB 96, § 1.
71-4222. Repealed. Laws 1971, LB 96, § 1.
71-4223. Repealed. Laws 1971, LB 96, § 1.
71-4224. Repealed. Laws 1971, LB 96, § 1.
71-4225. Repealed. Laws 1971, LB 96, § 1.
71-4226. Repealed. Laws 1971, LB 96, § 1.
71-4227. Repealed. Laws 1971, LB 96, § 1.
71-4228. Repealed. Laws 1971, LB 96, § 1.
71-4229. Repealed. Laws 1971, LB 96, § 1.
71-4230. Repealed. Laws 1971, LB 96, § 1.
71-4231. Repealed. Laws 1971, LB 96, § 1.
71-4232. Repealed. Laws 1971, LB 96, § 1.
71-4233. Repealed. Laws 1971, LB 96, § 1.
71-4234. Repealed. Laws 1971, LB 96, § 1.

71-4201 Repealed. Laws 1971, LB 96, § 1.

71-4202 Repealed. Laws 1971, LB 96, § 1.

71-4203 Repealed. Laws 1971, LB 96, § 1.

71-4204 Repealed. Laws 1971, LB 96, § 1.

71-4205 Repealed. Laws 1971, LB 96, § 1.

71-4206 Repealed. Laws 1971, LB 96, § 1.

71-4207 Repealed. Laws 1971, LB 96, § 1.

71-4208 Repealed. Laws 1971, LB 96, § 1.

71-4209 Repealed. Laws 1971, LB 96, § 1.

71-4210 Repealed. Laws 1971, LB 96, § 1.

71-4211 Repealed. Laws 1971, LB 96, § 1.

71-4212 Repealed. Laws 1971, LB 96, § 1.

71-4213 Repealed. Laws 1971, LB 96, § 1.

71-4214 Repealed. Laws 1971, LB 96, § 1.

71-4215 Repealed. Laws 1971, LB 96, § 1.

71-4216 Repealed. Laws 1971, LB 96, § 1.

71-4217 Repealed. Laws 1971, LB 96, § 1.

71-4218 Repealed. Laws 1971, LB 96, § 1.

71-4219 Repealed. Laws 1971, LB 96, § 1.

71-4220 Repealed. Laws 1971, LB 96, § 1.

71-4221 Repealed. Laws 1971, LB 96, § 1.

71-4222 Repealed. Laws 1971, LB 96, § 1.

71-4223 Repealed. Laws 1971, LB 96, § 1.

71-4224 Repealed. Laws 1971, LB 96, § 1.

71-4225 Repealed. Laws 1971, LB 96, § 1.

71-4226 Repealed. Laws 1971, LB 96, § 1.

71-4227 Repealed. Laws 1971, LB 96, § 1.

71-4228 Repealed. Laws 1971, LB 96, § 1.

71-4229 Repealed. Laws 1971, LB 96, § 1.

71-4230 Repealed. Laws 1971, LB 96, § 1.

71-4231 Repealed. Laws 1971, LB 96, § 1.

71-4232 Repealed. Laws 1971, LB 96, § 1.

71-4233 Repealed. Laws 1971, LB 96, § 1.

71-4234 Repealed. Laws 1971, LB 96, § 1.

ARTICLE 43
SWIMMING POOLS

Cross References

Municipalities, powers and duties, see sections 13-304, 15-210, 16-695, 17-559, 17-948 et seq., and 19-1302.

Section
71-4301. Swimming pool, defined.
71-4302. Department of Health and Human Services; sanitary and safety requirements; adopt.
71-4303. Construction; permit; Department of Health and Human Services; issuance; when.
71-4304. Permit; application; requirements.
71-4305. Department of Health and Human Services; inspection; records; owners and operators; fees; exception.
71-4306. Inspection; violation of act; effect.
71-4307. Violation; public nuisance; abatement.

71-4301 Swimming pool, defined.

For purposes of sections 71-4301 to 71-4307, unless the context otherwise requires, swimming pool means any artificial basin of water modified, improved, constructed, or installed solely for the purpose of public swimming, wading, diving, recreation, or instruction. Swimming pool includes, but is not limited to, a pool serving a community, a subdivision, an apartment complex, a condominium, a club, a camp, a school, an institution, a park, a manufactured home park, a hotel, a motel, a recreational area, or a water park. Swimming pool includes a spa, hot tub, or whirlpool or similar device which (1) is designed for recreational use and not to be drained, cleaned, and refilled after each individual use and (2) may consist of elements, including, but not limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction systems, or any combination thereof. Swimming pool does not include an artificial lake, a pool at a private residence intended only for the use of the owner and guests, or a pool operated exclusively for medical treatment, physical therapy, water rescue training, or training of divers.

Source: Laws 1969, c. 760, § 1, p. 2875; Laws 2002, LB 1021, § 81.

71-4302 Department of Health and Human Services; sanitary and safety requirements; adopt.

The Department of Health and Human Services shall prepare, adopt, and have printed minimum sanitary and safety requirements in the form of regulations for the design, construction, equipment, and operation of swimming pools and bather preparation facilities. Such requirements shall include, but not be limited to, provisions for waiver or variance of design standards and the circumstances under which such waiver or variance may be granted.

Source: Laws 1969, c. 760, § 2, p. 2876; Laws 1996, LB 1044, § 669; Laws 2002, LB 1021, § 82; Laws 2007, LB296, § 580.

71-4303 Construction; permit; Department of Health and Human Services; issuance; when.

No swimming pool shall be constructed after January 1, 1970, unless and until plans, specifications, and any additional information relative to such pool

as may be requested by the Department of Health and Human Services shall have been submitted to such department and after review by such department found to comply with the minimum sanitary and safety requirements provided in section 71-4302 and a permit for the construction of the pool issued by such department.

Source: Laws 1969, c. 760, § 3, p. 2876; Laws 1996, LB 1044, § 670; Laws 2007, LB296, § 581.

71-4304 Permit; application; requirements.

After January 1, 1970, swimming pools shall have equipment and shall be operated so as to comply with the minimum sanitary and safety requirements provided in section 71-4302. After such date no swimming pool shall operate until it has received a permit from the Department of Health and Human Services. Application for a permit to operate shall be submitted on forms provided by such department. Swimming pools constructed prior to January 1, 1970, which do not fully comply with the minimum sanitary and safety requirements as regards design and construction may be continued in use for such period as the department may authorize if the equipment and operation of such swimming pool comply with the minimum sanitary and safety requirements.

Source: Laws 1969, c. 760, § 4, p. 2876; Laws 1996, LB 1044, § 671; Laws 2007, LB296, § 582.

71-4305 Department of Health and Human Services; inspection; records; owners and operators; fees; exception.

(1) The Department of Health and Human Services shall make at least one inspection every year of each swimming pool to determine that such swimming pool complies with the minimum sanitary and safety requirements.

(2) The owner and operator of any swimming pool shall submit such operation and analytical records as may be requested at any time by the department to determine the sanitary and safety condition of the swimming pool.

(3) The department shall adopt and promulgate rules and regulations which classify swimming pools on the basis of criteria deemed appropriate by the department. The department shall charge engineering firms, swimming pool owners, and other appropriate parties fees established by rules and regulations for the review of plans and specifications of a swimming pool, the issuance of a license or permit, the inspection of a swimming pool, and any other services rendered at a rate which defrays no more than the actual cost of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure. All fees collected under this subsection shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. The department shall not charge a municipal corporation an inspection fee for an inspection of a swimming pool owned by such municipal corporation.

(4) The department shall establish and collect fees for certificates of competency for swimming pool operators as provided in sections 38-151 to 38-157.

Source: Laws 1969, c. 760, § 5, p. 2876; Laws 1973, LB 583, § 12; Laws 1976, LB 440, § 1; Laws 1978, LB 812, § 2; Laws 1983, LB 617,

§ 23; Laws 1986, LB 1047, § 5; Laws 1996, LB 1044, § 672; Laws 2002, LB 1021, § 83; Laws 2003, LB 242, § 123; Laws 2007, LB296, § 583; Laws 2007, LB463, § 1217.

71-4306 Inspection; violation of act; effect.

Whenever any duly authorized representative of the Department of Health and Human Services shall find that a swimming pool is being constructed, equipped, or operated in violation of any of the provisions of sections 71-4301 to 71-4307, the department may grant such time as in its opinion may reasonably be necessary for changing the construction or providing for the proper operation of the swimming pool to meet the provisions of sections 71-4301 to 71-4307. If and when the duly authorized representative of the department upon inspection and investigation of a swimming pool considers that the conditions are such as to warrant prompt closing of such swimming pool until the provisions of sections 71-4301 to 71-4307 are complied with, he or she shall notify the owner or operator of the swimming pool to prohibit any person from using the swimming pool and upon such notification to the sheriff and the county attorney of the county in which such pool is located, it shall be the duty of such county attorney and sheriff to see that the notice of the representative of the department shall be enforced. If and when the owner or operator of the pool has, in the opinion of the department, met the provisions of sections 71-4301 to 71-4307, the department may in writing authorize the use again of such swimming pool.

Source: Laws 1969, c. 760, § 6, p. 2876; Laws 1996, LB 1044, § 673; Laws 2007, LB296, § 584.

71-4307 Violation; public nuisance; abatement.

Any owner or operator of a swimming pool failing to comply with any of the provisions of sections 71-4301 to 71-4307 shall be guilty of maintaining a public nuisance and it shall be the duty of the county attorney of the county in which such swimming pool is located to act as provided by law for the abatement of public nuisances.

Source: Laws 1969, c. 760, § 7, p. 2877.

ARTICLE 44

RABIES

Section

Section
71-4412. Control of rabies; vaccination; enforcement; political subdivisions.

71-4401 Terms, defined.

For purposes of sections 71-4401 to 71-4412, unless the context otherwise requires:

(1) Domestic animal means any dog or cat, and cat means a cat which is a household pet;

(2) Vaccination against rabies means the inoculation of a domestic or hybrid animal with a rabies vaccine as approved by the rules and regulations adopted and promulgated by the department. Such vaccination shall be performed by a veterinarian duly licensed to practice veterinary medicine in the State of Nebraska;

(3) Compendium means the compendium of animal rabies vaccine as provided by the National Association of State Public Health Veterinarians;

(4) Department means the Department of Health and Human Services;

(5) Hybrid animal means any animal which is the product of the breeding of a domestic dog with a nondomestic canine species;

(6) Own, unless otherwise specified, means to possess, keep, harbor, or have control of, charge of, or custody of a domestic or hybrid animal. This term does not apply to domestic or hybrid animals owned by other persons which are temporarily maintained on the premises of a veterinarian or kennel operator for a period of not more than thirty days;

(7) Owner means any person possessing, keeping, harboring, or having charge or control of any domestic or hybrid animal or permitting any domestic or hybrid animal to habitually be or remain on or be lodged or fed within such person's house, yard, or premises. This term does not apply to veterinarians or kennel operators temporarily maintaining on their premises domestic or hybrid animals owned by other persons for a period of not more than thirty days; and

(8) Rabies control authority means county, township, city, or village health and law enforcement officials who shall enforce sections 71-4401 to 71-4412 relating to the vaccination and impoundment of domestic or hybrid animals. Such public officials are not responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

Source: Laws 1969, c. 445, § 1, p. 1484; Laws 1987, LB 104, § 1; Laws 1996, LB 1044, § 674; Laws 2000, LB 1115, § 75; Laws 2007, LB25, § 1; Laws 2007, LB296, § 585.

71-4402 Vaccination against rabies; required; vaccine; sales.

(1) Every domestic animal in the State of Nebraska shall be vaccinated against rabies with a licensed vaccine and revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. Young domestic animals shall be initially vaccinated at the age specified in such rules and regulations. Unvaccinated domestic animals acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate domestic animals pursuant to this section shall be sold only to licensed veterinarians.

Source: Laws 1969, c. 445, § 2, p. 1485; Laws 1987, LB 104, § 2; Laws 1990, LB 888, § 1; Laws 2007, LB25, § 2.

71-4402.01 Rules and regulations.

The department shall adopt and promulgate rules and regulations to:

(1) Determine rabid species of animals;

(2) Determine rabid species of animals amenable to rabies protection by immunization; and

(3) Determine tests for identifying animals afflicted with rabies.

When adopting and promulgating such rules and regulations, the department shall consider the general knowledge of the medical profession and related scientific fields, the compendium, and the recommendations of the United States Public Health Service.

Source: Laws 1987, LB 104, § 12.

71-4402.02 Hybrid animal; vaccination against rabies; required; vaccine; sales.

(1) Except as provided in subsection (3) of this section, every hybrid animal in the State of Nebraska shall be vaccinated against rabies and shall be revaccinated at intervals specified by rules and regulations adopted and promulgated by the department. A young hybrid animal shall be initially vaccinated at the age specified in such rules and regulations. An unvaccinated hybrid animal acquired or moved into the State of Nebraska shall be vaccinated within thirty days after purchase or arrival unless under the age for initial vaccination.

(2) The rabies vaccine used to vaccinate a hybrid animal pursuant to this section shall be sold only to licensed veterinarians.

(3) An owner of a hybrid animal in this state prior to the date of development of a licensed vaccine determined scientifically to be reliable in preventing rabies in a hybrid animal shall have one year after such date to comply with this section.

Source: Laws 2007, LB25, § 3.

71-4402.03 Control and prevention of rabies; rules and regulations.

The department shall adopt and promulgate rules and regulations for the control and prevention of rabies. Such rules and regulations shall generally comply with the compendium and the recommendations of the United States Public Health Service. The department may consider changes in the compendium and recommendations of the United States Public Health Service when adopting and promulgating such rules and regulations.

Source: Laws 2007, LB25, § 4.

71-4403 Veterinarian; vaccination for rabies; certificate; contents.

It shall be the duty of each veterinarian, at the time of vaccinating any domestic or hybrid animal, to complete a certificate of rabies vaccination which shall include, but not be limited to, the following information:

(1) The owner's name and address;

(2) An adequate description of the domestic or hybrid animal, including, but not limited to, such items as the domestic or hybrid animal's breed, sex, age, name, and distinctive markings;

(3) The date of vaccination;

(4) The rabies vaccination tag number;

(5) The type of rabies vaccine administered;

(6) The manufacturer's serial number of the vaccine used; and

(7) The site of vaccination.

Such veterinarian shall issue a tag with the certificate of vaccination.

Source: Laws 1969, c. 445, § 3, p. 1485; Laws 1987, LB 104, § 3; Laws 2007, LB25, § 5.

71-4404 Vaccination for rabies; cost; payment.

The cost of rabies vaccination shall be borne by the owner of the domestic or hybrid animal.

Source: Laws 1969, c. 445, § 4, p. 1486; Laws 1987, LB 104, § 4; Laws 2007, LB25, § 6.

71-4405 Vaccination; domestic animals exempt.

(1) The provisions of sections 71-4401 to 71-4412 with respect to vaccination shall not apply to any domestic or hybrid animal owned by a person temporarily remaining within the State of Nebraska for less than thirty days, to any domestic or hybrid animal brought into the State of Nebraska for field trial or show purposes, or to any domestic or hybrid animal brought into the state for hunting purposes for a period of less than thirty days. Such domestic or hybrid animals shall be kept under strict supervision of the owner. It shall be unlawful to bring any domestic or hybrid animal into the State of Nebraska which does not comply with the animal health laws and import rules and regulations of the State of Nebraska which are applicable to domestic or hybrid animals.

(2) Domestic or hybrid animals assigned to a research institution or a similar facility shall be exempt from sections 71-4401 to 71-4412.

Source: Laws 1969, c. 445, § 5, p. 1486; Laws 1987, LB 104, § 5; Laws 2007, LB25, § 7.

71-4406 Seizure by rabies control authority; confinement by owner; test authorized.

(1) Any animal which is owned by a person and has bitten any person or caused an abrasion of the skin of any person shall be seized by the rabies control authority for a period of not less than ten days if:

(a) The animal is suspected of having rabies, regardless of the species and whether or not the animal has been vaccinated;

(b) The animal is not vaccinated and is of a species determined by the department to be a rabid species; or

(c) The animal is of a species which has been determined by the department to be a rabid species not amenable to rabies protection by immunization, whether or not such animal has been vaccinated.

If, after observation and examination by a veterinarian, at the end of the ten-day period the animal shows no clinical signs of rabies, the animal may be released to its owner.

(2)(a) Except as provided in subdivision (b) of this subsection, whenever any person has been bitten or has an abrasion of the skin caused by an animal owned by another person, which animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, or if such injury to a person is caused by an owned animal determined by the department to be a rabid species amenable to rabies protection by immunization which has been vaccinated, such animal shall be confined by the owner or other responsible person as required by the rabies control authority for a period of at least ten days and shall be observed and examined by a veterinarian at the end of such ten-day period. If no clinical signs of rabies are found by the veterinarian, such animal may be released from confinement.

(b) A vaccinated animal owned by a law enforcement or governmental military agency which bites or causes an abrasion of the skin of any person during training or the performance of the animal's duties may be confined as provided in subdivision (a) of this subsection. Such agency shall maintain ownership of and shall control and supervise the actions of such animal for a period of fifteen days following such injury. If during such period the death of the animal occurs for any reason, a veterinarian shall within twenty-four hours of the death examine the tissues of the animal for clinical signs of rabies.

(3) Any animal of a rabid species which has bitten a person or caused an abrasion of the skin of a person and which is unowned or the ownership of which cannot be determined within seventy-two hours of the time of the bite or abrasion shall be immediately subject to any tests which the department believes are necessary to determine whether the animal is afflicted with rabies. The seventy-two-hour period shall include holidays and weekends and shall not be extended for any reason. The tests required by this subsection may include tests which require the animal to be destroyed.

Source: Laws 1969, c. 445, § 6, p. 1486; Laws 1987, LB 104, § 6; Laws 1989, LB 51, § 1; Laws 2007, LB25, § 8.

71-4407 Domestic or hybrid animal bitten by a rabid animal; disposition.

In the case of domestic or hybrid animals known to have been bitten by a rabid animal, the following rules shall apply:

(1) If the bitten or exposed domestic or hybrid animal has not been vaccinated in accordance with sections 71-4402 and 71-4402.02, such bitten or exposed domestic or hybrid animal shall be immediately destroyed unless the owner is willing to place such domestic or hybrid animal in strict isolation in a kennel under veterinary supervision for a period of not less than six months; and

(2) If the bitten or exposed domestic or hybrid animal has been vaccinated in accordance with sections 71-4402 and 71-4402.02, such domestic or hybrid animal shall be subject to the following procedure: (a) Such domestic or hybrid animal shall be immediately revaccinated and confined for a period of not less than thirty days following vaccination; (b) if such domestic or hybrid animal is not immediately revaccinated, such domestic or hybrid animal shall be confined in strict isolation in a kennel for a period of not less than six months under the supervision of a veterinarian; or (c) such domestic or hybrid animal

shall be destroyed if the owner does not comply with either subdivision (a) or (b) of this subdivision.

Source: Laws 1969, c. 445, § 7, p. 1487; Laws 1987, LB 104, § 7; Laws 2007, LB25, § 9.

71-4408 Rabies control authority; pounds; authorized; impoundment; notice; release; fee.

(1) The rabies control authority may authorize an animal pound or pounds or may enter into a cooperative agreement with a licensed veterinarian for the establishment and operation of a pound.

(2) Any dog or hybrid of the family Canidae found outside the owner's premises whose owner does not possess a valid certificate of rabies vaccination and valid rabies vaccination tag for such dog or hybrid of the family Canidae shall be impounded. The rabies control authority may require the impoundment of domestic or hybrid animals other than dogs or hybrids of the family Canidae. All impounded domestic or hybrid animals shall be given proper care, treatment, and maintenance. Each impounded domestic or hybrid animal shall be kept and maintained at the pound for a period of not less than seventy-two hours unless reclaimed earlier by the owner.

(3) Notice of impoundment of all animals, including any significant marks of identification, shall be posted at the pound as public notification of impoundment. Any unvaccinated domestic or hybrid animal may be reclaimed by its owner during the period of impoundment by payment of prescribed pound fees and by complying with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. Any vaccinated domestic or hybrid animal impounded because its owner has not presented a valid certificate of rabies vaccination and a valid rabies vaccination tag for such domestic or hybrid animal may be reclaimed by its owner by furnishing proof of rabies vaccination and payment of all impoundment fees prior to release.

(4) At the expiration of impoundment, a domestic or hybrid animal may be claimed by payment of established pound fees and by compliance with the rabies vaccination requirement of sections 71-4401 to 71-4412 within seventy-two hours of release. If the domestic or hybrid animal is unclaimed at the end of five days, the authorities may dispose of the domestic or hybrid animal in accordance with applicable laws or rules and regulations.

Source: Laws 1969, c. 445, § 8, p. 1487; Laws 1987, LB 104, § 8; Laws 2007, LB25, § 10.

71-4409 Rabies control authority; enforcement of sections; duties.

The rabies control authority shall enforce sections 71-4401 to 71-4412.

In the event that the health and law enforcement officials of a county, township, city, or village fail to act with sufficient promptness in enforcing sections 71-4401 to 71-4412, the department may take all actions necessary for the proper administration and enforcement of such sections relating to vaccination and impoundment of domestic or hybrid animals. In such a case no authorized representatives of the department or any law enforcement officials

enforcing such sections shall be responsible for any accident or disease of a domestic or hybrid animal resulting from the enforcement of such sections.

Source: Laws 1969, c. 445, § 9, p. 1488; Laws 1987, LB 104, § 9; Laws 2007, LB25, § 11.

71-4410 Violation; penalty; order for seizure.

The owner of any domestic or hybrid animal or any person who violates any of the provisions of sections 71-4401 to 71-4412 shall be guilty of a Class V misdemeanor. When the owner of any domestic or hybrid animal or other animal fails or refuses to comply with section 71-4406 or 71-4407, the rabies control authority shall obtain an order for seizure of such animal pursuant to Chapter 29, article 8.

Source: Laws 1969, c. 445, § 10, p. 1488; Laws 1978, LB 685, § 1; Laws 1987, LB 104, § 10; Laws 2007, LB25, § 12.

71-4411 Impoundment fees; payment.

Impoundment fees shall be paid by the owner. Fees for impoundment at public facilities shall be established by the rabies control authority.

Source: Laws 1969, c. 445, § 11, p. 1488.

71-4412 Control of rabies; vaccination; enforcement; political subdivisions.

In the State of Nebraska, all laws, ordinances, codes, or rules and regulations concerning the control of rabies or the vaccination of domestic or hybrid animals against rabies shall be enforced by the county, township, city, and village health and law enforcement officials or those other officers with regulatory authority as specified by the governing political subdivisions.

Whenever a county, township, city, or village requires the licensure of domestic or hybrid animals, it may require that, before a license is issued for the possession or maintenance of any domestic or hybrid animal in any such county, township, city, or village, the owner or keeper of the domestic or hybrid animal shall furnish to the clerk of such political subdivision a certification that the domestic or hybrid animal has been vaccinated against rabies in accordance with sections 71-4401 to 71-4412.

Source: Laws 1969, c. 445, § 12, p. 1489; Laws 1987, LB 104, § 11; Laws 2007, LB25, § 13.

ARTICLE 45

NEBRASKA AIR QUALITY ACT

Cross References

Environmental Protection Act, see section 81-1532.

Section
71-4501. Repealed. Laws 1971, LB 939, § 35.
71-4502. Repealed. Laws 1971, LB 939, § 35.
71-4503. Repealed. Laws 1971, LB 939, § 35.
71-4504. Repealed. Laws 1971, LB 939, § 35.
71-4505. Repealed. Laws 1971, LB 939, § 35.
71-4506. Repealed. Laws 1971, LB 939, § 35.
71-4507. Repealed. Laws 1971, LB 939, § 35.
71-4508. Repealed. Laws 1971, LB 939, § 35.
71-4509. Repealed. Laws 1971, LB 939, § 35.

Section
71-4510. Repealed. Laws 1971, LB 939, § 35.
71-4511. Repealed. Laws 1971, LB 939, § 35.
71-4512. Repealed. Laws 1971, LB 939, § 35.
71-4513. Repealed. Laws 1971, LB 939, § 35.
71-4514. Repealed. Laws 1971, LB 939, § 35.
71-4515. Repealed. Laws 1971, LB 939, § 35.
71-4516. Repealed. Laws 1971, LB 939, § 35.
71-4517. Repealed. Laws 1971, LB 939, § 35.
71-4518. Repealed. Laws 1971, LB 939, § 35.
71-4519. Repealed. Laws 1971, LB 939, § 35.
71-4520. Repealed. Laws 1971, LB 939, § 35.
71-4521. Repealed. Laws 1971, LB 939, § 35.

71-4501 Repealed. Laws 1971, LB 939, § 35.

71-4502 Repealed. Laws 1971, LB 939, § 35.

71-4503 Repealed. Laws 1971, LB 939, § 35.

71-4504 Repealed. Laws 1971, LB 939, § 35.

71-4505 Repealed. Laws 1971, LB 939, § 35.

71-4506 Repealed. Laws 1971, LB 939, § 35.

71-4507 Repealed. Laws 1971, LB 939, § 35.

71-4508 Repealed. Laws 1971, LB 939, § 35.

71-4509 Repealed. Laws 1971, LB 939, § 35.

71-4510 Repealed. Laws 1971, LB 939, § 35.

71-4511 Repealed. Laws 1971, LB 939, § 35.

71-4512 Repealed. Laws 1971, LB 939, § 35.

71-4513 Repealed. Laws 1971, LB 939, § 35.

71-4514 Repealed. Laws 1971, LB 939, § 35.

71-4515 Repealed. Laws 1971, LB 939, § 35.

71-4516 Repealed. Laws 1971, LB 939, § 35.

71-4517 Repealed. Laws 1971, LB 939, § 35.

71-4518 Repealed. Laws 1971, LB 939, § 35.

71-4519 Repealed. Laws 1971, LB 939, § 35.

71-4520 Repealed. Laws 1971, LB 939, § 35.

71-4521 Repealed. Laws 1971, LB 939, § 35.

ARTICLE 46

MANUFACTURED HOMES, RECREATIONAL VEHICLES, AND MOBILE HOME PARKS

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

Section
71-4601. Act, how cited.
71-4602. Uniformity in construction and use of manufactured homes and recreational vehicles and their systems; purpose.
71-4603. Terms, defined.
71-4604. Plumbing, heating, and electrical systems; body and frame design and construction; installed equal to standards approved by commission.
71-4604.01. Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Manufactured Homes and Recreational Vehicles Cash Fund; created; investment.
71-4605. Standards; compliance prior to sale, offer for sale, or lease.
71-4606. Standards; exception; reciprocity with other states; effect; seal of state on reciprocity list; federal manufactured-home label; validity; restrictions on sale.
71-4607. Repealed. Laws 1985, LB 313, § 31.
71-4608. Violations; penalties; administrative fine.
71-4609. Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.
71-4610. Commission; inspections and investigations; purpose; notice of noncompliance.
71-4611. Commission; powers and duties.
71-4612. District court; enforcement.
71-4613. Manufacturer of manufactured homes; duties.
71-4614. Commission; require manufacturer to supply information to purchaser; manner.
71-4615. Trade secret information; confidential; exceptions.
71-4616. Manufacturer; notification of failure to conform; method; contents.
71-4617. Manufacturer; furnish commission with information regarding hazards, defects, and noncompliance; disclosure to public; limitation; exception.
71-4618. Commission; notice to manufacturers concerning nonconformance; opportunity for evidence; determination by commission; effect.
71-4619. Manufacturer; maintain sales records; commission; rules and regulations.
71-4620. Manufacturer; compliance with standards or correction of nonconformance; conditions; powers of commission; remedy plan; replacement or refund; when provided.
71-4620.01. Existing rules, regulations, orders, suits, and proceedings; effect of transfer.

(b) MOBILE HOME PARKS

71-4621. Terms, defined.
71-4622. License required; term.
71-4623. License; application.
71-4624. License; application; fees; inspection.
71-4625. Sanitary facilities; permit; exception; application; issuance.
71-4626. Sanitary facilities permit; denial; procedures; appeal.
71-4627. Department; permit or license approved; records.
71-4628. Repealed. Laws 2008, LB 797, § 34.
71-4629. Department; utility systems and sanitary conditions; standards.
71-4630. Applicability of code; certificate of exemption; procedure.
71-4631. Licenses; issuance; denial, refusal of renewal, suspension, or revocation; civil penalty; grounds; notice; hearing; appeal.
71-4632. Violations; nuisance; penalty; removal.
71-4633. Operation without license; action by department; burden of proof.

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

71-4601 Act, how cited.

Sections 71-4601 to 71-4620.01 shall be known and may be cited as the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

Source: Laws 1969, c. 557, § 1, p. 2272; Laws 1975, LB 300, § 1; Laws 1985, LB 313, § 5; Laws 1998, LB 1073, § 127.

71-4602 Uniformity in construction and use of manufactured homes and recreational vehicles and their systems; purpose.

The Legislature recognizes that uniformity in the manner of the body and frame design, construction, assembly, and use of manufactured homes and recreational vehicles and that of their systems, components, and appliances including their plumbing, heating, and electrical systems is desirable in order that owners may not be burdened with differing requirements and in order to promote construction suitable for the health of the numerous persons living in manufactured homes and recreational vehicles.

Source: Laws 1969, c. 557, § 2, p. 2272; Laws 1975, LB 300, § 2; Laws 1985, LB 313, § 6.

71-4603 Terms, defined.

For purposes of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, unless the context otherwise requires:

(1) Camping trailer means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use;

(2) Commission means the Public Service Commission;

(3) Dealer means a person licensed by the state pursuant to Chapter 60, article 14, as a dealer in manufactured homes or recreational vehicles or any other person, other than a manufacturer, who sells, offers to sell, distributes, or leases manufactured homes or recreational vehicles primarily to persons who in good faith purchase or lease a manufactured home or recreational vehicle for purposes other than resale;

(4) Defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended but does not result in an unreasonable risk of injury or death to occupants;

(5) Distributor means any person engaged in the sale and distribution of manufactured homes or recreational vehicles for resale;

(6) Failure to conform means a defect, a serious defect, noncompliance, or an imminent safety hazard related to the code;

(7) Fifth-wheel trailer means a unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size

or weight as not to require a special highway movement permit, of gross trailer area not to exceed four hundred square feet in the setup mode, and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle;

(8) Gross trailer area means the total plan area measured on the exterior to the maximum horizontal projections of exterior wall in the setup mode and includes all siding, corner trims, moldings, storage spaces, expandable room sections regardless of height, and areas enclosed by windows but does not include roof overhangs. Storage lofts contained within the basic unit shall have ceiling heights less than five feet and shall not constitute additional square footage. Appurtenances, as defined in subdivision (2)(k) of section 60-6,288, shall not be considered in calculating the gross trailer area as provided in such subdivision;

(9) Imminent safety hazard means a hazard that presents an imminent and unreasonable risk of death or severe personal injury;

(10) Manufactured home means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body feet or more in length or when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure, except that manufactured home includes any structure that meets all of the requirements of this subdivision other than the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as such act existed on September 1, 2001, 42 U.S.C. 5401 et seq.;

(11) Manufactured-home construction means all activities relating to the assembly and manufacture of a manufactured home, including, but not limited to, activities relating to durability, quality, and safety;

(12) Manufactured-home safety means the performance of a manufactured home in such a manner that the public is protected against any unreasonable risk of the occurrence of accidents due to the design or construction of such manufactured home or any unreasonable risk of death or injury to the user or to the public if such accidents do occur;

(13) Manufacturer means any person engaged in manufacturing, assembling, or completing manufactured homes or recreational vehicles;

(14) Motor home means a vehicular unit primarily designed to provide temporary living quarters which are built into an integral part of, or permanently attached to, a self-propelled motor vehicle chassis or van, containing permanently installed independent life-support systems that meet the state standard for recreational vehicles and providing at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating, air conditioning, or both; a potable water supply system including a faucet and sink; separate one-hundred-twenty-nominal-volt electrical power supply; or LP gas supply;

(15) Noncompliance means a failure to comply with an applicable construction standard that does not constitute a defect, a serious defect, or an imminent safety hazard;

(16) Park trailer means a vehicular unit which meets the following criteria:

(a) Built on a single chassis mounted on wheels;

(b) Designed to provide seasonal or temporary living quarters which may be connected to utilities necessary for operation of installed fixtures and appliances;

(c) Constructed to permit setup by persons without special skills using only hand tools which may include lifting, pulling, and supporting devices; and

(d) Having a gross trailer area not exceeding four hundred square feet when in the setup mode;

(17) Person means any individual, partnership, limited liability company, company, corporation, or association engaged in manufacturing, selling, offering to sell, or leasing manufactured homes or recreational vehicles;

(18) Purchaser means the first person purchasing a manufactured home or recreational vehicle in good faith for purposes other than resale;

(19) Recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which unit either has its own motive power or is mounted on or towed by another vehicle. Recreational vehicle includes, but is not limited to, travel trailer, park trailer, camping trailer, truck camper, motor home, and van conversion;

(20) Seal means a device or insignia issued by the Department of Health and Human Services Regulation and Licensure prior to May 1, 1998, or by the Public Service Commission on or after May 1, 1998, to be displayed on the exterior of a manufactured home or recreational vehicle to evidence compliance with state standards. The federal manufactured-home label shall be recognized as a seal;

(21) Serious defect means a failure to conform to an applicable construction standard that renders the manufactured home or recreational vehicle or any component of the manufactured home or recreational vehicle not fit for the ordinary use for which it was intended and which results in an unreasonable risk of injury or death to the occupants;

(22) Travel trailer means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use of such size or weight as not to require special highway movement permits when towed by a motorized vehicle and of gross trailer area less than four hundred square feet;

(23) Truck camper means a portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides and designed to be loaded onto and unloaded from the bed of a pickup truck; and

(24) Van conversion means a completed vehicle permanently altered cosmetically, structurally, or both which has been recertified by the state as a multipurpose passenger vehicle but which does not conform to or otherwise meet the definition of a motor home in this section and which contains at least one plumbing, heating, or one-hundred-twenty-nominal-volt electrical component subject to the provisions of the state standard for recreational vehicles. Van

conversion does not include any such vehicle that lacks any plumbing, heating, or one-hundred-twenty-nominal-volt electrical system but contains an extension of the low-voltage automotive circuitry.

Source: Laws 1969, c. 557, § 3, p. 2272; Laws 1975, LB 300, § 3; Laws 1985, LB 313, § 7; Laws 1993, LB 121, § 435; Laws 1993, LB 536, § 86; Laws 1996, LB 1044, § 675; Laws 1998, LB 1073, § 128; Laws 2001, LB 376, § 6; Laws 2008, LB797, § 13.

71-4604 Plumbing, heating, and electrical systems; body and frame design and construction; installed equal to standards approved by commission.

(1) All body and frame design and construction and all plumbing, heating, and electrical systems installed in manufactured homes or recreational vehicles manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the standards of the state agency responsible for regulation of manufactured homes or recreational vehicles as such standards existed on the date of manufacture.

(2) All body and frame design and construction and all plumbing, heating, and electrical systems installed in manufactured homes or recreational vehicles manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall be at least equal to the standards adopted and approved by the commission pursuant to its rules and regulations as such standards existed on the date of manufacture. The standards pertaining to manufactured homes shall conform to the Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, and the Manufactured Home Procedural and Enforcement Regulations, 24 C.F.R. 3282, adopted by the United States Department of Housing and Urban Development pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq. Manufactured homes and recreational vehicles destined for sale outside the United States shall be exempt from such regulations if sufficient proof of such delivery is submitted to the commission for review. The standards pertaining to recreational vehicles shall (a) protect the health and safety of persons living in recreational vehicles, (b) assure reciprocity with other states that have adopted standards which protect the health and safety of persons living in recreational vehicles the purpose of which is to make uniform the law of those states which adopt them, and (c) allow variations from such uniform standards as will reduce unnecessary costs of construction or increase safety, durability, or efficiency, including energy efficiency, of the recreational vehicle without jeopardizing such reciprocity.

Source: Laws 1969, c. 557, § 4, p. 2273; Laws 1971, LB 654, § 1; Laws 1975, LB 300, § 4; Laws 1985, LB 313, § 8; Laws 1993, LB 536, § 87; Laws 1996, LB 1044, § 676; Laws 1998, LB 1073, § 129; Laws 2008, LB797, § 14.

71-4604.01 Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Manufactured Homes and Recreational Vehicles Cash Fund; created; investment.

(1)(a) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state more than four months after May 27, 1975, and before May 1, 1998, shall comply with the seal requirements of the

state agency responsible for regulation of manufactured homes or recreational vehicles as such requirements existed on the date of manufacture.

(b) Every manufactured home or recreational vehicle manufactured, sold, offered for sale, or leased in this state on or after May 1, 1998, shall bear a seal issued by the commission certifying that the body and frame design and construction and the plumbing, heating, and electrical systems of such manufactured home or recreational vehicle have been installed in compliance with the standards adopted by the commission, applicable at the time of manufacture. Manufactured homes destined for sale outside the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. Recreational vehicles destined for sale or lease outside this state or the United States shall be exempt from displaying the seal issued by the state if sufficient proof of such delivery is submitted to the commission for review. The commission shall issue the recreational-vehicle seal upon an inspection of the plans and specifications for the recreational vehicle or upon an actual inspection of the recreational vehicle during or after construction if the recreational vehicle is in compliance with state standards. The commission shall issue the manufactured-home seal in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., as such act existed on January 1, 2005. Each seal issued by the state shall remain the property of the commission and may be revoked by the commission in the event of a violation of the conditions of issuance.

(2) The commission shall charge a fee of not less than ten dollars and not more than seventy-five dollars, as determined annually by the commission after published notice and a hearing, for seals issued by the commission. A seal shall be placed on each manufactured home. The commission shall assess any costs of inspections conducted outside of Nebraska to the manufacturer in control of the inspected facility or to a manufacturer requesting such inspection. Such costs shall include, but not be limited to, actual travel, personnel, and inspection expenses and shall be paid prior to any issuance of seals.

(3) The commission shall adopt and promulgate rules and regulations governing the submission of plans and specifications of manufactured homes and recreational vehicles. A person who submits recreational-vehicle plans and specifications to the commission for review and approval shall be assessed an hourly rate by the commission for performing the review of the plans and specifications and related functions. The hourly rate shall be not less than fifteen dollars per hour and not more than seventy-five dollars per hour as determined annually by the commission after published notice and hearing based on the number of hours of review time as follows:

(a) New model, one hour;

(b) Quality control manual, two hours;

(c) Typicals, one-half hour;

(d) Revisions, three-fourths hour;

(e) Engineering calculations, three-fourths hour;

(f) Initial package, fifteen hours; and

(g) Yearly renewal, two hours plus the three-fourths hour for revisions.

(4) The commission shall charge each manufacturer an inspection fee of two hundred fifty dollars for each inspection of any new recreational vehicle

manufactured by such manufacturer and not bearing a seal issued by the State of Nebraska or some reciprocal state.

(5) All fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be remitted to the State Treasurer for credit to the Manufactured Homes and Recreational Vehicles Cash Fund which is hereby created. Money credited to the fund pursuant to this section shall be used by the commission for the purpose of administering the code. Any money in the Manufactured Homes and Recreational Vehicles Cash 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.

Source: Laws 1975, LB 300, § 5; Laws 1983, LB 617, § 24; Laws 1985, LB 313, § 9; Laws 1991, LB 703, § 50; Laws 1993, LB 536, § 88; Laws 1996, LB 1044, § 677; Laws 1996, LB 1155, § 33; Laws 1998, LB 1073, § 130; Laws 2003, LB 241, § 2; Laws 2005, LB 319, § 1; Laws 2008, LB797, § 15.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-4605 Standards; compliance prior to sale, offer for sale, or lease.

Except as provided in section 71-4606, no dealer shall sell, offer for sale, or lease in this state any new or used manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, unless such manufactured home or recreational vehicle meets or exceeds the standards with respect to body and frame design and construction and plumbing, heating, and electrical systems established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

Source: Laws 1969, c. 557, § 5, p. 2273; Laws 1971, LB 654, § 2; Laws 1975, LB 300, § 6; Laws 1985, LB 313, § 10.

71-4606 Standards; exception; reciprocity with other states; effect; seal of state on reciprocity list; federal manufactured-home label; validity; restrictions on sale.

If any other state has plumbing, heating, electrical, or body and frame design and construction codes for recreational vehicles at least equal to those established under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the commission, upon determining that such standards are being enforced by such other state, shall place such other state on a reciprocity list, which list shall be available to any interested person. Any recreational vehicle which bears the seal of any state which has been placed on the reciprocity list shall not be required to bear the seal issued by this state. A manufactured home manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label issued by this state or by a state which has been placed on the reciprocity list shall not be permitted to be manufactured, offered for sale, sold, or leased by a manufacturer, dealer, or any other person anywhere within this state nor delivered from this state into any other state or jurisdiction unless destined for sale outside the United States. A recreational vehicle manufactured in this state, which is offered for sale, sold, or leased by a manufacturer, dealer, or other person anywhere outside this

state, shall not be required to bear the seal issued by this state. If a recreational vehicle has a certificate of title or other certification from a state on the reciprocity list, a dealer may sell it unless he or she has actual knowledge that the recreational vehicle does not meet the standards of the state which has issued a certificate of title or other certification for it, so long as it bears the seal issued by this state or a state on the reciprocity list. No dealer or distributor shall sell a manufactured home or recreational vehicle if it contains a defect, a serious defect, or an imminent safety hazard.

Source: Laws 1969, c. 557, § 6, p. 2273; Laws 1971, LB 654, § 3; Laws 1975, LB 300, § 7; Laws 1985, LB 313, § 11; Laws 1993, LB 536, § 89; Laws 1996, LB 1155, § 34; Laws 1998, LB 1073, § 131.

71-4607 Repealed. Laws 1985, LB 313, § 31.

71-4608 Violations; penalties; administrative fine.

(1) Any person who is in violation of any provision of the Uniform Standard Code for Manufactured Homes and Recreational Vehicles regarding a used manufactured home or recreational vehicle or who manufactures unless destined for sale outside the United States, sells, offers for sale, or leases in this state any used manufactured home or recreational vehicle manufactured more than four months after May 27, 1975, which does not bear the federal manufactured-home label or the recreational-vehicle seal issued by this state or by a state which has been placed on the reciprocity list as required by the code shall be guilty of a Class I misdemeanor. Nothing in the Uniform Standard Code for Manufactured Homes and Recreational Vehicles shall be construed to require a seal for any recreational vehicle manufactured in this state which is sold or leased outside this state.

(2) No person shall:

(a) Manufacture for sale, lease, sell, offer for sale or lease, or introduce, deliver, or import into this state any manufactured home or recreational vehicle which is manufactured on or after the effective date of any applicable standard of the commission which does not comply with such standard;

(b) Fail or refuse to permit access to or copying of records, fail to make reports or provide information, or fail or refuse to permit entry or inspection as provided in section 71-4610;

(c) Fail to furnish notification to the purchaser of any manufactured home of any defect as required by 42 U.S.C. 5414 or to the purchaser of any recreational vehicle as provided in section 71-4616;

(d) Fail to issue a certification required by 42 U.S.C. 5415 or issue a certification to the effect that a manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(e) Fail to establish and maintain such records, make such reports, and provide such information as the commission may reasonably require to enable it to determine whether there is compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq., or the standards adopted by the commission for recreational-vehicle construction or fail to permit, upon request of a person duly authorized by the commission, inspection of appropriate books, papers, records, and

documents relative to determining whether a manufacturer, distributor, or dealer has acted or is acting in compliance with the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or with the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended, 42 U.S.C. 5401 et seq.; or

(f) Issue a certification pursuant to 42 U.S.C. 5403(a) if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

(3) Subdivision (2)(a) of this section shall not apply to the sale or the offer for sale of any manufactured home or recreational vehicle after the first purchase of it in good faith for purposes other than resale.

(4) Subdivision (2)(a) of this section shall not apply to any person who establishes that he or she did not have reason to know in the exercise of due care that such manufactured home or recreational vehicle was not in conformity with applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or the standards adopted by the commission for recreational-vehicle construction or any person who, prior to such first purchase, holds a certificate by the manufacturer or importer of such manufactured home or recreational vehicle to the effect that such manufactured home conforms to all applicable Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, or that such recreational vehicle conforms to the standards adopted by the commission for recreational-vehicle construction unless such person knows that such manufactured home or recreational vehicle does not so conform.

(5) Any person or officer, director, or agent of a corporation who willfully or knowingly violates subsection (2) of this section in any manner which threatens the health or safety of any purchaser shall be guilty of a Class I misdemeanor.

(6) The commission may administratively fine pursuant to section 75-156 any person who violates the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or any rule or regulation adopted and promulgated under the code.

Source: Laws 1969, c. 557, § 8, p. 2274; Laws 1975, LB 300, § 20; Laws 1977, LB 39, § 176; Laws 1985, LB 313, § 12; Laws 1993, LB 536, § 90; Laws 1996, LB 1155, § 35; Laws 1998, LB 1073, § 132; Laws 2005, LB 319, § 2; Laws 2008, LB797, § 16.

71-4609 Commission; duties; rules and regulations; refusal to issue seal; grounds; hearing; appeal; commission; powers; disciplinary actions; fee.

(1) The commission shall administer the Uniform Standard Code for Manufactured Homes and Recreational Vehicles. The commission may adopt and promulgate, amend, alter, or repeal general rules and regulations of procedure for (a) administering the provisions of the code, (b) issuing seals, (c) obtaining statistical data respecting the manufacture and sale of manufactured homes and recreational vehicles, and (d) prescribing means, methods, and practices to make effective such provisions.

(2) The commission shall refuse to issue a seal to any manufacturer or other person for any manufactured home or recreational vehicle found to be not in compliance with its standards governing body and frame design and construction or plumbing, heating, or electrical systems for manufactured homes or recreational vehicles or for which fees have not been paid. Except in case of

failure to pay the required fees, any such manufacturer or other person may request a hearing before the commission on the issue of such refusal. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The refusal by the commission may be appealed, and the appeal shall be in accordance with the act.

(3) The issuance of seals may be suspended or revoked as to any manufacturer or other person who has not complied with any provision of the code or with any rule, regulation, or standard adopted and promulgated under the code or who is convicted of violating section 71-4608, and issuance of the seals shall not be resumed until such manufacturer or other person submits sufficient proof that the conditions which caused the lack of compliance or the violation have been remedied. Any manufacturer or other person may request a hearing before the commission on the issue of such suspension or revocation. Procedures for notice and opportunity for a hearing before the commission shall be pursuant to the Administrative Procedure Act. The suspension or revocation by the commission may be appealed, and the appeal shall be in accordance with the act.

(4) The commission may conduct hearings and presentations of views consistent with the regulations adopted by the United States Department of Housing and Urban Development and adopt and promulgate such rules and regulations as are necessary to carry out this function.

(5) The commission shall establish a monitoring inspection fee in an amount approved by the United States Secretary of Housing and Urban Development, which fee shall be an amount paid to the commission by the manufacturer for each manufactured-home seal issued in the state. An additional monitoring inspection fee established by the United States Secretary of Housing and Urban Development shall be paid by the manufacturer to the secretary who shall distribute the fees collected from all manufactured-home manufacturers based on provisions developed and approved by the secretary.

Source: Laws 1969, c. 557, § 9, p. 2274; Laws 1975, LB 300, § 21; Laws 1981, LB 545, § 25; Laws 1985, LB 313, § 13; Laws 1988, LB 352, § 134; Laws 1993, LB 536, § 91; Laws 1998, LB 1073, § 133; Laws 2002, LB 93, § 16.

Cross References

Administrative Procedure Act, see section 84-920.

71-4610 Commission; inspections and investigations; purpose; notice of noncompliance.

(1) The commission may conduct inspections and investigations as may be necessary to enforce the standards adopted under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or to carry out its duties pursuant to the code. The commission shall furnish the appropriate state and county officials any information obtained indicating noncompliance with such standards for appropriate action.

(2) For purposes of enforcement of the code and the rules, regulations, and standards adopted and promulgated by the commission pursuant to the code, persons duly designated by the commission, upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) Enter, at reasonable times and without advance notice, any factory, warehouse, or other establishment or place in which manufactured homes or recreational vehicles are manufactured, stored, offered for sale, or held for lease or sale; and

(b) Inspect, at reasonable times and within reasonable limits and in a reasonable manner, any such factory, warehouse, or other establishment or place and inspect such books, papers, records, and documents as are set forth in section 71-4611. Each such inspection shall be commenced and completed with reasonable promptness.

Source: Laws 1975, LB 300, § 9; Laws 1985, LB 313, § 14; Laws 1993, LB 536, § 92; Laws 1998, LB 1073, § 134.

71-4611 Commission; powers and duties.

For purposes of carrying out the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, the commission may:

(1) Hold such hearings, take such testimony, act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, papers, correspondence, memoranda, contracts, agreements, or other records as the commission deems advisable. Witnesses summoned pursuant to this section shall be paid the same fees as are paid witnesses in the district courts of the state and mileage as provided in section 81-1176;

(2) Examine and copy any documentary evidence of any person having materials or information relevant to any function of the commission under the code;

(3) Require, by general or special orders, any person to file, in such form as the commission may prescribe, reports or answers in writing to specific questions relating to any function of the commission under the code. Such reports and answers shall be made under oath or otherwise and shall be filed with the commission within such reasonable period as the commission may prescribe; and

(4) Make available to the public any information which may indicate the existence of a failure to comply which relates to manufactured-home or recreational-vehicle construction or safety or of the failure of a manufactured home or recreational vehicle to comply with applicable standards. The commission shall disclose so much of other information obtained under this subdivision to the public as it determines will assist in carrying out the code, but it shall not under the authority of this subdivision make available or disclose to the public any information which contains or relates to a trade secret or any information the disclosure of which would put the person furnishing such information at a substantial competitive disadvantage, unless the commission determines that it is necessary to carry out the purposes of the code.

Source: Laws 1975, LB 300, § 10; Laws 1981, LB 204, § 129; Laws 1985, LB 313, § 15; Laws 1993, LB 536, § 93; Laws 1998, LB 1073, § 135.

71-4612 District court; enforcement.

Any district court of this state in which any action is instituted in the case of any willful or negligent refusal to obey a subpoena or order of the commission

issued pursuant to section 71-4611, may issue an order requiring compliance therewith. Any person who fails to obey such order of the court shall be guilty of contempt of court and may be punished by such court accordingly.

Source: Laws 1975, LB 300, § 11; Laws 1998, LB 1073, § 136.

71-4613 Manufacturer of manufactured homes; duties.

Each manufacturer of manufactured homes which selects the commission to perform plan review shall:

(1) Submit, in accordance with regulations and standards adopted by the United States Secretary of Housing and Urban Development, the building plans for every model of its manufactured homes to the commission for the purpose of inspection. The manufacturer shall certify that each building plan meets the standards in force at that time before the respective model is produced;

(2) Establish and maintain records, make reports, and provide information as the commission may reasonably require to enable it to determine whether such manufacturer or any distributor or dealer has acted or is acting in compliance with the Uniform Standard Code for Manufactured Homes and Recreational Vehicles and standards adopted pursuant thereto;

(3) Upon request of a person duly designated by the commission, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer or any distributor or dealer has acted or is acting in compliance with the code and standards adopted pursuant to the code; and

(4) Provide to the commission all performance data and other technical data related to performance and safety as may be required by the commission to carry out the purposes of the code. Such data shall include records of tests and test results which the commission may require to be performed.

Source: Laws 1975, LB 300, § 12; Laws 1985, LB 313, § 16; Laws 1993, LB 536, § 94; Laws 1998, LB 1073, § 137.

71-4614 Commission; require manufacturer to supply information to purchaser; manner.

The commission may require the manufacturer to give notification of performance and technical data to:

(1) Each prospective purchaser before the first sale for purposes other than resale at each location where any such manufacturer's manufactured homes or recreational vehicles are offered for sale by a person with whom such manufacturer has a contractual, proprietary, or other legal relationship and in a manner determined by the commission to be appropriate, which notification may include, but need not be limited to, printed matter that is both available for retention by such prospective purchaser and sent by mail to such prospective purchaser upon his or her request; and

(2) The first person who purchases a manufactured home or recreational vehicle for purposes other than resale, at the time of such purchase or in printed matter placed in the manufactured home or recreational vehicle.

Source: Laws 1975, LB 300, § 13; Laws 1985, LB 313, § 17; Laws 1993, LB 536, § 95; Laws 1998, LB 1073, § 138.

71-4615 Trade secret information; confidential; exceptions.

All information reported to or otherwise obtained by the commission or its duly authorized representatives pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles which contains or relates to a trade secret, or which, if disclosed, would put the person furnishing such information at a substantial competitive disadvantage, shall be considered confidential, except that such information may be disclosed to other officers or employees concerned with carrying out the code or, when relevant, in any proceeding under the code.

Source: Laws 1975, LB 300, § 14; Laws 1985, LB 313, § 18; Laws 1998, LB 1073, § 139.

71-4616 Manufacturer; notification of failure to conform; method; contents.

(1) Every manufacturer shall furnish notification of any failure to conform in any manufactured home or recreational vehicle produced by such manufacturer which the manufacturer determines, in good faith, violates a standard adopted by the commission or which constitutes an imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or noncompliance determined to be in a class of manufactured homes or recreational vehicles to the purchaser of such manufactured home or recreational vehicle, within a reasonable time after such manufacturer has discovered the failure to conform.

(2) The notification required by this section shall be accomplished:

(a) By certified mail to the first purchaser, not including any dealer or distributor of such manufacturer, of the manufactured home or recreational vehicle containing the failure to conform and to any subsequent purchaser to whom any warranty on such manufactured home or recreational vehicle has been transferred;

(b) By certified mail to any other person who is a registered owner of such manufactured home or recreational vehicle and whose name and address has been ascertained pursuant to procedures established under section 71-4619; and

(c) By certified mail or other more expeditious means to the dealer or dealers of such manufacturer to whom such manufactured home or recreational vehicle was delivered.

(3) The notification required by subsection (1) of this section shall contain a clear description of such failure to conform, an evaluation of the risk to occupant safety reasonably related to such failure to conform, and a statement of the measures needed to repair the failure to conform. The notification shall also inform the owner whether the failure to conform is a construction or safety failure to conform which the manufacturer will have corrected at no cost to the owner of the manufactured home or recreational vehicle or a failure to conform which must be corrected at the expense of the owner.

Source: Laws 1975, LB 300, § 15; Laws 1985, LB 313, § 19; Laws 1993, LB 536, § 96; Laws 1998, LB 1073, § 140.

71-4617 Manufacturer; furnish commission with information regarding hazards, defects, and noncompliance; disclosure to public; limitation; exception.

Every manufacturer shall furnish to the commission a true or representative copy of all notices, bulletins, and other communications sent to the dealers of

the manufacturer or to purchasers of manufactured homes or recreational vehicles of the manufacturer regarding any imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or a noncompliance determined to be in a class of manufactured homes or recreational vehicles produced by the manufacturer. The commission shall disclose to the public so much of the information contained in such notices or other information obtained pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles as it deems will assist in carrying out the purposes of the code, but it shall not disclose any information which contains or relates to a trade secret or which, if disclosed, would put the manufacturer at a substantial competitive disadvantage, unless the commission determines that such disclosure is necessary to carry out the purposes of the code.

Source: Laws 1975, LB 300, § 16; Laws 1985, LB 313, § 20; Laws 1993, LB 536, § 97; Laws 1998, LB 1073, § 141.

71-4618 Commission; notice to manufacturers concerning nonconformance; opportunity for evidence; determination by commission; effect.

(1) If the commission determines that any manufactured home or recreational vehicle (a) does not comply with an applicable standard adopted by the commission or (b) contains a failure to conform which constitutes an imminent safety hazard or serious defect in a single manufactured home or recreational vehicle or a noncompliance determined to be in a class of manufactured homes or recreational vehicles, it shall immediately notify the manufacturer of such failure to conform. The notice shall contain the findings of the commission and shall include all information upon which the findings are based.

(2) The commission shall afford such manufacturer an opportunity to present its views and supporting evidence to establish that there is no failure to conform. If, after such presentation by the manufacturer, the commission determines that there is a failure to conform with applicable standards or a failure to conform which constitutes a serious defect or an imminent safety hazard, the commission shall direct the manufacturer to furnish the notification specified in section 71-4616.

Source: Laws 1975, LB 300, § 17; Laws 1985, LB 313, § 21; Laws 1993, LB 536, § 98; Laws 1998, LB 1073, § 142.

71-4619 Manufacturer; maintain sales records; commission; rules and regulations.

Every manufacturer shall maintain a record of the name and address of the first purchaser of each manufactured home or recreational vehicle for purposes other than resale and, to the maximum extent feasible and reasonable, shall maintain procedures for ascertaining the name and address of any subsequent purchaser and shall maintain a record of names and addresses so ascertained. Such records shall be kept for each manufactured home or recreational vehicle produced by a manufacturer. The commission may establish by rule and regulation procedures to be followed by manufacturers in establishing and maintaining such records, including procedures to be followed by distributors and dealers to assist manufacturers to secure the information required by this section.

Source: Laws 1975, LB 300, § 18; Laws 1985, LB 313, § 22; Laws 1993, LB 536, § 99; Laws 1998, LB 1073, § 143.

71-4620 Manufacturer; compliance with standards or correction of nonconformance; conditions; powers of commission; remedy plan; replacement or refund; when provided.

(1) A manufacturer required to furnish notification of a failure to conform under section 71-4616 or 71-4618 shall also bring the manufactured home or recreational vehicle into compliance with applicable commission standards and correct the failure to conform or have the failure to conform corrected within a reasonable period of time at no expense to the owner if the failure to conform presents an unreasonable risk of injury or death to occupants and the failure to conform can be related to an error by the manufacturer in design or assembly.

(2) The commission may direct the manufacturer to make such corrections after providing an opportunity for oral and written presentation of views by interested persons. Nothing in this section shall limit the rights of the purchaser or any other person under any contract or applicable law.

(3) The manufacturer shall submit a remedy plan for repairing such failure to conform to the commission for its approval, or the manufacturer shall notify the commission of the corrective action the manufacturer has taken and request state approval. Whenever a manufacturer is required to correct a failure to conform, the commission shall approve with or without modification, after consultation with the manufacturer, the manufacturer's remedy plan, including the date when and the method by which the notification and remedy required pursuant to this section shall be effectuated. Such date shall be the earliest practicable one but shall not be more than sixty days after the date of discovery or determination of the failure to conform, unless the commission grants an extension of such period for good cause shown. The manufacturer shall implement any remedy plan approved by the commission.

(4) When a failure to conform cannot be adequately repaired within sixty days from the date of discovery or determination of the failure to conform, the commission may require that the manufactured home or recreational vehicle be replaced with a new or equivalent manufactured home or recreational vehicle without charge or that the purchase price be refunded in full, less a reasonable allowance for depreciation based on actual use if the manufactured home or recreational vehicle has been in the possession of the owner for more than one year.

Source: Laws 1975, LB 300, § 19; Laws 1985, LB 313, § 23; Laws 1993, LB 536, § 100; Laws 1998, LB 1073, § 144.

71-4620.01 Existing rules, regulations, orders, suits, and proceedings; effect of transfer.

All rules, regulations, and orders of the Department of Health and Human Services Regulation and Licensure or its predecessor agency adopted prior to May 1, 1998, in connection with the powers, duties, and functions transferred to the Public Service Commission under the Uniform Standard Code for Manufactured Homes and Recreational Vehicles, shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

No suit, action, or other proceeding, judicial or administrative, lawfully commenced prior to May 1, 1998, or which could have been commenced prior to that date, by or against such department or agency, or the director or employee thereof in such director's or employee's official capacity or in relation

to the discharge of his or her official duties, shall abate by reason of the transfer of duties and functions from such department or agency to the commission.

On and after May 1, 1998, unless otherwise specified, whenever any provision of law refers to such department or agency in connection with duties and functions transferred to the commission, the law shall be construed as referring to the commission.

Any costs incurred by the department and associated with the transfer of powers, duties, and functions to the commission under the code shall be borne by the commission.

Source: Laws 1998, LB 1073, § 145.

(b) MOBILE HOME PARKS

71-4621 Terms, defined.

As used in the Uniform Standard Code for Mobile Home Parks, unless the context otherwise requires:

(1) Mobile home means a movable or portable dwelling constructed to be towed on its own chassis, connected to utilities, and designed with or without a permanent foundation for year-round living. It may consist of one or more units that can be telescoped when towed and expanded later for additional capacity, or of two or more units, separately towable but designed to be joined into one integral unit. Mobile home includes a manufactured home as defined in section 71-4603;

(2) Mobile home lot means a designated portion of a mobile home park designed for the accommodation of one mobile home and its accessory buildings or structures for the exclusive use of the occupants;

(3) Mobile home park means a parcel or contiguous parcels of land which have been so designated and improved that it contains two or more mobile home lots available to the general public for the placement thereon of mobile homes for occupancy. The term mobile home park shall not be construed to include mobile homes, buildings, tents, or other structures temporarily maintained by any individual, corporation, limited liability company, company, or other entity on its own premises and used exclusively to house its own labor force;

(4) Department means the Department of Health and Human Services; and

(5) Person means any individual, firm, partnership, limited liability company, corporation, company, association, joint-stock company or association, political subdivision, governmental agency, or other legal entity, and includes any trustee, receiver, assignee, or other legal representative thereof.

Source: Laws 1976, LB 91, § 1; Laws 1985, LB 313, § 24; Laws 1993, LB 121, § 436; Laws 1996, LB 1044, § 678; Laws 2007, LB296, § 586.

71-4622 License required; term.

No person shall establish, conduct, operate or maintain a mobile home park within this state without first obtaining an annual license therefor from the

department. Such license shall be issued for the calendar year applied for and shall expire at midnight on December 31 of such year.

Source: Laws 1976, LB 91, § 2.

71-4623 License; application.

The application for such annual license to conduct, operate, and maintain a mobile home park shall be submitted in writing or by electronic format and shall include the full name and address of the applicant or applicants, the names and addresses of the partners if the applicant is a partnership, the names and addresses of the members if the applicant is a limited liability company, or the names and addresses of the officers if the applicant is a corporation, and the current or most recent occupation of the applicant at the time of the filing of the application, and such other pertinent data as the department may require by regulation. If the applicant is an individual, the application shall include the applicant's social security number.

Source: Laws 1976, LB 91, § 3; Laws 1993, LB 121, § 437; Laws 1997, LB 752, § 183; Laws 2008, LB797, § 17.

71-4624 License; application; fees; inspection.

(1) The application for the first or initial annual license shall be submitted with the requirements mentioned in section 71-4623 accompanied by the appropriate fees. The department by regulation shall charge engineering firms, mobile home park owners and operators, and other appropriate parties fees established by regulation for the review of plans and specifications of a mobile home park, the issuance of a license or permit, the inspection of a mobile home park, and any other services rendered at a rate which defrays no more than the actual costs of the services provided. All fees shall be paid as a condition of annual renewal of licensure or of continuance of licensure.

(2) All fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the Uniform Standard Code for Mobile Home Parks.

(3) When any application is received, the department shall cause the mobile home park and appurtenances to be inspected by representatives of the department. When such inspection has been made and the department finds that all of the provisions of the Uniform Standard Code for Mobile Home Parks and the rules, regulations, and standards of the department have been met by the applicant, the department shall issue an annual license. Inspection by the department or its authorized representatives at any time of a mobile home park shall be a condition of continued licensure.

Source: Laws 1976, LB 91, § 4; Laws 1983, LB 617, § 25; Laws 1984, LB 916, § 63; Laws 1986, LB 1047, § 6; Laws 1991, LB 703, § 51; Laws 1996, LB 1044, § 679; Laws 2007, LB296, § 587.

71-4625 Sanitary facilities; permit; exception; application; issuance.

No person shall construct, expand, remodel or make alterations to the sanitary facilities in a mobile home park within this state without first obtaining a permit therefor from the department, except that no such permit shall be

required in the making of minor repairs or in matters of general maintenance. The application for such permit shall be made to the department in such manner as may be prescribed by regulations of the department, which shall require the applicant to supply plans and specifications and otherwise provide a description of the nature, type, location and extent of the sanitary facilities contemplated. When the application has been approved, the department shall issue a permit to the applicant to construct, expand, remodel or make alterations to sanitary facilities, including water and sewage disposal, upon a mobile home park and the appurtenances thereto according to the plans and specifications and other data submitted with the approved application. No approval of plans and specifications and issuance of a permit to construct, expand, remodel or make alterations upon a mobile home park and the appurtenances thereto by the department shall be made unless such park is in compliance with the provisions of sections 71-4621 to 71-4634 and the rules, regulations and standards of the department. Such a permit does not relieve the applicant from obtaining building permits when located within a municipality or county having a building code or from complying with any other municipal or county resolution, ordinance, or regulation applicable thereto, and not in conflict with sections 71-4621 to 71-4634.

Source: Laws 1976, LB 91, § 5.

71-4626 Sanitary facilities permit; denial; procedures; appeal.

If the application for a permit to construct, expand, remodel, or make alterations upon a mobile home park and the appurtenances thereto, pursuant to section 71-4625, is denied by the department, it shall so state in writing, giving the reasons for denying the application. If the objection can be corrected, the applicant may amend his or her application and resubmit it for approval. No such permit shall be denied except after due notice and opportunity for a hearing before the department pursuant to the Administrative Procedure Act. Any denial of such permit may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 91, § 6; Laws 1988, LB 352, § 135.

Cross References

Administrative Procedure Act, see section 84-920.

71-4627 Department; permit or license approved; records.

When the department has approved an application for a permit to construct, expand, remodel or make alterations upon a mobile home park or appurtenances thereto, pursuant to section 71-4625, or a license to establish, conduct, operate or maintain a mobile home park, it shall retain the original and keep a file thereof. One copy shall be returned to the applicant or his agent.

Source: Laws 1976, LB 91, § 7.

71-4628 Repealed. Laws 2008, LB 797, § 34.

71-4629 Department; utility systems and sanitary conditions; standards.

The department shall adopt, promulgate, and enforce by rules and regulations standards governing utility systems and sanitary conditions for mobile

home parks. The department shall not adopt or enforce by rules and regulations any design, construction, or land-use standards for any mobile home park.

Source: Laws 1976, LB 91, § 9; Laws 1997, LB 622, § 108.

71-4630 Applicability of code; certificate of exemption; procedure.

(1) The Uniform Standard Code for Mobile Home Parks shall not apply to any mobile home park located within the jurisdiction of any city, village, or county which provides for the regulation of mobile home parks by resolution, ordinance, or regulation which at a minimum is not less stringent than the then current standards and specifications, and all subsequent revisions and amendments thereto, approved, adopted, and promulgated by the department, as such standards and specifications apply to mobile home parks. No such resolution, ordinance, or regulation shall become effective until a certificate of exemption has been issued by the department. Such certificate of exemption shall be available for inspection in the office of the city or county clerk as the case may be.

(2) If the department shall determine at any time after the issuance of such a certificate of exemption that such a resolution, ordinance, or regulation is being enforced in a manner contrary to or inconsistent with the standards mentioned in subsection (1) of this section or is otherwise being improperly enforced in any city, village, or county holding a certificate of exemption, the department may revoke the certificate of exemption and the Uniform Standard Code for Mobile Home Parks shall apply in such city, village, or county until such standards are met and enforced and a new certificate is issued.

(3) Any city, village, or county desiring a certificate of exemption shall make application for such certificate by filing a petition for a certificate of exemption with the department. The department shall promptly investigate such petition. If the recommendation of the department is against the granting of a certificate of exemption and the applicant requests that a formal hearing be held, a formal hearing shall be held on the questions of whether (a) the resolution, ordinance, or regulation is at a minimum as stringent as the standards mentioned in subsection (1) of this section, (b) the resolution, ordinance, or regulation is being enforced in a manner contrary to or inconsistent with such standards or is otherwise being improperly enforced, and (c) adequate provisions have been made for enforcement. The burden of proof thereof shall be upon the applicant. A like formal hearing shall be held upon any proposed revocation of a certificate of exemption upon the request of the holder thereof. The procedure governing hearings authorized by this subsection shall be in accordance with the Administrative Procedure Act. The decision to deny or revoke a certificate of exemption may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 91, § 10; Laws 1988, LB 352, § 136.

Cross References

Administrative Procedure Act, see section 84-920.

71-4631 Licenses; issuance; denial, refusal of renewal, suspension, or revocation; civil penalty; grounds; notice; hearing; appeal.

(1) The department shall issue licenses for the establishment, operation, and maintenance of mobile home parks which are found to comply with the

Uniform Standard Code for Mobile Home Parks and such rules, regulations, and standards as are lawfully adopted and promulgated by the department pursuant thereto.

(2) The department shall deny, refuse renewal of, suspend, or revoke licenses or impose a civil penalty not to exceed two thousand dollars per day on any of the following grounds:

(a) Violation of any of the provisions of the code or the rules, regulations, and standards lawfully adopted and promulgated pursuant thereto;

(b) Permitting, aiding, or abetting the commission of any unlawful act; or

(c) Conduct or utility or sanitation practices detrimental to the health or safety of residents of a mobile home park.

(3) Should the department determine to deny, refuse renewal of, suspend, or revoke a license or impose a civil penalty, it shall send to the applicant or licensee, by either certified or registered mail, a notice setting forth the specific reasons for the determination.

(4) The denial, refusal of renewal, suspension, revocation, or imposition of a civil penalty shall become final thirty days after the mailing of the notice in all cases of failure to pay the required licensure fee if not paid by the end of such period, and in all other instances unless the applicant or licensee, within such thirty-day period, shall give written notice of a desire for a hearing. Thereupon the applicant or licensee shall be given opportunity for a formal hearing before the department and shall have the right to present evidence on his or her own behalf.

(5) The procedure governing hearings authorized by this section shall be in accordance with the Administrative Procedure Act. On the basis of the evidence presented, the determination involved shall be affirmed or set aside, and a copy of such decision setting forth the findings of facts and the specific reasons upon which it is based shall be sent by either certified or registered mail to the applicant or licensee. The applicant or licensee may appeal such decision, and the appeal shall be in accordance with the Administrative Procedure Act.

(6) The department shall remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1976, LB 91, § 11; Laws 1988, LB 352, § 137; Laws 2008, LB797, § 18.

Cross References

Administrative Procedure Act, see section 84-920.

71-4632 Violations; nuisance; penalty; removal.

Any person who establishes, conducts, operates, or maintains a mobile home park without first obtaining a license therefor from the department as provided in sections 71-4621 to 71-4634 shall be guilty of a Class IV misdemeanor and each day such mobile home park shall operate without a license after a first conviction shall be considered a separate offense. Such person shall also be guilty of maintaining a nuisance pursuant to section 28-1321, and upon conviction thereof, in addition to payment of the fine, such nuisance shall be removed.

Source: Laws 1976, LB 91, § 12; Laws 1977, LB 41, § 61; Laws 1978, LB 748, § 38.

71-4633 Operation without license; action by department; burden of proof.

The department may, in accordance with the laws governing injunctions and other process, maintain an action in the name of the state against any person for establishing, conducting, operating, or maintaining any mobile home park without first having a license therefor from the department as provided in sections 71-4621 to 71-4634. In charging any defendant in a complaint in such action, it shall be sufficient to charge that such defendant did, upon a certain day and in a certain county, establish, conduct, operate, or maintain a mobile home park without having a license to do so without averring any further or more particular facts concerning the same.

Source: Laws 1976, LB 91, § 13.

71-4634 Act, how cited.

Sections 71-4621 to 71-4634 shall be known and may be cited as the Uniform Standard Code for Mobile Home Parks.

Source: Laws 1976, LB 91, § 14.

71-4635 Fire safety inspection; fee.

The Department of Health and Human Services may request the State Fire Marshal to inspect for fire safety any mobile home park for which a license or renewal of a license is sought, pursuant to section 81-502. The State Fire Marshal shall assess a fee for such inspection pursuant to section 81-505.01 and payable by the licensee or applicant for a license. The authority to make such investigations may be delegated to qualified local fire prevention personnel pursuant to section 81-502.

Source: Laws 1983, LB 498, § 4; Laws 1996, LB 1044, § 680; Laws 2007, LB296, § 588.

ARTICLE 47

HEARING

Cross References

Assistive Technology Regulation Act, see section 69-2601.
Hearing Instrument Specialists Practice Act, see section 38-1501.
Interpreters for hearing-impaired persons, when required, see sections 20-150 to 20-159.
Sales and use tax exemption, see section 77-2704.09.
Service dogs:
Access, see section 20-131.04.
Pet license tax, exemption, see section 54-603.
Vehicle driver, duties, see section 20-128.
Violence against, criminal penalty, see section 28-1009.01.
Telecommunications Relay System Act, see section 86-301.
Uniform Credentialing Act, see section 38-101.

(a) HEARING AIDS

Section
71-4701. Transferred to section 38-1502.
71-4702. Transferred to section 38-1509.
71-4702.01. Repealed. Laws 2007, LB 463, § 1319.
71-4703. Transferred to section 38-1511.
71-4704. Transferred to section 38-1510.
71-4705. Repealed. Laws 1986, LB 701, § 13.
71-4706. Repealed. Laws 2007, LB 463, § 1319.
71-4707. Transferred to section 38-1512.
71-4708. Transferred to section 38-1513.

(a) HEARING AIDS

71-4701 Transferred to section 38-1502.

71-4702 Transferred to section 38-1509.

71-4702.01 Repealed. Laws 2007, LB 463, § 1319.

71-4703 Transferred to section 38-1511.

71-4704 Transferred to section 38-1510.

71-4705 Repealed. Laws 1986, LB 701, § 13.

71-4706 Repealed. Laws 2007, LB 463, § 1319.

71-4707 Transferred to section 38-1512.

71-4708 Transferred to section 38-1513.

71-4709 Transferred to section 38-1514.

71-4709.01 Repealed. Laws 2007, LB 463, § 1319.

71-4710 Repealed. Laws 2007, LB 463, § 1319.

71-4711 Repealed. Laws 2007, LB 463, § 1319.

71-4712 Transferred to section 38-1517.

71-4713 Repealed. Laws 1988, LB 1100, § 185.

71-4714 Repealed. Laws 2007, LB 463, § 1319.

71-4714.01 Transferred to section 38-1518.

71-4715 Transferred to section 38-1508.

71-4715.01 Repealed. Laws 2007, LB 463, § 1319.

71-4716 Repealed. Laws 2007, LB 463, § 1319.

71-4717 Repealed. Laws 2007, LB 463, § 1319.

71-4718 Repealed. Laws 2003, LB 242, § 154.

71-4719 Repealed. Laws 2007, LB 463, § 1319.

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

71-4720 Commission for the Deaf and Hard of Hearing; created; members; appointment; qualifications.

There is hereby created the Commission for the Deaf and Hard of Hearing which shall consist of nine members to be appointed by the Governor subject to approval by the Legislature. The commission members shall include three deaf persons, three hard of hearing persons, and three persons who have an interest in and knowledge of deafness and hearing loss issues. A majority of the commission members who are deaf or hard of hearing shall be able to express themselves through sign language. Employees of any state agency other than employees of the commission shall be eligible to serve on the commission. When appointing members to the commission, the Governor shall consider recommendations from individuals, organizations, and the public.

On September 13, 1997, all personnel, furniture, equipment, books, files, records, and other property of the Commission for the Hearing Impaired shall be transferred to the Commission for the Deaf and Hard of Hearing.

Source: Laws 1979, LB 101, § 1; Laws 1981, LB 250, § 1; Laws 1987, LB 376, § 16; Laws 1995, LB 25, § 1; Laws 1997, LB 851, § 12.

71-4720.01 Terms, defined.

For purposes of sections 71-4720 to 71-4732.01:

(1) Commission means Commission for the Deaf and Hard of Hearing;

(2) Deaf means a hearing impairment, with or without amplification, which is so severe that the person with the impairment may have difficulty in auditorily processing spoken language without the use of an interpreter;

(3) Hard of hearing means a hearing loss, permanent or fluctuating, which may adversely affect the ability to understand spoken language without the use of an interpreter or auxiliary aid; and

(4) Licensed interpreter has the same meaning as in section 20-151.

Source: Laws 1997, LB 851, § 13; Laws 2000, LB 352, § 17; Laws 2001, LB 334, § 3; Laws 2002, LB 22, § 14.

71-4721 Commission; members; terms.

Members of the commission shall serve for terms of three years and may not serve more than two consecutive three-year terms. A former member who has served two consecutive terms may be reappointed to the commission after at least one year of nonservice. The terms of the members shall expire on January 31 of the final year of their appointed term. As the terms of the appointees expire, succeeding appointees shall be representatives of the same segment of the public as the previous appointee, and such successors shall be appointed to three-year terms, except appointees to vacancies occurring from unexpired terms, in which case the successor shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed.

Source: Laws 1979, LB 101, § 2; Laws 1987, LB 376, § 17; Laws 1997, LB 851, § 14.

71-4722 Members; removal; grounds.

Members may be removed by the Governor for inefficiency, neglect of duty, or misconduct in office, but only after delivering to the member a copy of the charges and affording such member an opportunity to be publicly heard in person, or by counsel, in his or her own defense, upon not less than ten days' notice.

Source: Laws 1979, LB 101, § 3.

71-4723 Members; expenses.

The members of the commission shall receive no compensation for their services as such but shall be reimbursed for their actual and necessary expenses in attending meetings of the commission and in carrying out their official duties as provided in sections 81-1174 to 81-1177, for state employees.

Source: Laws 1979, LB 101, § 4; Laws 1981, LB 204, § 131.

71-4724 Commission; meetings; record; quorum.

The commission shall hold at least four meetings a year, at a time and place decided by the commission, and shall keep a record of its proceedings, which shall be open to the public for inspection. The commission shall adopt and promulgate rules and regulations for the holding of special meetings. Written

notice of the time and place of all meetings shall be mailed in advance to the office of each member of the commission by the secretary. Six members of the commission shall constitute a quorum.

Source: Laws 1979, LB 101, § 5; Laws 1981, LB 250, § 2; Laws 1987, LB 376, § 18; Laws 1997, LB 851, § 15.

71-4725 Commission; officers; elect.

The commission shall annually elect from its members a chairperson, vice-chairperson, and secretary. At least one officer shall be a deaf or hard of hearing person. The vice-chairperson shall serve as chairperson in case of the absence or disability of the chairperson.

Source: Laws 1979, LB 101, § 6; Laws 1981, LB 250, § 3; Laws 1987, LB 376, § 19; Laws 1997, LB 851, § 16.

71-4726 Commission; executive director; appoint.

The commission shall appoint a qualified person to serve as executive director who shall serve with the advice and consent of the commission. When appointing an executive director preference may be given to a deaf or hard of hearing person.

Source: Laws 1979, LB 101, § 7; Laws 1981, LB 250, § 4; Laws 1997, LB 851, § 17.

71-4727 Commission; employees.

The commission may employ any employees, including interpreters, it considers necessary to carry out the purposes of sections 71-4720 to 71-4732.01.

Source: Laws 1979, LB 101, § 8; Laws 1995, LB 25, § 2; Laws 1999, LB 359, § 1; Laws 2001, LB 334, § 4; Laws 2002, LB 22, § 15.

71-4728 Commission; purpose; duties.

The commission shall serve as the principal state agency responsible for monitoring public policies and implementing programs which shall improve the quality and coordination of existing services for deaf or hard of hearing persons and promote the development of new services when necessary. To perform this function the commission shall:

(1) Inventory services available for meeting the problems of persons with a hearing loss and assist such persons in locating and securing such services;

(2) License interpreters under sections 20-150 to 20-159 and prepare and maintain a roster of licensed interpreters. The roster shall include the type of employment the interpreter generally engages in, the type of license the interpreter holds, and the expiration date of the license. Each interpreter included on the roster shall provide the commission with his or her social security number which shall be kept confidential by the commission. The roster shall be made available to local, state, and federal agencies and shall be used for referrals to private organizations and individuals seeking interpreters;

(3) Promote the training of interpreters for deaf or hard of hearing persons;

(4) Provide counseling to deaf or hard of hearing persons or refer such persons to private or governmental agencies which provide counseling services;

(5) Conduct a voluntary census of deaf or hard of hearing persons in Nebraska and compile a current registry;

(6) Promote expanded adult educational opportunities for deaf or hard of hearing persons;

(7) Serve as an agency for the collection of information concerning deaf or hard of hearing persons and for the dispensing of such information to interested persons by collecting studies, compiling bibliographies, gathering information, and conducting research with respect to the education, training, counseling, placement, and social and economic adjustment of deaf or hard of hearing persons and with respect to the causes, diagnosis, treatment, and methods of prevention of impaired hearing;

(8) Appoint advisory or special committees when appropriate for indepth investigations and study of particular problems and receive reports of findings and recommendations;

(9) Assess and monitor programs for services to deaf or hard of hearing persons and make recommendations to those state agencies providing such services regarding changes necessary to improve the quality and coordination of the services;

(10) Make recommendations to the Governor and the Legislature with respect to modification in existing services or establishment of additional services for deaf or hard of hearing persons;

(11) Promote awareness and understanding of the rights of deaf or hard of hearing persons;

(12) Promote statewide communication services for deaf or hard of hearing persons;

(13) Assist deaf or hard of hearing persons in accessing comprehensive mental health, alcoholism, and drug abuse services;

(14) Provide licensed interpreters in public and private settings for the benefit of deaf or hard of hearing persons, if private-practice licensed interpreters are not available, and establish and collect reasonable fees for such interpreter services;

(15) Make recommendations to the State Department of Education, public school districts, and educational service units regarding policies and procedures for qualified educational interpreter guidelines and a training program as required in subsection (3) of section 20-150, including, but not limited to, testing, training, and grievances; and

(16) Approve, conduct, and sponsor continuing education programs and other activities to assess continuing competence of licensees. The commission shall establish and charge reasonable fees for such activities. All fees collected pursuant to this section by the commission shall be remitted to the State Treasurer for credit to the Commission for the Deaf and Hard of Hearing Fund. Such fees shall be disbursed for payment of expenses related to this section.

Source: Laws 1979, LB 101, § 9; Laws 1981, LB 250, § 5; Laws 1987, LB 376, § 20; Laws 1995, LB 25, § 3; Laws 1997, LB 851, § 18; Laws 1999, LB 359, § 2; Laws 2002, LB 22, § 16; Laws 2006, LB 87, § 4.

Cross References

Telecommunications Relay System Act, see section 86-301.

71-4728.01 Commission; mental health, alcoholism, and drug abuse services; service coordination.

The commission shall not deliver direct mental health, alcoholism, and drug abuse services but shall assist in obtaining full access to comprehensive mental health, alcoholism, and drug abuse services for deaf or hard of hearing persons by providing service coordination for deaf or hard of hearing persons with mental health, alcoholism, and drug abuse disorders including:

(1) Meeting the communication needs of deaf or hard of hearing persons including interpreter services and auxiliary aids;

(2) Education and training for persons who provide treatment for mental health, alcoholism, and drug abuse disorders to deaf or hard of hearing persons; and

(3) Placement of assistive-listening devices for deaf or hard of hearing persons in mental health, alcoholism, and drug abuse treatment facilities.

Source: Laws 1995, LB 25, § 4; Laws 1997, LB 851, § 19.

71-4728.02 Commission; mental health specialist advisor; duties.

The commission shall appoint a mental health specialist advisor. The specialist shall monitor and provide advice to mental health, alcoholism, and drug abuse programs which provide treatment for deaf or hard of hearing persons. The specialist shall also serve as the commission's liaison to persons who provide treatment or intervention services for mental health, alcoholism, and drug abuse disorders which provide treatment for deaf or hard of hearing persons.

Source: Laws 1995, LB 25, § 5; Laws 1997, LB 851, § 20.

71-4728.03 Commission; special advisory committee; members.

The commission shall implement section 71-4728.02 with the advice of a special advisory committee appointed by the commission. The committee shall consist of five members as follows: Three counselors familiar with mental health, alcoholism, and drug abuse disorders in deaf or hard of hearing persons and two human services professionals. The Department of Health and Human Services and the commission shall each have a representative who serves on the committee in a nonvoting technical capacity.

Source: Laws 1995, LB 25, § 6; Laws 1996, LB 1044, § 682; Laws 1997, LB 851, § 21.

71-4728.04 Commission; telehealth system; powers and duties.

(1) The commission may establish a telehealth system to provide access for deaf and hard of hearing persons in remote locations to mental health, alcoholism, and drug abuse services. The telehealth system may (a) provide access for deaf or hard of hearing persons to counselors who communicate in sign language and are knowledgeable in deafness and hearing loss issues, (b) promote access for hard of hearing persons through contacts with counselors in which hard of hearing persons receive both visual cues, or reading lips, and auditory cues, (c) offer remote interpreter services for deaf or hard of hearing persons to interact with counselors who are not fluent in sign language, and (d) promote participation in educational programs.

(2) The commission shall set and charge a fee between the range of twenty and one hundred fifty dollars per hour for the use of the telehealth system. The commission shall remit all fees collected pursuant to this section to the State Treasurer for credit to the Telehealth System Fund.

(3) For purposes of this section, telehealth has the same meaning as in section 71-8503.

Source: Laws 2001, LB 334, § 1; Laws 2002, Second Spec. Sess., LB 49, § 1.

71-4728.05 Interpreter Review Board; members; duties; expenses.

(1) The commission shall appoint the Interpreter Review Board as required in section 20-156.

(2) Members of the Interpreter Review Board shall be as follows:

(a) A representative of the Department of Health and Human Services and the executive director of the commission or his or her designee, both of whom shall serve continuously and without limitation;

(b) One qualified interpreter, appointed for a term to expire on June 30, 2008;

(c) One representative of local government, appointed for a term to expire on June 30, 2008;

(d) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2009;

(e) One qualified interpreter, appointed for a term to expire on June 30, 2009;

(f) One deaf or hard of hearing person, appointed for a term to expire on June 30, 2010; and

(g) One representative of local government, appointed for a term to expire on June 30, 2010.

(3) Upon the expiration of the terms described in subsection (2) of this section, members other than those identified in subdivision (2)(a) of this section shall be appointed for terms of three years. No such member may serve more than two consecutive three-year terms beginning June 30, 2007, except that members whose terms have expired shall continue to serve until their successors have been appointed and qualified.

(4) The commission may remove a member of the board for inefficiency, neglect of duty, or misconduct in office after delivering to such member a copy of the charges and a public hearing in accordance with the Administrative Procedure Act. If a vacancy occurs on the board, the commission shall appoint another member with the same qualifications as the vacating member to serve the remainder of the term. The members of the board shall receive no compensation but shall be reimbursed for their actual and necessary expenses, as provided in sections 81-1174 to 81-1177, in attending meetings of the commission and in carrying out their official duties as provided in this section and section 20-156.

(5) The board shall establish policies, standards, and procedures for evaluating and licensing interpreters, including, but not limited to, testing, training, issuance, renewal, and denial of licenses, continuing education and continuing

competency assessment, investigation of complaints, and disciplinary actions against a license pursuant to section 20-156.

Source: Laws 2002, LB 22, § 17; Laws 2006, LB 87, § 5; Laws 2007, LB296, § 590.

Cross References

Administrative Procedure Act, see section 84-920.

71-4729 Commission; cooperate with state agencies.

The commission shall in fulfilling its responsibilities enumerated in section 71-4728 cooperate with any state agency having authority related to the problems of deaf or hard of hearing persons. Such agencies shall also cooperate with the commission. Avoidance of unnecessary duplication of state-delivered services to deaf or hard of hearing persons shall be a primary objective of such cooperation.

Source: Laws 1979, LB 101, § 10; Laws 1981, LB 250, § 6; Laws 1995, LB 25, § 7; Laws 1997, LB 851, § 22.

71-4730 Commission; agreements; contracts; enter into.

The commission may make agreements with other state agencies and may contract with other individuals, organizations, corporations, associations, or other legal entities including private agencies or any department or agency of the federal government or the state or any political subdivision thereof, to carry out the functions and purposes of the commission.

Source: Laws 1979, LB 101, § 11.

71-4731 Governor; gifts, grants, and donations; accept.

The Governor may accept gifts, grants, and donations of money, personal property, and real property for use in expanding and improving services to deaf or hard of hearing persons of this state.

Source: Laws 1979, LB 101, § 12; Laws 1997, LB 851, § 23.

71-4732 Commission for the Deaf and Hard of Hearing Fund; created; use; investment.

There is hereby created a Commission for the Deaf and Hard of Hearing Fund to consist of such funds as the Legislature shall appropriate, any funds received under sections 20-156 and 71-4731, and any fees collected for interpreter services as provided in section 71-4728. The fund shall be used to administer sections 20-156 and 71-4720 to 71-4732.01, except that (1) money in the fund from fees collected for interpreter services shall be used only for expenses related to the provision of such services and (2) money in the fund may only be used to provide services pursuant to section 71-4728.04 if there is no money in the Telehealth System Fund. Any money in the Commission for the Deaf and Hard of Hearing 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.

Source: Laws 1979, LB 101, § 13; Laws 1995, LB 7, § 78; Laws 1995, LB 25, § 8; Laws 1997, LB 851, § 24; Laws 1999, LB 359, § 3; Laws 2001, LB 334, § 5; Laws 2002, LB 22, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-4732.01 Telehealth System Fund; created; use; investment.

The Telehealth System Fund is created. The fund shall be used for any expenses related to the operation and maintenance of the telehealth system established in section 71-4728.04. 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.

Source: Laws 2001, LB 334, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-4733 Repealed. Laws 2000, LB 352, § 24.

(c) INFANT HEARING ACT

71-4734 Act, how cited.

Sections 71-4734 to 71-4744 shall be known and may be cited as the Infant Hearing Act.

Source: Laws 2000, LB 950, § 1.

71-4735 Legislative findings and purpose.

(1) The Legislature finds that:

(a) Hearing loss occurs in newborns more frequently than any other health condition for which newborn screening is required;

(b) Early detection of hearing loss in a child and early intervention and treatment before six months of age has been demonstrated to be highly effective in facilitating a child's language, communication, and educational development;

(c) Children of all ages can receive reliable and valid screening for hearing loss in a cost-effective manner; and

(d) Appropriate screening and identification of newborns and infants with hearing loss will facilitate early intervention and treatment in the critical time period for language development and may serve the public purposes of promoting the healthy development of children and reducing public expenditure for health care, special education, and related services.

(2) The purpose of the Infant Hearing Act is:

(a) To provide early detection of hearing loss in newborns at the birthing facility, or as soon after birth as possible for those children born outside of a birthing facility, to enable these children and their families and other caregivers to obtain needed multidisciplinary evaluation, treatment, and intervention services at the earliest opportunity and to prevent or mitigate the developmental delays and academic failures associated with late detection of hearing loss; and

(b) To provide the state with the information necessary to effectively plan, establish, and evaluate a comprehensive system for the identification of newborns and infants who have a hearing loss.

Source: Laws 2000, LB 950, § 2.

71-4736 Terms, defined.

For purposes of the Infant Hearing Act:

(1) Birth admission means the time after birth that the newborn remains in the hospital or other health care facility prior to discharge;

(2) Birthing facility means a hospital or other health care facility in this state which provides birthing and newborn care services;

(3) Confirmatory testing facility means a hospital or other health care facility in this state which provides followup hearing tests;

(4) Infant means a child from thirty days through twelve months old;

(5) Newborn means a child from birth through twenty-nine days old; and

(6) Parent means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.

Source: Laws 2000, LB 950, § 3.

71-4737 Hearing loss; tracking system.

The Legislature recognizes that it is necessary to track newborns and infants identified with a potential hearing loss or who have been evaluated and have been found to have a hearing loss for a period of time in order to render appropriate followup care. The Department of Health and Human Services shall determine and implement the most appropriate system for this state which is available to track newborns and infants identified with a hearing loss. It is the intent of the Legislature that the tracking system provide the department and Legislature with the information necessary to effectively plan and establish a comprehensive system of developmentally appropriate services for newborns and infants who have a potential hearing loss or who have been found to have a hearing loss and shall reduce the likelihood of associated disabling conditions for such newborns and infants.

Source: Laws 2000, LB 950, § 4; Laws 2005, LB 301, § 44; Laws 2007, LB296, § 591.

71-4738 Federal funding.

The Department of Health and Human Services shall apply for all available federal funding to implement the Infant Hearing Act.

Source: Laws 2000, LB 950, § 5; Laws 2005, LB 301, § 45; Laws 2007, LB296, § 592.

71-4739 Birthing facility; confirmatory testing facility; reports required.

(1) Every birthing facility shall annually report to the Department of Health and Human Services the number of:

(a) Newborns born;

(b) Newborns and infants recommended for a hearing screening test;

(c) Newborns who received a hearing screening test during birth admission;

(d) Newborns who passed a hearing screening test during birth admission if administered;

(e) Newborns who did not pass a hearing screening test during birth admission if administered; and

(f) Newborns recommended for monitoring, intervention, and followup care.

(2) Every confirmatory testing facility shall annually report to the Department of Health and Human Services the number of:

(a) Newborns and infants who return for a followup hearing test;

(b) Newborns and infants who do not have a hearing loss based upon the followup hearing test; and

(c) Newborns and infants who are shown to have a hearing loss based upon the followup hearing test.

Source: Laws 2000, LB 950, § 6; Laws 2005, LB 301, § 46; Laws 2007, LB296, § 593.

71-4740 Hearing loss educational information.

(1) Every birthing facility shall educate the parents of newborns born in such facilities of the importance of receiving a hearing screening test and any necessary followup care. This educational information shall explain, in lay terms, the hearing screening test, the likelihood of the newborn having a hearing loss, followup procedures, and community resources, including referral for early intervention services under the Early Intervention Act. The educational information shall also include a description of the normal auditory, speech, and language developmental process in children. Education shall not be considered a substitute for the hearing screening test.

(2) If a newborn is not born in a birthing facility, the Department of Health and Human Services shall educate the parents of such newborns of the importance of receiving a hearing screening test and any necessary followup care. The department shall also give parents information to assist them in having the test performed within three months after the date of the child's birth.

Source: Laws 2000, LB 950, § 7; Laws 2005, LB 301, § 47; Laws 2007, LB296, § 594.

Cross References

Early Intervention Act, see section 43-2501.

71-4741 Hearing screening; department; duties.

(1) The Department of Health and Human Services shall determine which birthing facilities are administering hearing screening tests to newborns and infants on a voluntary basis and the number of newborns and infants screened. The department shall annually report to the Legislature the number of:

(a) Birthing facilities administering voluntary hearing screening tests during birth admission;

(b) Newborns screened as compared to the total number of newborns born in such facilities;

(c) Newborns who passed a hearing screening test during birth admission if administered;

(d) Newborns who did not pass a hearing screening test during birth admission if administered; and

(e) Newborns recommended for followup care.

(2) The Department of Health and Human Services, in consultation with the State Department of Education, birthing facilities, and other providers, shall develop approved screening methods and protocol for statewide hearing screening tests of substantially all newborns and infants.

(3) Subject to available appropriations, the Department of Health and Human Services shall make the report described in this section available.

Source: Laws 2000, LB 950, § 8; Laws 2005, LB 301, § 48; Laws 2007, LB296, § 595.

71-4742 Hearing screening test; newborn; standard of care.

(1) Each birthing facility shall include a hearing screening test as part of its standard of care for newborns and shall establish a mechanism for compliance review. A hearing screening test shall be conducted on no fewer than ninety-five percent of the newborns born in this state.

(2) If the number of newborns receiving a hearing screening test does not equal or exceed ninety-five percent of the total number of newborns born in this state on or before December 1, 2003, or falls below ninety-five percent at any time thereafter, the Department of Health and Human Services shall immediately adopt and promulgate rules and regulations implementing a hearing screening program. The hearing screening program shall provide for a hearing screening test that every newborn born in this state shall undergo and shall provide that the hearing screening test be completed during birth admission or, if that is not possible, no later than three months after birth. Notwithstanding this section, it is the goal of this state to achieve a one-hundred-percent screening rate.

Source: Laws 2000, LB 950, § 9; Laws 2005, LB 301, § 49; Laws 2007, LB296, § 596.

71-4743 Referral guidelines.

The Department of Health and Human Services and the State Department of Education shall establish guidelines for when a referral shall be made for early intervention services under the Early Intervention Act. The guidelines shall include a request for an individual evaluation of a child suspected of being deaf or hard of hearing as defined in section 79-1118.01.

Source: Laws 2000, LB 950, § 10; Laws 2005, LB 301, § 50; Laws 2007, LB296, § 597.

Cross References

Early Intervention Act, see section 43-2501.

71-4744 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Infant Hearing Act.

Source: Laws 2000, LB 950, § 11; Laws 2005, LB 301, § 51; Laws 2007, LB296, § 598.

ARTICLE 48
ANATOMICAL GIFTS

Cross References

Coroner, duties, see sections 23-1825 to 23-1832.
Transactions relating to blood and human tissue, see section 71-4001.

(a) UNIFORM ANATOMICAL GIFT ACT

(b) MISCELLANEOUS PROVISIONS

(c) BONE MARROW DONATIONS

(d) DONOR REGISTRY OF NEBRASKA

(a) UNIFORM ANATOMICAL GIFT ACT

71-4801 Terms, defined.

For purposes of the Uniform Anatomical Gift Act, unless the context otherwise requires:

(1) Bank or storage facility means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof;

(2) Decedent means a deceased individual and includes a stillborn infant or fetus;

(3) Donor means an individual who makes a gift of all or part of his or her body;

(4) Hospital means a hospital licensed, accredited, or approved under the laws of any state and includes a hospital operated by the United States Government, a state, or a subdivision thereof, although not required to be licensed under state laws;

(5) Part includes organs, tissues, eyes, bones, arteries, blood, other fluids, and other portions of a human body, and parts includes parts;

(6) Person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, or other legal entity;

(7) Physician or surgeon means a physician or surgeon licensed or authorized to practice under the laws of any state; and

(8) State includes any state, district, commonwealth, territory, insular possession, and other area subject to the legislative authority of the United States of America.

Source: Laws 1971, LB 799, § 1; Laws 1993, LB 121, § 439.

71-4802 Persons who may execute anatomical gift; when.

(1) Any individual of sound mind who is eighteen years of age or older may give all or any part of his or her body for any purposes specified in section 71-4803. The gift shall take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 71-4803:

(a) The spouse;

(b) An adult son or daughter;

(c) Either parent;

(d) An adult brother or sister;

(e) A guardian of the person of the decedent at the time of death; and

(f) Any other person authorized or under obligation to dispose of the body.

The persons authorized by this subsection may make the gift after death or immediately before death.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection (4) of section 71-4807.

Source: Laws 1971, LB 799, § 2; Laws 1976, LB 764, § 1; Laws 1977, LB 115, § 1; Laws 1992, LB 1178, § 7; Laws 2003, LB 138, § 1.

71-4803 Persons who may become donees; purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) Any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation;

(2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy;

(3) The State Anatomical Board, any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) Any specified individual for therapy or transplantation needed by him.

Source: Laws 1971, LB 799, § 3.

71-4804 Manner of executing anatomical gifts.

(1) A gift of all or part of the body under subsection (1) of section 71-4802 may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under subsection (1) of section 71-4802 may also be made by document other than a will. The gift shall become effective as provided in such subsection. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his or her presence. If the donor cannot sign, the document may be signed for him or her at his or her direction and in his or her presence and in the presence of two witnesses who must sign the document in his or her presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) A gift of all or part of the body under subsection (1) of section 71-4802 may also be made by an indication on a motor vehicle operator's license or state identification card pursuant to sections 60-493 to 60-495. The gift shall become effective as provided in subsection (1) of section 71-4802.

(4) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. Any physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting any part of the body except as provided in subsection (2) of section 71-4807.

(5) Notwithstanding subsection (2) of section 71-4807, the donor may designate in his or her will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(6) Any gift by a person designated in subsection (2) of section 71-4802 shall be made by a document signed by him or her or made by his or her telegraphic, recorded telephonic, or other recorded message.

Source: Laws 1971, LB 799, § 4; Laws 1976, LB 764, § 2; Laws 1977, LB 115, § 2; Laws 1989, LB 285, § 139; Laws 1992, LB 1178, § 8.

71-4805 Document of gift; delivery.

If the gift is made by the donor to a specified donee, the will, card or other document, or an executed copy thereof, may be delivered to the donee to

expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, medical or dental school, State Anatomical Board, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Source: Laws 1971, LB 799, § 5.

71-4806 Gifts; amendment; revocation.

(1) If the will, card or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) The execution and delivery to the donee of a signed statement;

(b) An oral statement made in the presence of two persons and communicated to the donee;

(c) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee; or

(d) A signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) of this section or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (1) of this section.

Source: Laws 1971, LB 799, § 6.

71-4807 Rights and duties at death.

(1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he or she may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who attends the donor at his or her death or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part, except the enucleation of eyes. An appropriately qualified designee of a physician with training in ophthalmologic techniques or a funeral director and embalmer licensed pursuant to the Funeral Directing and Embalming Practice Act upon (a) successfully completing a course in eye enucleation and (b) receiving a certificate of competence from the Department of Ophthalmology, College of Medicine of the University of Nebraska, may enucleate the eyes of the donor.

(3) A person who acts in good faith in accord with the terms of the Uniform Anatomical Gift Act or under the anatomical gift laws of another state shall not

be liable for damages in any civil action or subject to prosecution in any criminal proceeding for his or her act.

(4) The Uniform Anatomical Gift Act shall be subject to the laws of this state prescribing powers and duties with respect to autopsies.

Source: Laws 1971, LB 799, § 7; Laws 1976, LB 764, § 3; Laws 1986, LB 1228, § 1; Laws 1993, LB 187, § 36; Laws 2007, LB463, § 1218.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-4808 Blood; who may consent to donate.

Any individual of sound mind and seventeen years of age or more may consent to donate whole blood for the purpose of injecting, transfusing, or transplanting such blood in the human body. No person seventeen or eighteen years of age shall receive compensation for any donation of whole blood without parental permission or authorization.

Source: Laws 1971, LB 799, § 8; Laws 1972, LB 1086, § 3; Laws 1977, LB 49, § 1; Laws 1992, LB 1178, § 9.

71-4809 Legal liability; policy of state.

The availability of scientific knowledge, skills and materials for the transplantation, injection, transfusion or transfer of human tissue, organs, blood and components thereof is important to the health and welfare of the people of this state. The imposition of legal liability without fault upon the persons and organizations engaged in such scientific procedures inhibits the exercise of sound medical judgment and restricts the availability of important scientific knowledge, skills and materials. It is therefor the public policy of this state to promote the health and welfare of the people by limiting the legal liability arising out of such scientific procedures to the instances of negligence or willful misconduct.

Source: Laws 1971, LB 799, § 9.

71-4810 Legal liability; exemption; exceptions.

No physician, surgeon, hospital, blood bank, tissue bank, funeral director and embalmer licensed under the Funeral Directing and Embalming Practice Act, or other person or entity who donates, obtains, prepares, transplants, injects, transfuses, or otherwise transfers, or who assists or participates in obtaining, preparing, transplanting, injecting, transfusing, or transferring any tissue, organ, blood, or component thereof from one or more human beings, living or dead, to another human being, shall be liable in damages as a result of any such activity, save and except that each such person or entity shall remain liable in damages for his, her, or its own negligence or willful misconduct.

Source: Laws 1971, LB 799, § 10; Laws 1976, LB 764, § 4; Laws 1993, LB 187, § 37; Laws 2007, LB463, § 1219.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

71-4811 Act, how construed.

Sections 71-4801 to 71-4812 shall be construed as to effectuate their general purpose to make uniform the law of those states which enact them.

Source: Laws 1971, LB 799, § 11.

71-4812 Act, how cited.

Sections 71-4801 to 71-4812 may be cited as the Uniform Anatomical Gift Act.

Source: Laws 1971, LB 799, § 12.

(b) MISCELLANEOUS PROVISIONS

71-4813 Eye tissue; pituitary gland; removal; when authorized.

When an autopsy is performed by the physician authorized by the county coroner to perform such autopsy, the physician or an appropriately qualified designee with training in ophthalmologic techniques, as provided for in subsection (2) of section 71-4807, may remove eye tissue of the decedent for the purpose of transplantation. The physician may also remove the pituitary gland for the purpose of research and treatment of hypopituitary dwarfism and of other growth disorders. Removal of the eye tissue or the pituitary gland shall only take place if the:

(1) Autopsy was authorized by the county coroner;

(2) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 38-1425; and

(3) Removal of eye tissue or of the pituitary gland will not interfere with the course of any subsequent investigation or alter the decedent's postmortem facial appearance.

The removed eye tissue or pituitary gland shall be transported to the Department of Health and Human Services or any desired institution or health facility as prescribed by section 38-1427.

Source: Laws 1983, LB 60, § 1; Laws 1985, LB 130, § 2; Laws 1996, LB 1044, § 683; Laws 2007, LB296, § 599; Laws 2007, LB463, § 1220.

71-4814 Organ and tissue donations; legislative findings; protocol; development.

The Legislature finds that the availability of donor organs and tissue can save the lives and restore the health and productivity of many Nebraskans. Every hospital in the state shall develop a protocol, appropriate to the hospital's capability, for identifying and referring potential donor organ and tissue availability. The protocol shall require utmost care and sensitivity to the family's circumstances, views, and beliefs in all discussions regarding donation of organs or tissue. Hospitals shall be required to consult with existing organ and tissue agencies preparatory to establishing a staff training and education program in the protocol. Sections 71-4814 to 71-4818 are for the immediate preservation of the public health and welfare.

Source: Laws 1987, LB 74, § 1.

71-4815 Chief administrator; physician; duties.

(1) Except as otherwise provided by subsection (2) of this section, the chief administrator of a hospital, the attending physician, or a designee, trained in the protocol, of either shall, according to the established protocol, upon the death of a patient whose body, according to accepted medical standards, is suitable for the donation of organs or tissue, offer the opportunity to one of the persons listed in subsection (2) of section 71-4802, in the order of priority stated, to consent to organ or tissue donation or to decline to consent to such donation.

(2) The chief administrator of a hospital, the attending physician, or a designee of either shall not be required to offer such opportunity to consent or decline if one or more of the following conditions exist:

(a) He or she has notice of contrary indications by the decedent;

(b) He or she has notice of opposition by a person listed in subsection (2) of section 71-4802;

(c) He or she believes or has reason to believe that organ or tissue donation is contrary to the religious beliefs of the decedent or is objectionable for any other reason; or

(d) He or she believes that the patient's body is not suitable for organ or tissue donation.

Source: Laws 1987, LB 74, § 2.

71-4816 Certificate of death; attestation required; statistical information.

(1) The physician responsible for the completion and signing of the portion of the certificate of death entitled medical certificate of death or, if there is no such physician, the person responsible for signing the certificate of death shall attest on the death certificate whether organ or tissue donation was considered and whether consent was granted.

(2) The Department of Health and Human Services shall make available the number of organ and tissue donors in Nebraska for statistical purposes.

Source: Laws 1987, LB 74, § 3; Laws 1996, LB 1044, § 684; Laws 2007, LB296, § 600.

71-4817 Request for consent; liability; when.

No civil or criminal proceedings may be instituted in any court in this state against any hospital or chief administrator of a hospital, the attending physician, or a designee of either when, in such administrator's, physician's, or designee's best judgment, he or she deems a request for consent to organ or tissue donation to be inappropriate according to the protocol of the hospital or when he or she has made every reasonable effort to comply with section 71-4815.

Source: Laws 1987, LB 74, § 4.

71-4818 Gift; how made.

A gift made pursuant to a request for consent under section 71-4815 shall be executed pursuant to the Uniform Anatomical Gift Act.

Source: Laws 1987, LB 74, § 5.

Cross References

Uniform Anatomical Gift Act, see section 71-4812.

(c) BONE MARROW DONATIONS

71-4819 Department of Health and Human Services; education regarding bone marrow donors; powers and duties.

(1) The Department of Health and Human Services shall educate residents of the state about:

(a) The need for bone marrow donors;

(b) The procedures required to become registered as a potential bone marrow donor, including the procedures for determining tissue type; and

(c) The medical procedures a donor must undergo to donate bone marrow and the attendant risks of the procedures.

(2) The department shall make special efforts to educate and recruit persons of racial and ethnic minorities to volunteer as potential bone marrow donors.

(3) The department may use the press, radio, and television and may place educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department, in conjunction with the Director of Motor Vehicles, shall make educational materials available at all places where motor vehicle operators' licenses are issued or renewed.

Source: Laws 1992, LB 1099, § 1; Laws 1996, LB 1044, § 685; Laws 2007, LB296, § 601.

71-4820 Employer; grant of leaves of absence; encouraged.

An employer shall be encouraged to grant paid leaves of absence to an employee who seeks to undergo a medical procedure to donate bone marrow.

Source: Laws 1992, LB 1099, § 2.

71-4821 Repealed. Laws 1996, LB 1044, § 985.

(d) DONOR REGISTRY OF NEBRASKA

71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.

(1) The federally designated organ procurement organization in Nebraska shall use the information received from the Department of Motor Vehicles under section 60-494 to establish and maintain the Donor Registry of Nebraska. Transplant facilities may obtain needed information from such organization for placement of organs and tissue. Federally designated organ procurement agencies and cadaveric tissue agencies in other states may obtain information from such organization when a Nebraska resident is listed as a donor on the registry and is not located in Nebraska immediately preceding or at the time of his or her death. The federally designated organ procurement organization in Nebraska may receive donor information from sources other than the Department of Motor Vehicles and shall pay all costs associated with creating and maintaining the registry.

(2) It is the intent of the Legislature that the registry facilitate organ and tissue donations and not inhibit such donations. A person does not need to be listed on the registry to be an organ and tissue donor.

(3) No person shall obtain information from the registry for the purpose of fundraising or other commercial use. Information obtained from the registry may only be used to facilitate the donation process at the time of the donor's death. General statistical information may be provided upon request to the federally designated organ procurement organization in Nebraska.

Source: Laws 2004, LB 559, § 7.

71-4823 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 49
CHRONIC RENAL DISEASES

Section
71-4901. Chronic renal diseases; Department of Health and Human Services program; establish; definitions.
71-4902. Repealed. Laws 2002, LB 93, § 27.
71-4903. Department of Health and Human Services; duties.
71-4904. Chronic Renal Disease Cash Fund; created; purpose.
71-4905. Director of Administrative Services; warrants.

71-4901 Chronic renal diseases; Department of Health and Human Services program; establish; definitions.

The Department of Health and Human Services shall establish a program for the care and treatment of persons suffering from chronic renal diseases. This program shall assist persons suffering from chronic renal diseases who require life-saving care and treatment for such renal disease, but who are unable to pay for such services on a continuing basis. For the purposes of sections 71-4901 to 71-4905, chronic renal disease is defined as that stage of renal function in which the kidney is no longer able to maintain the integrity of the internal environment of the organism which condition is of a permanent and deteriorating state. Such condition shall include but not be limited to the following: (1) Chronic glomerulonephritis; (2) chronic pyelonephritis; (3) nephrotic syndrome; (4) polycystic kidney disease; (5) Kimmelstiel-Wilson disease; or (6) progressive focal glomemlites such as lupus nephritis. For the purposes of sections 71-4901 to 71-4905, life-saving care and treatment is that care and treatment which requires constant medical attention and frequent hospitalization capable of restoring life or extending life beyond that normal for a person suffering from chronic renal disease.

Source: Laws 1972, LB 1270, § 1; Laws 1996, LB 1044, § 686.

71-4902 Repealed. Laws 2002, LB 93, § 27.

71-4903 Department of Health and Human Services; duties.

The Department of Health and Human Services shall:

(1) Develop standards for determining eligibility for care and treatment under this program and establish standards and qualifications of those patients unable to pay for treatment of chronic renal disease on a continuing basis. Such standards shall require that an individual:

(a) Shall be a bona fide resident of the State of Nebraska;

(b) Shall not be able to pay the total cost of such needed care and treatment without depriving himself or herself or those legally dependent upon him or her for their necessities of life;

(c) Shall not have deprived himself or herself, directly or indirectly, of any property for the purpose of qualifying for assistance under the provisions of sections 71-4901 to 71-4905;

(d) Shall not have relatives legally responsible to provide such care and treatment who refuse or neglect to provide such care and treatment in whole or in part without good cause; and

(e) Shall be a proper candidate for such care and treatment, including willingness of that person to receive such care and treatment;

(2) Assist in the development and expansion of programs for the care and treatment of persons suffering from chronic renal diseases, including dialysis, transplant, and other medical procedures and techniques which will have a life-saving effect in the care and treatment of persons suffering from these diseases;

(3) Assist in the development of programs for the prevention of chronic renal diseases;

(4) Extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such diseases, including the renting of home dialysis equipment, and extend financial assistance to donors to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary in caring for such donors;

(5) Assist in equipping dialysis centers and the planning of such on the basis of consultation with the comprehensive health planning office; and

(6) Institute and carry on an educational program among physicians, hospitals, public health departments, and the public concerning chronic renal diseases, including the dissemination of information and the conducting of educational programs concerning the prevention of chronic renal diseases and the methods for the care and treatment of persons suffering from these diseases.

Source: Laws 1972, LB 1270, § 3; Laws 1996, LB 1044, § 688; Laws 2002, LB 93, § 17.

71-4904 Chronic Renal Disease Cash Fund; created; purpose.

There is hereby created in the Department of Health and Human Services the Chronic Renal Disease Cash Fund. The fund shall be used for payment of services, granting of financial assistance, and participation in other state and federal programs for the purpose of caring for persons suffering from chronic renal disease.

Source: Laws 1972, LB 1270, § 5; Laws 1996, LB 1044, § 689.

71-4905 Director of Administrative Services; warrants.

The Director of Administrative Services is hereby authorized and directed to draw his warrants upon the proper funds in the state treasury for, but never in excess of, the sums herein specified upon presentation of proper vouchers. The

State Treasurer shall pay the warrants out of money in the proper funds not otherwise appropriated.

Source: Laws 1972, LB 1270, § 6.

ARTICLE 50

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

Cross References

Nebraska Behavioral Health Services Act, see section 71-801.
Nebraska Mental Health Commitment Act, see section 71-901.

(a) COMMUNITY MENTAL HEALTH SERVICES

Section
71-5001. Repealed. Laws 2004, LB 1083, § 149.
71-5002. Repealed. Laws 2004, LB 1083, § 149.
71-5003. Repealed. Laws 2004, LB 1083, § 149.
71-5003.01. Repealed. Laws 2004, LB 1083, § 149.
71-5004. Repealed. Laws 2004, LB 1083, § 149.
71-5005. Repealed. Laws 2004, LB 1083, § 149.
71-5006. Repealed. Laws 2004, LB 1083, § 149.
71-5007. Repealed. Laws 2004, LB 1083, § 149.
71-5008. Repealed. Laws 2004, LB 1083, § 149.
71-5009. Repealed. Laws 2004, LB 1083, § 149.
71-5009.01. Repealed. Laws 2004, LB 1083, § 149.
71-5010. Repealed. Laws 2004, LB 1083, § 149.
71-5011. Repealed. Laws 1992, LB 863, § 1.
71-5012. Repealed. Laws 2004, LB 1083, § 149.
71-5013. Repealed. Laws 2004, LB 1083, § 149.
71-5014. Repealed. Laws 2004, LB 1083, § 149.
71-5015. Repealed. Laws 2004, LB 1083, § 149.

(b) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES

71-5016. Repealed. Laws 2004, LB 1083, § 149.
71-5017. Repealed. Laws 2004, LB 1083, § 149.
71-5018. Repealed. Laws 2004, LB 1083, § 149.
71-5019. Repealed. Laws 2004, LB 1083, § 149.
71-5020. Repealed. Laws 2004, LB 1083, § 149.
71-5021. Repealed. Laws 2004, LB 1083, § 149.
71-5022. Repealed. Laws 2004, LB 1083, § 149.
71-5023. Repealed. Laws 2004, LB 1083, § 149.
71-5024. Repealed. Laws 2004, LB 1083, § 149.
71-5025. Repealed. Laws 2004, LB 1083, § 149.
71-5026. Repealed. Laws 2004, LB 1083, § 149.
71-5027. Repealed. Laws 2004, LB 1083, § 149.
71-5028. Repealed. Laws 2004, LB 1083, § 149.
71-5029. Repealed. Laws 2004, LB 1083, § 149.
71-5030. Repealed. Laws 2004, LB 1083, § 149.
71-5031. Repealed. Laws 2004, LB 1083, § 149.
71-5032. Repealed. Laws 2004, LB 1083, § 149.
71-5033. Repealed. Laws 2004, LB 1083, § 149.
71-5034. Repealed. Laws 2004, LB 1083, § 149.
71-5035. Repealed. Laws 2004, LB 1083, § 149.
71-5036. Repealed. Laws 2004, LB 1083, § 149.
71-5037. Repealed. Laws 2004, LB 1083, § 149.
71-5038. Repealed. Laws 2004, LB 1083, § 149.
71-5039. Repealed. Laws 2004, LB 1083, § 149.
71-5040. Repealed. Laws 2004, LB 1083, § 149.

(c) MINORS; ALCOHOL OR DRUG ABUSE COUNSELING OR TREATMENT

71-5041. Repealed. Laws 2004, LB 1083, § 149.

Section

(d) REHABILITATION AND SUPPORT MENTAL HEALTH SERVICES INCENTIVE ACT

71-5042. Repealed. Laws 2004, LB 1083, § 149.
71-5043. Repealed. Laws 2004, LB 1083, § 149.
71-5044. Repealed. Laws 2004, LB 1083, § 149.
71-5045. Repealed. Laws 2004, LB 1083, § 149.
71-5046. Repealed. Laws 2004, LB 1083, § 149.
71-5047. Repealed. Laws 2004, LB 1083, § 149.
71-5048. Repealed. Laws 2004, LB 1083, § 149.
71-5049. Repealed. Laws 2004, LB 1083, § 149.
71-5050. Repealed. Laws 2004, LB 1083, § 149.
71-5051. Repealed. Laws 2004, LB 1083, § 149.
71-5052. Repealed. Laws 2004, LB 1083, § 149.

(e) BEHAVIORAL HEALTH COMMUNITY-BASED SERVICES

71-5053. Repealed. Laws 2004, LB 1083, § 149.
71-5054. Repealed. Laws 2000, LB 1135, § 34.
71-5055. Repealed. Laws 2004, LB 1083, § 149.
71-5056. Repealed. Laws 2004, LB 1083, § 149.
71-5057. Repealed. Laws 2004, LB 1083, § 149.

(f) NEBRASKA BEHAVIORAL HEALTH REFORM ACT

71-5058. Repealed. Laws 2004, LB 1083, § 149.
71-5059. Repealed. Laws 2004, LB 1083, § 149.
71-5060. Repealed. Laws 2004, LB 1083, § 149.
71-5061. Repealed. Laws 2004, LB 1083, § 149.
71-5062. Repealed. Laws 2004, LB 1083, § 149.
71-5063. Repealed. Laws 2004, LB 1083, § 149.
71-5064. Repealed. Laws 2004, LB 1083, § 149.
71-5065. Repealed. Laws 2004, LB 1083, § 149.
71-5066. Repealed. Laws 2004, LB 1083, § 149.

(a) COMMUNITY MENTAL HEALTH SERVICES

71-5001 Repealed. Laws 2004, LB 1083, § 149.

71-5002 Repealed. Laws 2004, LB 1083, § 149.

71-5003 Repealed. Laws 2004, LB 1083, § 149.

71-5003.01 Repealed. Laws 2004, LB 1083, § 149.

71-5004 Repealed. Laws 2004, LB 1083, § 149.

71-5005 Repealed. Laws 2004, LB 1083, § 149.

71-5006 Repealed. Laws 2004, LB 1083, § 149.

71-5007 Repealed. Laws 2004, LB 1083, § 149.

71-5008 Repealed. Laws 2004, LB 1083, § 149.

71-5009 Repealed. Laws 2004, LB 1083, § 149.

71-5009.01 Repealed. Laws 2004, LB 1083, § 149.

71-5010 Repealed. Laws 2004, LB 1083, § 149.

71-5011 Repealed. Laws 1992, LB 863, § 1.

71-5012 Repealed. Laws 2004, LB 1083, § 149.

71-5013 Repealed. Laws 2004, LB 1083, § 149.

71-5014 Repealed. Laws 2004, LB 1083, § 149.

71-5015 Repealed. Laws 2004, LB 1083, § 149.

(b) ALCOHOLISM, DRUG ABUSE, AND ADDICTION SERVICES

71-5016 Repealed. Laws 2004, LB 1083, § 149.

71-5017 Repealed. Laws 2004, LB 1083, § 149.

71-5018 Repealed. Laws 2004, LB 1083, § 149.

71-5019 Repealed. Laws 2004, LB 1083, § 149.

71-5020 Repealed. Laws 2004, LB 1083, § 149.

71-5021 Repealed. Laws 2004, LB 1083, § 149.

71-5022 Repealed. Laws 2004, LB 1083, § 149.

71-5023 Repealed. Laws 2004, LB 1083, § 149.

71-5024 Repealed. Laws 2004, LB 1083, § 149.

71-5025 Repealed. Laws 2004, LB 1083, § 149.

71-5026 Repealed. Laws 2004, LB 1083, § 149.

71-5027 Repealed. Laws 2004, LB 1083, § 149.

71-5028 Repealed. Laws 2004, LB 1083, § 149.

71-5029 Repealed. Laws 2004, LB 1083, § 149.

71-5030 Repealed. Laws 2004, LB 1083, § 149.

71-5031 Repealed. Laws 2004, LB 1083, § 149.

71-5032 Repealed. Laws 2004, LB 1083, § 149.

71-5033 Repealed. Laws 2004, LB 1083, § 149.

71-5034 Repealed. Laws 2004, LB 1083, § 149.

71-5035 Repealed. Laws 2004, LB 1083, § 149.

71-5036 Repealed. Laws 2004, LB 1083, § 149.

71-5037 Repealed. Laws 2004, LB 1083, § 149.

71-5038 Repealed. Laws 2004, LB 1083, § 149.

71-5039 Repealed. Laws 2004, LB 1083, § 149.

71-5040 Repealed. Laws 2004, LB 1083, § 149.

(c) MINORS; ALCOHOL OR DRUG ABUSE COUNSELING OR TREATMENT

71-5041 Repealed. Laws 2004, LB 1083, § 149.

(d) REHABILITATION AND SUPPORT MENTAL HEALTH SERVICES INCENTIVE ACT

71-5042 Repealed. Laws 2004, LB 1083, § 149.

71-5043 Repealed. Laws 2004, LB 1083, § 149.

71-5044 Repealed. Laws 2004, LB 1083, § 149.

71-5045 Repealed. Laws 2004, LB 1083, § 149.

71-5046 Repealed. Laws 2004, LB 1083, § 149.

71-5047 Repealed. Laws 2004, LB 1083, § 149.

71-5048 Repealed. Laws 2004, LB 1083, § 149.

71-5049 Repealed. Laws 2004, LB 1083, § 149.

71-5050 Repealed. Laws 2004, LB 1083, § 149.

71-5051 Repealed. Laws 2004, LB 1083, § 149.

71-5052 Repealed. Laws 2004, LB 1083, § 149.

(e) BEHAVIORAL HEALTH COMMUNITY-BASED SERVICES

71-5053 Repealed. Laws 2004, LB 1083, § 149.

71-5054 Repealed. Laws 2000, LB 1135, § 34.

71-5055 Repealed. Laws 2004, LB 1083, § 149.

71-5056 Repealed. Laws 2004, LB 1083, § 149.

71-5057 Repealed. Laws 2004, LB 1083, § 149.

(f) NEBRASKA BEHAVIORAL HEALTH REFORM ACT

71-5058 Repealed. Laws 2004, LB 1083, § 149.

71-5059 Repealed. Laws 2004, LB 1083, § 149.

71-5060 Repealed. Laws 2004, LB 1083, § 149.

71-5061 Repealed. Laws 2004, LB 1083, § 149.

71-5062 Repealed. Laws 2004, LB 1083, § 149.

71-5063 Repealed. Laws 2004, LB 1083, § 149.

71-5064 Repealed. Laws 2004, LB 1083, § 149.

71-5065 Repealed. Laws 2004, LB 1083, § 149.

71-5066 Repealed. Laws 2004, LB 1083, § 149.

ARTICLE 51
EMERGENCY MEDICAL SERVICES

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
Statewide Trauma System Act, see section 71-8201.
Uniform Credentialing Act, see section 38-101.

(a) EMERGENCY MEDICAL TECHNICIANS

Section
71-5101. Repealed. Laws 1997, LB 138, § 57.
71-5102. Repealed. Laws 1997, LB 138, § 57.
71-5103. Repealed. Laws 1997, LB 138, § 57.
71-5104. Repealed. Laws 1997, LB 138, § 57.
71-5105. Repealed. Laws 1997, LB 138, § 57.
71-5106. Repealed. Laws 1997, LB 138, § 57.
71-5107. Repealed. Laws 1997, LB 138, § 57.
71-5108. Repealed. Laws 1997, LB 138, § 57.
71-5108.01. Repealed. Laws 1997, LB 138, § 57.
71-5109. Repealed. Laws 1997, LB 138, § 57.
71-5110. Repealed. Laws 1997, LB 138, § 57.
71-5111. Repealed. Laws 1997, LB 138, § 57.
71-5112. Repealed. Laws 1997, LB 138, § 57.
71-5113. Repealed. Laws 1997, LB 138, § 57.
71-5114. Repealed. Laws 1997, LB 138, § 57.
71-5115. Repealed. Laws 1997, LB 138, § 57.
71-5116. Repealed. Laws 1997, LB 138, § 57.
71-5117. Repealed. Laws 1997, LB 138, § 57.
71-5118. Repealed. Laws 1997, LB 138, § 57.
71-5119. Repealed. Laws 1997, LB 138, § 57.
71-5120. Repealed. Laws 1997, LB 138, § 57.
71-5121. Repealed. Laws 1997, LB 138, § 57.
71-5122. Repealed. Laws 1997, LB 138, § 57.
71-5123. Repealed. Laws 1997, LB 138, § 57.
71-5124. Repealed. Laws 1997, LB 138, § 57.
71-5125. Repealed. Laws 1997, LB 138, § 57.
71-5126. Repealed. Laws 1997, LB 138, § 57.
71-5127. Repealed. Laws 1997, LB 138, § 57.
71-5128. Repealed. Laws 1997, LB 138, § 57.
71-5129. Repealed. Laws 1997, LB 138, § 57.
71-5130. Repealed. Laws 1997, LB 138, § 57.
71-5130.01. Repealed. Laws 1997, LB 138, § 57.
71-5131. Repealed. Laws 1997, LB 138, § 57.
71-5132. Repealed. Laws 1997, LB 138, § 57.
71-5133. Repealed. Laws 1997, LB 138, § 57.
71-5134. Repealed. Laws 1997, LB 138, § 57.
71-5135. Repealed. Laws 1997, LB 138, § 57.
71-5136. Repealed. Laws 1997, LB 138, § 57.
71-5137. Repealed. Laws 1997, LB 138, § 57.
71-5138. Repealed. Laws 1997, LB 138, § 57.
71-5139. Repealed. Laws 1997, LB 138, § 57.
71-5140. Repealed. Laws 1997, LB 138, § 57.
71-5141. Repealed. Laws 1997, LB 138, § 57.
71-5142. Repealed. Laws 1997, LB 138, § 57.
71-5143. Repealed. Laws 1997, LB 138, § 57.
71-5144. Repealed. Laws 1997, LB 138, § 57.
71-5145. Repealed. Laws 1997, LB 138, § 57.
71-5146. Repealed. Laws 1997, LB 138, § 57.
71-5147. Repealed. Laws 1997, LB 138, § 57.

Section
71-5148. Repealed. Laws 1997, LB 138, § 57.
71-5149. Repealed. Laws 1997, LB 138, § 57.
71-5150. Repealed. Laws 1997, LB 138, § 57.
71-5151. Repealed. Laws 1997, LB 138, § 57.
71-5152. Repealed. Laws 1997, LB 138, § 57.
71-5153. Repealed. Laws 1997, LB 138, § 57.
71-5154. Repealed. Laws 1997, LB 138, § 57.
71-5155. Repealed. Laws 1997, LB 138, § 57.
71-5156. Repealed. Laws 1997, LB 138, § 57.
71-5157. Repealed. Laws 1997, LB 138, § 57.
71-5158. Repealed. Laws 1997, LB 138, § 57.
71-5159. Repealed. Laws 1997, LB 138, § 57.
71-5160. Repealed. Laws 1997, LB 138, § 57.
71-5161. Repealed. Laws 1997, LB 138, § 57.
71-5162. Repealed. Laws 1997, LB 138, § 57.
71-5163. Repealed. Laws 1997, LB 138, § 57.
71-5164. Repealed. Laws 1997, LB 138, § 57.
71-5165. Repealed. Laws 1997, LB 138, § 57.

(b) NEBRASKA TRAUMA SYSTEMS DEVELOPMENT ACT

71-5166. Repealed. Laws 1998, LB 898, § 3.
71-5167. Repealed. Laws 1998, LB 898, § 3.
71-5168. Repealed. Laws 1998, LB 898, § 3.
71-5169. Repealed. Laws 1998, LB 898, § 3.
71-5170. Repealed. Laws 1998, LB 898, § 3.
71-5171. Repealed. Laws 1998, LB 898, § 3.

(c) EMERGENCY MEDICAL SERVICES ACT

71-5172. Transferred to section 38-1201.
71-5173. Transferred to section 38-1202.
71-5174. Transferred to section 38-1203.
71-5175. Transferred to section 38-1204.
71-5176. Transferred to section 38-1215.
71-5177. Transferred to section 38-1216.
71-5178. Transferred to section 38-1217.
71-5179. Transferred to section 38-1218.
71-5180. Repealed. Laws 2007, LB 463, § 1319.
71-5181. Repealed. Laws 2007, LB 463, § 1319.
71-5181.01. Transferred to section 38-1222.
71-5182. Repealed. Laws 2007, LB 463, § 1319.
71-5183. Transferred to section 38-1223.
71-5184. Transferred to section 38-1224.
71-5185. Transferred to section 38-1225.
71-5186. Transferred to section 38-1226.
71-5187. Transferred to section 38-1227.
71-5188. Transferred to section 38-1228.
71-5189. Transferred to section 38-1229.
71-5190. Transferred to section 38-1230.
71-5191. Transferred to section 38-1220.
71-5192. Repealed. Laws 2007, LB 463, § 1319.
71-5193. Transferred to section 38-1231.
71-5194. Transferred to section 38-1232.
71-5195. Transferred to section 38-1233.
71-5196. Transferred to section 38-1234.
71-5197. Transferred to section 38-1235.
71-5198. Transferred to section 38-1236.
71-5199. Transferred to section 38-1237.
71-51,100. Repealed. Laws 2007, LB 463, § 1319.
71-51,101. Repealed. Laws 1997, LB 90, § 8.

Section

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

71-51,102. Automated external defibrillator; use; conditions; liability.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

71-51,103. Nebraska Emergency Medical System Operations Fund; created; use; investment.

(a) EMERGENCY MEDICAL TECHNICIANS

71-5101 Repealed. Laws 1997, LB 138, § 57.

71-5102 Repealed. Laws 1997, LB 138, § 57.

71-5103 Repealed. Laws 1997, LB 138, § 57.

71-5104 Repealed. Laws 1997, LB 138, § 57.

71-5105 Repealed. Laws 1997, LB 138, § 57.

71-5106 Repealed. Laws 1997, LB 138, § 57.

71-5107 Repealed. Laws 1997, LB 138, § 57.

71-5108 Repealed. Laws 1997, LB 138, § 57.

71-5108.01 Repealed. Laws 1997, LB 138, § 57.

71-5109 Repealed. Laws 1997, LB 138, § 57.

71-5110 Repealed. Laws 1997, LB 138, § 57.

71-5111 Repealed. Laws 1997, LB 138, § 57.

71-5112 Repealed. Laws 1997, LB 138, § 57.

71-5113 Repealed. Laws 1997, LB 138, § 57.

71-5114 Repealed. Laws 1997, LB 138, § 57.

71-5115 Repealed. Laws 1997, LB 138, § 57.

71-5116 Repealed. Laws 1997, LB 138, § 57.

71-5117 Repealed. Laws 1997, LB 138, § 57.

71-5118 Repealed. Laws 1997, LB 138, § 57.

71-5119 Repealed. Laws 1997, LB 138, § 57.

71-5120 Repealed. Laws 1997, LB 138, § 57.

71-5121 Repealed. Laws 1997, LB 138, § 57.

71-5122 Repealed. Laws 1997, LB 138, § 57.

71-5123 Repealed. Laws 1997, LB 138, § 57.

71-5124 Repealed. Laws 1997, LB 138, § 57.

71-5125 Repealed. Laws 1997, LB 138, § 57.

71-5126 Repealed. Laws 1997, LB 138, § 57.

71-5127 Repealed. Laws 1997, LB 138, § 57.

71-5128 Repealed. Laws 1997, LB 138, § 57.

71-5129 Repealed. Laws 1997, LB 138, § 57.

71-5130 Repealed. Laws 1997, LB 138, § 57.

71-5130.01 Repealed. Laws 1997, LB 138, § 57.

71-5131 Repealed. Laws 1997, LB 138, § 57.

71-5132 Repealed. Laws 1997, LB 138, § 57.

71-5133 Repealed. Laws 1997, LB 138, § 57.

71-5134 Repealed. Laws 1997, LB 138, § 57.

71-5135 Repealed. Laws 1997, LB 138, § 57.

71-5136 Repealed. Laws 1997, LB 138, § 57.

71-5137 Repealed. Laws 1997, LB 138, § 57.

71-5138 Repealed. Laws 1997, LB 138, § 57.

71-5139 Repealed. Laws 1997, LB 138, § 57.

71-5140 Repealed. Laws 1997, LB 138, § 57.

71-5141 Repealed. Laws 1997, LB 138, § 57.

71-5142 Repealed. Laws 1997, LB 138, § 57.

71-5143 Repealed. Laws 1997, LB 138, § 57.

71-5144 Repealed. Laws 1997, LB 138, § 57.

71-5145 Repealed. Laws 1997, LB 138, § 57.

71-5146 Repealed. Laws 1997, LB 138, § 57.

71-5147 Repealed. Laws 1997, LB 138, § 57.

71-5148 Repealed. Laws 1997, LB 138, § 57.

71-5149 Repealed. Laws 1997, LB 138, § 57.

71-5150 Repealed. Laws 1997, LB 138, § 57.

71-5151 Repealed. Laws 1997, LB 138, § 57.

71-5152 Repealed. Laws 1997, LB 138, § 57.

71-5153 Repealed. Laws 1997, LB 138, § 57.

71-5154 Repealed. Laws 1997, LB 138, § 57.

71-5155 Repealed. Laws 1997, LB 138, § 57.

71-5156 Repealed. Laws 1997, LB 138, § 57.

71-5157 Repealed. Laws 1997, LB 138, § 57.

71-5158 Repealed. Laws 1997, LB 138, § 57.

71-5159 Repealed. Laws 1997, LB 138, § 57.

71-5160 Repealed. Laws 1997, LB 138, § 57.

71-5161 Repealed. Laws 1997, LB 138, § 57.

71-5162 Repealed. Laws 1997, LB 138, § 57.

71-5163 Repealed. Laws 1997, LB 138, § 57.

71-5164 Repealed. Laws 1997, LB 138, § 57.

71-5165 Repealed. Laws 1997, LB 138, § 57.

(b) NEBRASKA TRAUMA SYSTEMS DEVELOPMENT ACT

71-5166 Repealed. Laws 1998, LB 898, § 3.

71-5167 Repealed. Laws 1998, LB 898, § 3.

71-5168 Repealed. Laws 1998, LB 898, § 3.

71-5169 Repealed. Laws 1998, LB 898, § 3.

71-5170 Repealed. Laws 1998, LB 898, § 3.

71-5171 Repealed. Laws 1998, LB 898, § 3.

(c) EMERGENCY MEDICAL SERVICES ACT

71-5172 Transferred to section 38-1201.

71-5173 Transferred to section 38-1202.

71-5174 Transferred to section 38-1203.

71-5175 Transferred to section 38-1204.

71-5176 Transferred to section 38-1215.

71-5177 Transferred to section 38-1216.

71-5178 Transferred to section 38-1217.

71-5179 Transferred to section 38-1218.

71-5180 Repealed. Laws 2007, LB 463, § 1319.

71-5181 Repealed. Laws 2007, LB 463, § 1319.

71-5181.01 Transferred to section 38-1222.

71-5182 Repealed. Laws 2007, LB 463, § 1319.

71-5183 Transferred to section 38-1223.

71-5184 Transferred to section 38-1224.

71-5185 Transferred to section 38-1225.

71-5186 Transferred to section 38-1226.

71-5187 Transferred to section 38-1227.

71-5188 Transferred to section 38-1228.

71-5189 Transferred to section 38-1229.

71-5190 Transferred to section 38-1230.

71-5191 Transferred to section 38-1220.

71-5192 Repealed. Laws 2007, LB 463, § 1319.

71-5193 Transferred to section 38-1231.

71-5194 Transferred to section 38-1232.

71-5195 Transferred to section 38-1233.

71-5196 Transferred to section 38-1234.

71-5197 Transferred to section 38-1235.

71-5198 Transferred to section 38-1236.

71-5199 Transferred to section 38-1237.

71-51,100 Repealed. Laws 2007, LB 463, § 1319.

71-51,101 Repealed. Laws 1997, LB 90, § 8.

(d) AUTOMATED EXTERNAL DEFIBRILLATOR

71-51,102 Automated external defibrillator; use; conditions; liability.

(1) For purposes of this section:

(a) Automated external defibrillator means a device that:

(i) Is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention of an operator, whether defibrillation should be performed; and

(ii) Automatically charges and requests delivery of an electrical impulse to an individual's heart when it has identified a condition for which defibrillation should be performed;

(b) Emergency medical service means an emergency medical service as defined in section 38-1207;

(c) Health care facility means a health care facility as defined in section 71-413;

(d) Health care practitioner facility means a health care practitioner facility as defined in section 71-414; and

(e) Health care professional means any person who is licensed, certified, or registered by the Department of Health and Human Services and who is

authorized within his or her scope of practice to use an automated external defibrillator.

(2) Except for the action or omission of a health care professional acting in such capacity or in a health care facility, no person who delivers emergency care or treatment using an automated external defibrillator shall be liable in any civil action to respond in damages as a result of his or her acts of commission or omission arising out of and in the course of rendering such care or treatment in good faith. Nothing in this subsection shall be construed to (a) grant immunity for any willful, wanton, or grossly negligent acts of commission or omission or (b) limit the immunity provisions for certain health care professionals as provided in section 38-1232.

(3) A person acquiring an automated external defibrillator shall notify the local emergency medical service of the existence, location, and type of the defibrillator and of any change in the location of such defibrillator unless the defibrillator was acquired for use in a private residence, a health care facility, or a health care practitioner facility.

Source: Laws 1999, LB 498, § 1; Laws 2000, LB 819, § 111; Laws 2003, LB 667, § 12; Laws 2005, LB 176, § 1; Laws 2007, LB296, § 605; Laws 2007, LB463, § 1221.

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

71-51,103 Nebraska Emergency Medical System Operations Fund; created; use; investment.

There is hereby created the Nebraska Emergency Medical System Operations Fund. The fund may receive gifts, bequests, grants, fees, or other contributions or donations from public or private entities. The fund shall be used to carry out the purposes of the Statewide Trauma System Act and the Emergency Medical Services Practice Act, including activities related to the design, maintenance, or enhancement of the statewide trauma system, support of emergency medical services programs, and support for the emergency medical services programs for children. The Department of Health and Human Services shall annually, on or before January 1, submit a report to the Legislature which includes a general accounting of the income and expenditures of the fund. 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.

Source: Laws 2001, LB 191, § 2; Laws 2007, LB296, § 606; Laws 2007, LB463 § 1222.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.
Statewide Trauma System Act, see section 71-8201.

ARTICLE 52

RESIDENT PHYSICIAN EDUCATION AND DENTAL EDUCATION PROGRAMS

(a) FAMILY PRACTICE RESIDENCY

(b) DENTAL PROGRAM

(c) PRIMARY CARE PROVIDER ACT

(a) FAMILY PRACTICE RESIDENCY

71-5201 Terms, defined.

For purposes of sections 71-5201 to 71-5209, unless the context otherwise requires:

(1) Residency program shall mean a residency education program which is approved by the Accreditation Council for Graduate Medical Education;

(2) Model ambulatory practice unit shall mean the facilities or classrooms for the teaching of ambulatory health care skills within a residency program;

(3) Medical profession shall mean medical physicians and osteopathic physicians; and

(4) College of Medicine shall mean the University of Nebraska College of Medicine.

Source: Laws 1975, LB 571, § 1; Laws 1993, LB 152, § 1.

71-5202 Medical education residency program; established; purpose; implementation.

There is hereby established a statewide medical education residency program for the purpose of training resident physicians. The Dean of the College of Medicine of the University of Nebraska Medical Center shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The dean and the departmental chairmen in the College of Medicine shall determine where residency education and training shall be established, giving

consideration to communities in the state where the population, hospital facilities, number of physicians and interest in medical education indicate the potential success of residency education and training. The communities chosen shall be selected because they can be expected to fill requirements of the American Medical Association for participation in a residency program.

Source: Laws 1975, LB 571, § 2.

71-5203 Residency programs; funding; use of funds.

The Legislature shall provide funding for residency programs as provided in sections 71-5201 to 71-5209. Such funding shall be in addition to all other funding of the University of Nebraska, including current sources of funding house officer education and training. The funding for the residency programs shall not be used to supplant funds for other programs under the administration of the College of Medicine or the University of Nebraska Medical Center.

Residency program funding shall include, but not be limited to:

(1) Stipends for the residents in training;

(2) Salaries of appropriate faculty and auxiliary support personnel and operational budget items; and

(3) Initial construction costs and costs to remodel existing facilities to serve as model ambulatory practice units within a residency program.

Source: Laws 1975, LB 571, § 3; Laws 1993, LB 152, § 2.

71-5204 Funding; designation of minimum enrollments and priorities.

Funding provided by section 71-5203 shall be sufficient to provide for the following minimal residency enrollments:

(1) During fiscal year 1975-76, funding shall be provided for two hundred eighty-three residencies, including forty-three in the family practice residency program;

(2) During fiscal year 1976-77, funding shall be provided for three hundred seven residencies, including fifty-five in the family practice residency program;

(3) During fiscal year 1977-78, funding shall be provided for three hundred seventeen residencies, including fifty-seven in the family practice residency program;

(4) During fiscal year 1978-79, and each year thereafter, funding shall be provided for three hundred twenty residencies, including sixty in the family practice residency program;

(5) During fiscal year 1975-76 and each year thereafter, funding shall be provided for thirty additional family practice residencies in the State of Nebraska through associated residency programs; and

(6) Any residencies which may be funded, in addition to those provided in this section, shall be family practice residencies. Beginning July 1, 1976, any expansion of residencies, other than family practice residencies, shall be initiated only when the demand for such specialties is shown by patient numbers and need in the State of Nebraska.

Source: Laws 1975, LB 571, § 4.

71-5205 Family practice residency program; how funded.

The family practice residency program may be funded in part by grants provided by the Department of Health and Human Services or agencies of the federal government. If such grants are provided, the Legislature shall not provide funding for such program.

Source: Laws 1975, LB 571, § 5; Laws 1996, LB 1044, § 711; Laws 2007, LB296, § 607.

71-5206 Family practice residents; contract with other programs to assist in training; when; requirements.

If the College of Medicine of the University of Nebraska is unable to train the number of family practice residents provided for in section 71-5204, the college may, with the approval of the Board of Regents of the University of Nebraska, contract with other associated programs which:

(1) Comply with the essentials for residency training in family practice as specified by the American Medical Association;

(2) Are approved or eligible for approval by the Accreditation Council for Graduate Medical Education;

(3) Are affiliated with an accredited medical school; and

(4) Are not receiving funds pursuant to section 71-5206.01.

Source: Laws 1975, LB 571, § 6; Laws 1993, LB 152, § 3; Laws 1999, LB 241, § 1.

71-5206.01 Family practice residents; funding of stipends and benefits.

The Legislature may provide funding to the Office of Rural Health for the purpose of funding the cost of resident stipends and benefits, which funding may include health insurance, professional liability insurance, disability insurance, medical education expenses, continuing competency expenses, pension benefits, moving expenses, and meal expenses in family practice residency programs based in Nebraska but which are not under a contract pursuant to section 71-5206. The resident stipends and benefits funded in this section shall apply only to residents who begin family practice residency training at a qualifying institution in years beginning on or after January 1, 1993. The total funding provided in the form of stipend and benefit support per resident to a family practice residency program under this section shall not exceed the total funding provided in the form of stipend and benefit support per resident to a family practice residency program under section 71-5203.

Upon receiving an itemized statement of the cost of stipends and benefits of a family practice residency program from a sponsoring institution and upon determining that the sponsoring institution is not receiving funds under a contract pursuant to section 71-5206, the office may reimburse such institution fifty percent of such cost for each family practice resident in the program. The office may reimburse such institution twenty-five percent of the remaining cost per family practice resident for each year that one of the program's graduates practices family medicine in Nebraska, up to a maximum of three years for each graduate, and an additional twenty-five percent of the remaining cost per resident for each of the program's graduates who practices family medicine in an area of Nebraska classified as of January 1, 1991, by the United States Secretary of Health and Human Services as Medicare Locale 16. The total

number of residents receiving annual financial payments made under this section shall not exceed nine students during any school year.

At the end of the third year of the funding under this section, the sponsoring institutions and the office shall report to the Legislature regarding the performance of the residency programs and the placement of residents and physicians for training and practice.

Source: Laws 1993, LB 152, § 4; Laws 1999, LB 241, § 2; Laws 2002, LB 1021, § 89.

71-5207 Recruitment and training of physicians for rural communities; program established; purpose.

There is hereby created a program for the recruitment and training of physicians for rural communities, which shall be included as a program in the general budget of the University of Nebraska Medical Center. The purpose of such program shall be to coordinate, train, and recruit physicians to meet the medical service needs of rural communities.

Source: Laws 1975, LB 571, § 7.

(b) DENTAL PROGRAM

71-5208 Dental education program in comprehensive dentistry; established; purpose; implementation.

There is hereby established a statewide dental education program in comprehensive dentistry for the purpose of training dentists in the clinic of the College of Dentistry during the senior year of dental training. The Dean of the College of Dentistry of the University of Nebraska shall be responsible for implementing the comprehensive dentistry program.

Source: Laws 1975, LB 571, § 8.

71-5209 Comprehensive dentistry program; funding.

Funding for the comprehensive dentistry program shall be provided in the manner set forth in section 71-5203.

Source: Laws 1975, LB 571, § 9.

(c) PRIMARY CARE PROVIDER ACT

71-5210 Act, how cited.

Sections 71-5210 to 71-5213 shall be known and may be cited as the Primary Care Provider Act.

Source: Laws 1994, LB 1223, § 69.

71-5211 Primary care, defined.

For purposes of the Primary Care Provider Act, primary care means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry.

Source: Laws 1994, LB 1223, § 70; Laws 1996, LB 1155, § 43.

71-5212 Postgraduate residency training program; University of Nebraska Medical Center and Creighton University Medical Center; develop plans.

The University of Nebraska Medical Center and the Creighton University Medical Center shall each develop a separate plan to increase the number of graduates from its medical center who enter a primary care postgraduate residency training program. Each report shall include numerical goals and timeframes for such increases. Each medical center shall request input from the Nebraska Rural Health Advisory Commission in the formation of the plans.

Source: Laws 1994, LB 1223, § 71; Laws 1996, LB 1155, § 44.

71-5213 Postgraduate residency training programs; report.

A report shall be submitted to the Governor and the Legislature as to the efforts of the Nebraska Rural Health Advisory Commission, University of Nebraska Medical Center, and Creighton University Medical Center to increase the number of graduates entering primary care postgraduate residency training programs. The report shall include recommendations as to further steps that should be taken to increase the number of such graduates. The report shall be submitted to the Nebraska Rural Health Advisory Commission for comment by October 1 in 1994, 1995, and 1996. The report shall be submitted to the Governor and the Legislature by December 1 in 1994, 1995, and 1996.

Source: Laws 1994, LB 1223, § 72; Laws 1996, LB 1155, § 45.

ARTICLE 53

DRINKING WATER

Cross References

Credentialing provisions, see sections 38-1,119 to 38-1,123.
Drinking water, standards for pesticide levels, see section 2-2626.
Residential Lead-Based Paint Professions Practice Act, see section 71-6318.
Wastewater Treatment Facilities Construction Assistance Act, see section 81-15,147.
Wastewater Treatment Operator Certification Act, see section 81-15,128.

(a) NEBRASKA SAFE DRINKING WATER ACT

Section

(a) NEBRASKA SAFE DRINKING WATER ACT

71-5301 Terms, defined.

For purposes of the Nebraska Safe Drinking Water Act, unless the context otherwise requires:

(1) Council means the Advisory Council on Public Water Supply;

(2) Department means the Division of Public Health of the Department of Health and Human Services;

(3) Director means the Director of Public Health of the Division of Public Health or his or her authorized representative;

(4) Designated agent means any political subdivision or corporate entity having the demonstrated capability and authority to carry out in whole or in part the Nebraska Safe Drinking Water Act and with which the director has consummated a legal and binding contract covering specifically delegated responsibilities;

(5) Major construction, extension, or alteration means those structural changes that affect the source of supply, treatment processes, or transmission of water to service areas but does not include the extension of service mains within established service areas;

(6) Operator means the individual or individuals responsible for the continued performance of the water supply system or any part of such system during assigned duty hours;

(7) Owner means any person owning or operating a public water system;

(8) Person means any individual, corporation, firm, partnership, limited liability company, association, company, trust, estate, public or private institution, group, agency, political subdivision, or other entity or any legal successor, representative, agent, or agency of any of such entities;

(9) Water supply system means all sources of water and their surroundings under the control of one owner and includes all structures, conduits, and appurtenances by means of which such water is collected, treated, stored, or delivered except service pipes between street mains and buildings and the plumbing within or in connection with the buildings served;

(10)(a) Public water system means a system for providing the public with water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least sixty days per year. Public water system includes (i) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system and (ii) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Public water system does not include a special irrigation district. A public water system is either a community water system or a noncommunity water system.

(b) Service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe if (i) the water is used exclusively for purposes other than residential uses, consisting of drinking, bathing, cooking, and other similar uses, (ii) the department determines that alternative water to achieve the equivalent level of public health protection provided by the Nebraska Safe Drinking Water Act and rules and regulations under the act is provided for residential or similar uses for drinking and cooking, or (iii) the department determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the Nebraska Safe Drinking Water Act and the rules and regulations under the act.

(c) Special irrigation district means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use if the system or the residential or similar users of the system comply with exclusion provisions of subdivision (b)(ii) or (iii) of this subdivision;

(11) Drinking water standards means rules and regulations adopted and promulgated pursuant to section 71-5302 which (a) establish maximum levels for harmful materials which, in the judgment of the director, may have an adverse effect on the health of persons and (b) apply only to public water systems;

(12) Lead free (a) when used with respect to solders and flux means solders and flux containing not more than two-tenths percent lead, (b) when used with respect to pipes and pipe fittings means pipes and pipe fittings containing not more than eight percent lead, and (c) when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion means fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300g-6(e) as such section existed on July 16, 2004;

(13) Community water system means a public water system that (a) serves at least fifteen service connections used by year-round residents of the area served by the system or (b) regularly serves at least twenty-five year-round residents;

(14) Noncommunity water system means a public water system that is not a community water system;

(15) Nontransient noncommunity water system means a public water system that is not a community water system and that regularly serves at least twenty-five of the same individuals over six months per year; and

(16) Small system means a public water system that regularly serves less than ten thousand individuals.

Source: Laws 1976, LB 821, § 1; Laws 1988, LB 383, § 1; Laws 1993, LB 121, § 441; Laws 1996, LB 1044, § 712; Laws 1997, LB 517, § 17; Laws 2001, LB 667, § 28; Laws 2003, LB 31, § 3; Laws 2004, LB 1005, § 98; Laws 2007, LB296, § 608; Laws 2007, LB463, § 1223.

71-5301.01 Pipe, pipe fitting, solder, or flux; lead free; requirements; inspection.

(1) After July 1, 1988, any pipe, pipe fitting, solder, or flux which is used in the installation or repair of any public water system shall be lead free.

(2) By July 1, 1988, the owner of any public water system shall, by the adoption of plumbing codes or ordinances, contract, or other enforceable means, require that any solder or flux used in the installation or repair of any residential or nonresidential facility which is connected to the public water system be lead free.

(3) The owner of any public water system shall inspect the installation or repair of facilities described in subsection (2) of this section to determine compliance with such subsection.

(4) The owner of a public water system shall cause any joint or pipe in facilities described in subsection (2) of this section to be replaced if the owner or the director finds that such joint or pipe is not lead free.

(5) This section shall not apply to the repair of leaded joints in cast iron pipes in any public water system that are in existence and use on July 1, 1988.

Source: Laws 1988, LB 383, § 2; Laws 2001, LB 667, § 29.

71-5302 Drinking water and monitoring standards; harmful materials; how determined; applicability; priority system.

(1) The director shall adopt and promulgate necessary minimum drinking water standards, in the form of rules and regulations, to insure that drinking water supplied to consumers through all public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological material determined by the director to be harmful to human health.

(2) The director may adopt and promulgate rules and regulations to require the monitoring of drinking water supplied to consumers through public water systems for chemical, radiological, physical, or bacteriological material determined by the director to be potentially harmful to human health.

(3) In determining what materials are harmful or potentially harmful to human health and in setting maximum levels for such harmful materials, the director shall be guided by:

(a) General knowledge of the medical profession and related scientific fields as to materials and substances which are harmful to humans if ingested through drinking water; and

(b) General knowledge of the medical profession and related scientific fields as to the maximum amounts of such harmful materials which may be ingested by human beings, over varying lengths of time, without resultant adverse effects on health.

(4) Subject to section 71-5310, state drinking water standards shall apply to each public water system in the state, except that such standards shall not apply to a public water system:

(a) Which consists only of distribution and storage facilities and does not have any collection and treatment facilities;

(b) Which obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) Which does not sell water to any person; and

(d) Which is not a carrier which conveys passengers in interstate commerce.

(5) The director may adopt alternative monitoring requirements for public water systems in accordance with section 1418 of the federal Safe Drinking Water Act, as such section existed on May 22, 2001.

(6) The director may adopt a system for the ranking of safe drinking water projects with known needs or for which loan applications have been received by the director or the Department of Environmental Quality. In establishing the ranking system the director shall consider, among other things, the risk to human health, compliance with the federal Safe Drinking Water Act, as the act existed on May 22, 2001, and assistance to systems most in need based upon affordability criteria adopted by the director. This priority system shall be reviewed annually by the director.

Source: Laws 1976, LB 821, § 2; Laws 1988, LB 383, § 3; Laws 1997, LB 517, § 18; Laws 2001, LB 667, § 30; Laws 2007, LB296, § 609.

Cross References

Drinking water, standards for pesticide levels, see section 2-2626.

71-5303 Public water system; permit; director; powers; hearing; appeal.

(1) No person shall operate or maintain a public water system without first obtaining a permit to operate such system from the director. No fee shall be charged for the issuance of such permit.

(2) The director shall inspect public water systems and report findings to the owner, publish a list of those systems not in compliance, and promote the training of operators. The director may deny or revoke a permit, issue administrative orders scheduling action to be taken, take emergency action as provided in section 71-5304.01, and seek a temporary or permanent injunction or such other legal process as is deemed necessary to obtain compliance with the Nebraska Safe Drinking Water Act.

(3) A permit may be denied or revoked for noncompliance with the act, the rules and regulations adopted and promulgated under the act, or the terms of a variance or exemption issued pursuant to section 71-5310.

(4) Any person shall be granted, upon request, an opportunity for a hearing before the department under the Administrative Procedure Act prior to the

denial or revocation of a permit. The denial or revocation may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 821, § 3; Laws 1988, LB 383, § 4; Laws 1988, LB 352, § 139; Laws 1996, LB 1044, § 713; Laws 2000, LB 1115, § 77; Laws 2001, LB 667, § 31; Laws 2003, LB 31, § 4; Laws 2007, LB296, § 610; Laws 2007, LB463, § 1224.

Cross References

Administrative Procedure Act, see section 84-920.

71-5304 Rules and regulations; construction and operation of system; objectives.

(1) The director shall adopt and promulgate necessary minimum rules and regulations governing the siting, design, construction, alteration, classification, and operation of public water systems to insure that such public water systems shall not contain amounts of chemical, radiological, physical, or bacteriological materials which are determined by the director, pursuant to section 71-5302, to be harmful to the physical health of human beings. In adopting such rules and regulations, the director shall attempt to meet the following objectives:

(a) Insure that facilities are physically separated, to the greatest extent possible, from water or land areas which contain high levels of materials which are harmful to humans;

(b) Insure that such facilities, and all parts thereof, are physically sealed so that leakage of harmful materials into the public water system itself from sources outside the system shall not occur;

(c) Insure that all materials which are used in the construction of a system shall not place harmful materials into the public water system;

(d) Insure that all chemicals or other substances used to treat and purify water are free from harmful materials; and

(e) Insure, to the greatest extent possible, that such rules and regulations will allow uninterrupted and efficient operation of public water systems.

(2) The rules and regulations may contain differences and distinctions based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the objectives of this section are met.

Source: Laws 1976, LB 821, § 4; Laws 2001, LB 667, § 32; Laws 2003, LB 31, § 5.

71-5304.01 Violations; administrative orders; director; emergency powers; hearing; administrative penalties.

(1) Whenever the director has reason to believe that a violation of any provision of the Nebraska Safe Drinking Water Act, any rule or regulation adopted and promulgated under such act, or any term of a variance or exemption issued pursuant to section 71-5310 has occurred, he or she may cause an administrative order to be served upon the permittee or permittees alleged to be in violation. Such order shall specify the violation and the facts alleged to constitute a violation and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any such

order shall become final unless the permittee or permittees named in the order request in writing a hearing before the director no later than thirty days after the date such order is served. In lieu of such order, the director may require that the permittee or permittees appear before the director at a time and place specified in the notice and answer the charges. The notice shall be served on the permittee or permittees alleged to be in violation not less than thirty days before the time set for the hearing.

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the public health and welfare concerning a material which is determined by the director to be harmful or potentially harmful to human health, the director may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the director deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such order is directed shall comply immediately and, on written application to the director, shall be afforded a hearing as soon as possible and not later than ten days after receipt of such application by such affected person. On the basis of such hearing, the director shall continue such order in effect, revoke it, or modify it.

(3) The director shall afford to the alleged violator an opportunity for a fair hearing before the director under the Administrative Procedure Act.

(4) In addition to any other remedy provided by law, the director may issue an order assessing an administrative penalty upon a violator.

(5) The range of administrative penalties assessed under this section for a public water system serving ten thousand or more persons shall be not less than one thousand dollars per day or part thereof for each violation, not to exceed twenty-five thousand dollars in the aggregate. Administrative penalties for a small system shall be not more than five hundred dollars per day or part thereof for each violation, not to exceed five thousand dollars in the aggregate. In determining the amount of the administrative penalty, the department shall take into consideration all relevant circumstances, including, but not limited to, the harm or potential harm which the violation causes or may cause, the violator's previous compliance record, the nature and persistence of the violation, any corrective actions taken, and any other factors which the department may reasonably deem relevant. The administrative penalty assessment shall state specific amounts to be paid for each violation identified in the order.

(6) An administrative penalty shall be paid within sixty days after the date of issuance of the order assessing the penalty. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for the penalty amount plus any statutory interest rate applicable to judgments. An order under this section imposing an administrative penalty may be appealed to the director in the manner provided for in subsection (1) of this section. Any administrative penalty paid pursuant to this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska. An action may be brought in the appropriate court to collect any unpaid administrative penalty and for attorney's fees and costs incurred directly in the collection of the penalty.

Source: Laws 1988, LB 383, § 5; Laws 1996, LB 1044, § 714; Laws 1997, LB 517, § 19; Laws 2001, LB 667, § 33; Laws 2007, LB296, § 611.

Cross References

Administrative Procedure Act, see section 84-920.

71-5304.02 Public water system; notice; requirements.

(1) The director may require a public water system to give notice to the persons served by the system and to the department whenever the system:

(a) Is not in compliance with an applicable maximum contaminant level or treatment technique requirement of or a testing procedure prescribed by rules and regulations adopted and promulgated under the Nebraska Safe Drinking Water Act;

(b) Fails to perform monitoring, testing, analyzing, or sampling as required;

(c) Is subject to a variance or exemption; or

(d) Is not in compliance with the requirements prescribed by a variance or exemption.

(2) The director may require a public water system to give notice to the persons served by the public water system of potential sources of contamination as identified by the director under subsection (2) of section 71-5302, of possible health effects of such contamination, and of possible mitigation measures.

(3) The director shall by rule and regulation prescribe the form and manner for giving such notice.

Source: Laws 1988, LB 383, § 6; Laws 1996, LB 1044, § 715; Laws 2001, LB 667, § 34; Laws 2007, LB296, § 612.

71-5305 Public water system; construction, extension, or alteration; written authorization required; exception; procedure.

(1) No major construction, extension, or alteration of a public water system shall be commenced without written authorization from the director. No such authorization shall be needed in the case of minor repairs and matters of maintenance. No such authorization shall be granted unless plans and specifications, prepared by a professional engineer, and any additional information required by the department have been submitted to the department or its designated agent for review.

(2) Upon a finding that there has been compliance with the minimum sanitary requirements adopted pursuant to section 71-5304, authorization to proceed with construction shall be granted by the director or his or her designated agent. In issuing authorization for the development of new public water supply sources, consideration shall be given to the location and effects of other water supply systems and the location of points of discharge or disposal for solid and liquid wastes.

Source: Laws 1976, LB 821, § 5; Laws 1997, LB 622, § 109; Laws 2001, LB 667, § 35.

71-5305.01 Certain new water systems; technical, managerial, and financial capacity.

All new community water systems and new nontransient noncommunity water systems commencing operation after October 1, 1999, shall demonstrate technical, managerial, and financial capacity to operate under the Nebraska Safe Drinking Water Act.

The director may adopt and promulgate rules and regulations to determine demonstration requirements for technical, managerial, and financial capacity of community water systems and nontransient noncommunity water systems.

Source: Laws 1997, LB 517, § 20; Laws 2007, LB296, § 613.

71-5305.02 Capacity development strategy; department; solicit public comment.

The department shall develop a capacity development strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity pursuant to section 71-5305.01. The department shall consider and solicit public comment on:

(1) The methods or criteria the department will use to identify and prioritize the public water systems most in need of improving technical, managerial, and financial capacity;

(2) A description of the institutional, regulatory, financial, tax, or legal factors at the federal, state, or local level that encourage or impair capacity development;

(3) A description of how the department will:

(a) Assist public water systems in complying with the Nebraska Safe Drinking Water Act;

(b) Encourage the development of partnerships between public water systems to enhance the technical, managerial, and financial capacity of the systems; and

(c) Assist public water systems in the training and licensure of operators; and

(4) A description of how the department will establish a baseline and measure improvements in capacity with respect to the act.

Source: Laws 1997, LB 517, § 21; Laws 2001, LB 667, § 36; Laws 2007, LB296, § 614; Laws 2007, LB463, § 1225.

71-5306 Director; powers and authority; Safe Drinking Water Act Cash Fund; created; use; investment.

(1) To carry out the provisions and purposes of the Nebraska Safe Drinking Water Act, the director may:

(a) Enter into agreements, contracts, or cooperative arrangements, under such terms as are deemed appropriate, with other state, federal, or interstate agencies or with municipalities, educational institutions, local health departments, or other organizations, entities, or individuals;

(b) Require all laboratory analyses to be performed at the Department of Health and Human Services, Division of Public Health, Environmental Laboratory, or at any other certified laboratory which has entered into an agreement with the department therefor, and establish and collect fees for making laboratory analyses of water samples pursuant to sections 71-2619 to 71-2621, except that subsection (6) of section 71-2619 shall not apply for purposes of the Nebraska Safe Drinking Water Act. Inspection fees for making other laboratory agreements shall be established and collected pursuant to sections 71-2619 to 71-2621;

(c) Certify laboratories performing tests on water that is intended for human consumption. The director may establish, through rules and regulations, standards for certification. Such standards may include requirements for staffing,

equipment, procedures, and methodology for conducting laboratory tests, quality assurance and quality control procedures, and communication of test results. Such standards shall be consistent with requirements for performing laboratory tests established by the federal Environmental Protection Agency to the extent such requirements are consistent with state law. The director may accept accreditation by a recognized independent accreditation body, public agency, or federal program which has standards that are at least as stringent as those established pursuant to this section. The director may adopt and promulgate rules and regulations which list accreditation bodies, public agencies, and federal programs that may be accepted as evidence that a laboratory meets the standards for certification. Inspection fees and fees for certifying other laboratories shall be established and collected to defray the cost of the inspections and certification as provided in sections 71-2619 to 71-2621;

(d) Receive financial and technical assistance from an agency of the federal government or from any other public or private agency;

(e) Enter the premises of a public water system at any time for the purpose of conducting monitoring, making inspections, or collecting water samples for analysis;

(f) Delegate those responsibilities and duties as deemed appropriate for the purpose of administering the requirements of the Nebraska Safe Drinking Water Act, including entering into agreements with designated agents which shall perform specifically delegated responsibilities and possess specifically delegated powers;

(g) Require the owner and operator of a public water system to establish and maintain records, make reports, and provide information as the department may reasonably require by regulation to enable it to determine whether such owner or operator has acted or is acting in compliance with the Nebraska Safe Drinking Water Act and rules and regulations adopted pursuant thereto. The department or its designated agent shall have access at all times to such records and reports; and

(h) Assess by regulation a fee for any review of plans and specifications pertaining to a public water system governed by section 71-5305 in order to defray no more than the actual cost of the services provided.

(2) All such fees collected by the department shall be remitted to the State Treasurer for credit to the Safe Drinking Water Act Cash Fund, which is hereby created. Such fund shall be used by the department for the purpose of administering the Nebraska Safe Drinking Water 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.

Source: Laws 1976, LB 821, § 6; Laws 1986, LB 1047, § 7; Laws 1996, LB 1044, § 716; Laws 2000, LB 1115, § 78; Laws 2001, LB 667, § 37; Laws 2003, LB 242, § 130; Laws 2007, LB296, § 615; Laws 2008, LB928, § 30.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-5307 Operator of public water system; license required.

No public water system shall be issued or otherwise hold a permit to operate a public water system, granted by the department, unless its operator possesses a license issued by the department.

Source: Laws 1976, LB 821, § 7; Laws 2001, LB 667, § 38; Laws 2007, LB463, § 1226.

71-5308 License; application; issuance; disciplinary actions; grounds; existing certificate holder; how treated.

Application for a license to act as a licensed operator of a public water system shall be made as provided in the Uniform Credentialing Act. The department shall establish and collect fees for licenses as provided in sections 38-151 to 38-157. An operator shall be licensed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139. In addition to the grounds for disciplinary action found in the Uniform Credentialing Act, a license issued under the Nebraska Safe Drinking Water Act may be disciplined for any violation of the act or the rules and regulations adopted and promulgated under the act.

An individual holding a certificate as a certified operator of a public water system under the Nebraska Safe Drinking Water Act on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Nebraska Safe Drinking Water Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1976, LB 821, § 8; Laws 1997, LB 752, § 190; Laws 2001, LB 667, § 39; Laws 2002, LB 1021, § 90; Laws 2003, LB 242, § 131; Laws 2007, LB463, § 1227.

Cross References

Uniform Credentialing Act, see section 38-101.

71-5309 Qualifications of operators of public water system; license; rules and regulations; expired license; relicensure; department; powers and duties.

(1) The director shall adopt and promulgate minimum necessary rules and regulations governing the qualifications of operators of public water systems. In adopting such rules and regulations, the director shall give consideration to the levels of training and experience which are required, in the opinion of the director, to insure to the greatest extent possible that the public water systems shall be operated in such a manner that (a) maximum efficiency can be attained, (b) interruptions in service will not occur, (c) chemical treatment of the water will be adequate to maintain purity and safety, and (d) harmful materials will not enter the public water system.

(2) The director may require, by rule and regulation, that the applicant for a license successfully pass an examination on the subject of operation of a public water system. The rules and regulations, and any tests so administered, may set out different requirements for public water systems based on one or more of the following: Physical size of the facilities, number of persons served, system classification, source of water, treatment technique and purpose, and distribution complexity, so long as the criteria set forth in this section are followed.

(3) An applicant for a license as a public water system operator under the Nebraska Safe Drinking Water Act who previously held a license or certification as a public water system operator under the act and whose license or certification expired two years or more prior to the date of application shall take the examination required to be taken by an applicant for an initial license under the act. The department's review of the application for licensure by an applicant under this subsection shall include the results of such examination and the applicant's experience and training. The department may by rules and regulations establish requirements for relicensure under the act which are more stringent for applicants whose license is expired or has been revoked or suspended than those for applicants for initial licensure.

Source: Laws 1976, LB 821, § 9; Laws 1988, LB 383, § 7; Laws 2001, LB 667, § 40; Laws 2003, LB 31, § 6; Laws 2007, LB463, § 1228; Laws 2009, LB288, § 35.

71-5310 Director; authorize variances or exemptions to standards; procedure.

(1) The director, with the approval of the council, may authorize variances or exemptions from the drinking water standards issued pursuant to section 71-5302 under conditions and in such manner as they deem necessary and desirable. Such variances or exemptions shall be permitted under conditions and in a manner which are not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the federal Safe Drinking Water Act as the act existed on July 20, 2002.

(2) Prior to granting a variance or an exemption, the director shall provide notice, in a newspaper of general circulation serving the area served by the public water system, of the proposed exemption or variance and that interested persons may request a public hearing on the proposed exemption or variance. The director may require the system to provide other appropriate notice necessary to provide adequate notice to persons served by the system.

If a public hearing is requested, the director shall set a time and place for the hearing and such hearing shall be held before the department prior to the variance or exemption being issued. Frivolous and insubstantial requests for a hearing may be denied by the director. An exemption or variance shall be conditioned on monitoring, testing, analyzing, or other requirements to insure the protection of the public health. A variance or an exemption granted shall include a schedule of compliance under which the public water system is required to meet each contaminant level or treatment technique requirement for which a variance or an exemption is granted within a reasonable time as specified by the director with the approval of the council.

Source: Laws 1976, LB 821, § 10; Laws 1988, LB 383, § 8; Laws 1996, LB 1044, § 717; Laws 2001, LB 667, § 41; Laws 2002, LB 1062, § 54; Laws 2007, LB296, § 616.

71-5310.01 Notice, order, or other instrument; service.

Except as otherwise expressly provided, any notice, order, or other instrument issued by or under authority of the director under the Nebraska Safe Drinking Water Act may be served on any person affected by such notice, order, or other instrument, personally or by publication, and proof of such service may be made in like manner as in case of service of a summons in a civil

action, such proof to be filed in the office of the department, or such service may be made by mailing a copy of the notice, order, or other instrument by certified or registered mail directed to the person affected at his or her last-known post office address as shown by the files or records of the department, and proof of service may be made by the affidavit of the person who did the mailing and filed in the office of the department.

Every certificate or affidavit of service made and filed as provided in this section shall be prima facie evidence of the facts stated in such certificate or affidavit, and a certified copy shall have like force and effect.

Source: Laws 1988, LB 383, § 9; Laws 1996, LB 1044, § 718; Laws 2007, LB296, § 617.

71-5311 Advisory Council on Public Water Supply; established; duties; members; qualifications; terms; vacancy; meetings; officers; quorum; expenses.

(1) There is hereby established the Advisory Council on Public Water Supply which shall advise and assist the department in administering the Nebraska Safe Drinking Water Act.

(2) The council shall be composed of seven members appointed by the Governor, (a) one of whom shall be a professional engineer, (b) one of whom shall be a licensed physician, (c) two of whom shall be consumers of a public water system, (d) two of whom shall be operators of a public water system who possess a license issued by the department to operate a public water system. One such operator shall represent a system serving a population of five thousand or less, and one such operator shall represent a system serving a population of more than five thousand, and (e) one of whom shall be, at the time of appointment, (i) an individual who owns a public water system, (ii) a member of the governing board of a public or private corporation which owns a public water system, or (iii) in the case of a political subdivision which owns a public water system, a member of the subdivision's governing board or board of public works or similar board which oversees the operation of a public water system.

(3) All members shall be appointed for three-year terms. No member shall serve more than three consecutive three-year terms. Each member shall hold office until the expiration of his or her term or until a successor has been appointed. Any vacancy occurring in council membership, other than by expiration of term, shall be filled within sixty days by the Governor by appointment from the appropriate category for the unexpired term.

(4) The council shall meet not less than once each year. Special meetings of the council may be called by the director or upon the written request of any two members of the council explaining the reason for such meeting. The place of the meeting shall be set by the director. Such officers as the council deems necessary shall be elected every three years beginning with the first meeting in the year 1990. A majority of the members of the council shall constitute a quorum for the transaction of business. Representatives of the department shall attend each meeting. Every act of the majority of the members of the council shall be deemed to be the act of the council.

(5) No member of the council shall receive any compensation, but each member shall be entitled, while serving on the business of the council, to

receive his or her travel and other necessary expenses while so serving away from his or her place of residence as provided in sections 81-1174 to 81-1177.

Source: Laws 1976, LB 821, § 11; Laws 1989, LB 344, § 32; Laws 1996, LB 1044, § 719; Laws 1997, LB 622, § 110; Laws 2001, LB 667, § 42; Laws 2007, LB296, § 618; Laws 2007, LB463, § 1229.

71-5311.01 Compliance not dependent on funding.

The failure or inability of any public water system to receive funds under the Drinking Water State Revolving Fund Act or any other loan or grant program or any delay in obtaining the funds shall not alter the obligation of the system to comply in a timely manner with the Nebraska Safe Drinking Water Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 517, § 22; Laws 2001, LB 667, § 43.

Cross References

Drinking Water State Revolving Fund Act, see section 71-5314.

71-5311.02 Voluntary compliance.

The director shall make every effort to obtain voluntary compliance through warning, conference, or any other appropriate means prior to initiating enforcement proceedings, except that such requirement shall not be construed to alter enforcement duties or requirements of the director and the department.

Source: Laws 1997, LB 517, § 23; Laws 2007, LB296, § 619.

71-5312 Violations; penalty; county attorney or Attorney General; action to assure compliance.

Any person who shall violate any of the provisions of sections 71-5301 to 71-5313 shall be guilty of a Class IV misdemeanor and each day shall constitute a separate offense in cases of continued violation. It shall be the duty of the county attorney or the Attorney General, to whom the director reports a violation, to cause appropriate proceedings to be instituted without delay to assure compliance with sections 71-5301 to 71-5313.

Source: Laws 1976, LB 821, § 12; Laws 1977, LB 41, § 62.

71-5312.01 Existing rules, regulations, certificates, forms of approval, suits, other proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All certificates or other forms of approval issued prior to December 1, 2008, in accordance with the Nebraska Safe Drinking Water Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Nebraska Safe Drinking Water Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1230.

71-5313 Act, how cited.

Sections 71-5301 to 71-5313 shall be known and may be cited as the Nebraska Safe Drinking Water Act.

Source: Laws 1976, LB 821, § 13; Laws 1988, LB 383, § 10; Laws 1997, LB 517, § 24; Laws 2007, LB463, § 1231.

(b) DRINKING WATER STATE REVOLVING FUND ACT

71-5314 Act, how cited.

Sections 71-5314 to 71-5327 shall be known and may be cited as the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 3.

71-5315 Legislative findings.

The Legislature finds that safe drinking water is essential to the protection of public health. The Legislature further finds that the construction, rehabilitation, operation, and maintenance of modern and efficient public water systems and safe drinking water projects are essential to protecting and improving the quality of the state's drinking water, that protecting water quality is an issue of concern to all citizens of the state, and that adequate public water systems and safe drinking water projects are essential to public health and to economic growth and development. Systems need to have adequate technical, managerial, and financial capacities to assure that the public is protected. Needed assistance can be provided to systems through the funds created by the Drinking Water State Revolving Fund Act. The Legislature finds and determines that the funds should be available in perpetuity for providing financial assistance to such systems and for such projects.

The Legislature finds and determines that these funds will consist of both state money and federal grant funds. In addition, the funds can be increased and additional needed safe drinking water projects for owners of public water systems can be undertaken more expeditiously through the issuance of revenue bonds by the Nebraska Investment Finance Authority and the deposit of the proceeds thereof into the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund.

The Legislature finds and determines that the issuance of revenue bonds for financing the funds serves a public purpose by assisting public water systems in providing and improving safe drinking water projects and thereby providing safe drinking water to the citizens of the state, promoting the health and well-being of the citizens, and assisting in the economic growth and development of the state. The full faith and credit and the taxing power of the state are not pledged to the payment of such bonds or the interest thereon.

Source: Laws 1997, LB 517, § 4; Laws 2001, LB 667, § 44.

71-5316 Terms, defined.

For purposes of the Drinking Water State Revolving Fund Act, unless the context otherwise requires:

(1) Safe Drinking Water Act means the federal Safe Drinking Water Act, as the act existed on May 22, 2001;

(2) Construction means any of the following: Preliminary planning to determine the feasibility of a safe drinking water project for a public water system; engineering, architectural, legal, fiscal, or economic investigations or studies; surveys, designs, plans, working drawings, specifications, procedures, or other necessary preliminary actions; erection, building, acquisition, alteration, remodeling, improvement, or extension of public water systems; or the inspection or supervision of any of such items;

(3) Council means the Environmental Quality Council;

(4) Department means the Department of Environmental Quality;

(5) Director means the Director of Environmental Quality;

(6) Operate and maintain means all necessary activities, including the normal replacement of equipment or appurtenances, to assure the dependable and economical function of a public water system in accordance with its intended purpose;

(7) Owner means any person owning or operating a public water system;

(8) Public water system has the definition found in section 71-5301; and

(9) Safe drinking water project means the structures, equipment, surroundings, and processes required to establish and operate a public water system.

Source: Laws 1997, LB 517, § 5; Laws 2001, LB 667, § 45.

71-5317 Federal grants; director; powers.

The director may obligate and administer federal grants for construction of safe drinking water projects pursuant to the Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 6.

71-5318 Drinking Water Facilities Loan Fund; Land Acquisition and Source Water Loan Fund; Drinking Water Administration Fund; created; use; investment.

(1) The Drinking Water Facilities Loan Fund is created. The fund shall be held as a trust fund for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may conduct activities related to financial administration of the fund, administration or provision of technical assistance through public water system source water assessment programs, and implementation of a source water petition program under the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for the security, investment, and repayment of bonds.

The fund and the assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or to secure the payment of bonds and the interest thereon, except that amounts deposited into the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

(2) The Land Acquisition and Source Water Loan Fund is created. The fund shall be held as a trust for the purposes and uses described in the Drinking Water State Revolving Fund Act.

The fund shall consist of federal capitalization grants, state matching appropriations, proceeds of state match bond issues credited to the fund, repayments of principal and interest on loans, and other money designated for the fund. The director may make loans from the fund pursuant to the Drinking Water State Revolving Fund Act and may, in consultation with the Director of Public Health of the Division of Public Health, conduct activities other than the making of loans permitted under section 1452(k) of the Safe Drinking Water Act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act, except that any bond proceeds in the fund shall be invested in accordance with the terms of the documents under which the bonds are issued. The state investment officer may direct that the bond proceeds shall be deposited with the bond trustee for investment. Investment earnings shall be credited to the fund.

The department may create or direct the creation of accounts within the fund as the department determines to be appropriate and useful in administering the fund and in providing for security, investment, and repayment of bonds.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to pay or secure the payment of bonds and the interest thereon, except that amounts credited to the fund from state appropriations and the earnings on such appropriations may not be used to pay or to secure the payment of bonds or the interest thereon.

The director may transfer any money in the Land Acquisition and Source Water Loan Fund to the Drinking Water Facilities Loan Fund.

(3) There is hereby created the Drinking Water Administration Fund. Any funds available for administering loans or fees collected pursuant to the Drinking Water State Revolving Fund Act shall be remitted to the State Treasurer for credit to such fund. The fund shall be administered by the department for the purposes of the act. The state investment officer shall invest any money in the fund available for investment pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Investment earnings shall be credited to the fund.

The fund and assets thereof may be used, to the extent permitted by the Safe Drinking Water Act and the regulations adopted and promulgated pursuant to such act, to fund subdivisions (9), (10), and (11) of section 71-5322. The annual obligation of the state pursuant to subdivisions (9) and (11) of section 71-5322

shall not exceed sixty-five percent of the revenue from administrative fees collected pursuant to section 71-5321 in the prior fiscal year.

The director may transfer any money in the Drinking Water Administration Fund to the Drinking Water Facilities Loan Fund to meet the state matching appropriation requirements of any applicable federal capitalization grants or to meet the purposes of subdivision (9) of section 71-5322.

Source: Laws 1997, LB 517, § 7; Laws 2001, LB 667, § 46; Laws 2007, LB80, § 1; Laws 2007, LB296, § 620.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-5319 Repayment of loan or credit; effect.

If funds are loaned to or otherwise credited to the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund with an obligation to repay such loan or credit, the obligation to repay the amount of the loan or credit and the interest thereon shall, upon authorization by the council and execution and delivery by the department of an agreement to repay the loan or credit, be a valid and binding obligation of such funds or either fund or portions thereof and payable in accordance with the terms of the agreement executed by the department.

Source: Laws 1997, LB 517, § 8.

71-5320 Pledge; effect.

Any pledge of the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund or any part thereof or any pledge of the assets of such funds made by the department as authorized by the council shall be valid and binding from the time the pledge is made. The revenue, money, or assets so pledged and received by such funds shall immediately be subject to a lien of such pledge without any physical delivery thereof or further act, and the lien shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against such funds or the assets thereof, regardless of whether the parties have notice of the lien. Neither the action by the council, the pledge agreement executed by the department, nor any other instrument by which a pledge is created need be recorded.

Source: Laws 1997, LB 517, § 9.

71-5321 Council; powers and duties.

The council shall have the following powers and duties:

(1) The power to adopt and promulgate rules and regulations to govern eligible systems and application procedures and requirements for making loans under the Drinking Water State Revolving Fund Act;

(2) The power to adopt an intended use plan which shall include the funding priorities established in subsection (6) of section 71-5302. This intended use plan shall be reviewed annually by the council;

(3) The power to adopt a system of establishing interest rates to be charged on loans. The system may allow discounted interest rates for short-term loans or for serious financial hardship. The following factors shall be considered when making a determination of serious financial hardship: Income level of

residents; amount of debt and debt service requirements; and level of user fees both in absolute terms and relative to income of residents;

(4) The power to approve criteria for defining disadvantaged communities;

(5) The power to create an administrative fee to be assessed on a loan for the purpose of administering the Drinking Water State Revolving Fund Act; and

(6) Except as limited by section 71-5318, the power to obligate the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof, in whole or in part, to repay with interest loans to or credits into such funds, including bonds, the proceeds of which are credited to such funds.

Source: Laws 1997, LB 517, § 10.

71-5322 Department; powers and duties.

The department shall have the following powers and duties:

(1) The power to establish a program to make loans to owners of public water systems, individually or jointly, for construction or modification of safe drinking water projects in accordance with the Drinking Water State Revolving Fund Act and the rules and regulations of the council adopted and promulgated pursuant to such act;

(2) The power, if so authorized by the council pursuant to section 71-5321, to execute and deliver documents obligating the Drinking Water Facilities Loan Fund or the Land Acquisition and Source Water Loan Fund and the assets thereof to the extent permitted by section 71-5318 to repay, with interest, loans to or credits into such funds and to execute and deliver documents pledging to the extent permitted by section 71-5318 all or part of such funds and assets to secure, directly or indirectly, the loans or credits;

(3) The duty to prepare an annual report for the Governor and the Legislature;

(4) The duty to establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods, including the following:

(a) Accounting from the Nebraska Investment Finance Authority for the costs associated with the issuance of bonds pursuant to the act;

(b) Accounting for payments or deposits received by the funds;

(c) Accounting for disbursements made by the funds; and

(d) Balancing the funds at the beginning and end of the accounting period;

(5) The duty to establish financial capability requirements that assure sufficient revenue to operate and maintain a facility for its useful life and to repay the loan for such facility;

(6) The power to determine the rate of interest to be charged on a loan in accordance with the rules and regulations adopted and promulgated by the council;

(7) The power to develop an intended use plan, in consultation with the Director of Public Health of the Division of Public Health, for adoption by the council;

(8) The power to enter into required agreements with the United States Environmental Protection Agency pursuant to the Safe Drinking Water Act;

(9) The power to enter into agreements for the purpose of providing loan forgiveness concurrent with loans to public water systems operated by political subdivisions with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may enter into agreements for up to one-half of the eligible project cost. Such agreements shall contain a provision that payment of the amount allocated is conditional upon the availability of appropriated funds;

(10) The power to provide emergency funding to public water systems operated by political subdivisions with drinking water facilities which have been damaged or destroyed by natural disaster or other unanticipated actions or circumstances. Such funding shall not be used for routine repair or maintenance of facilities;

(11) The power to provide financial assistance consistent with the intended use plan, described in subdivision (7) of this section, for completion of engineering studies, research projects to investigate low-cost options for achieving compliance with safe drinking water standards, preliminary engineering reports, regional water system planning, source water protection, and other studies for the purpose of enhancing the ability of communities to meet the requirements of the Safe Drinking Water Act, to public water systems operated by political subdivisions with populations of ten thousand inhabitants or less which demonstrate serious financial hardships. The department may enter into agreements for up to ninety percent of the eligible project cost. Such agreements shall contain a provision that payment of the amount obligated is conditional upon the availability of appropriated funds; and

(12) Such other powers as may be necessary and appropriate for the exercise of the duties created under the Drinking Water State Revolving Fund Act.

Source: Laws 1997, LB 517, § 11; Laws 2001, LB 667, § 47; Laws 2007, LB80, § 2; Laws 2007, LB296, § 621.

71-5323 Loans; eligibility.

Loans shall be made only to owners of eligible systems for eligible projects pursuant to the Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 12.

71-5324 Loans; requirements.

(1) All loans made under the Drinking Water State Revolving Fund Act shall be made only to owners of public water systems that:

(a) Meet the requirements of financial, technical, and managerial capability set by the department;

(b) Pledge sufficient revenue sources for the repayment of the loan if such revenue may by law be pledged for that purpose;

(c) In the case of a privately owned public water system, pledge sufficient revenue, collateral, or other security for the repayment of the loan;

(d) Agree to maintain financial records according to generally accepted government accounting principles and to conduct an audit of the financial records according to generally accepted government auditing standards; and

(e) Provide a written assurance, signed by an attorney holding an active license to practice in the State of Nebraska, that the recipient has proper title,

easements, and rights-of-way to the property on or through which the safe drinking water project is to be constructed or extended.

(2) Loans made for the construction of a safe drinking water project shall be made only to owners of public water systems which meet the conditions of subsection (1) of this section and, in addition, that:

(a) Require the contractor of the project to post separate performance and payment bonds or other security approved by the department in the amount of the bid;

(b) Provide a written notice of completion and start of operation of the safe drinking water project;

(c) Employ a registered professional engineer to provide and be responsible for engineering services on the project such as an engineering report, construction contract documents, observation of construction, and startup services; and

(d) Agree to operate and maintain the safe drinking water project so that it will function properly over the structural and material design life.

Source: Laws 1997, LB 517, § 13; Laws 2001, LB 667, § 48.

71-5325 Loan terms.

Loan terms shall include, but not be limited to, the following:

(1) The term of the loan shall not exceed twenty years, except for systems serving disadvantaged communities which term may not exceed thirty years;

(2) The interest rate shall be at or below market interest rates;

(3) The annual principal and interest payment shall commence not later than one year after completion of any project; and

(4) The loan recipient shall immediately repay any loan when a grant has been received which covers costs provided for by such loan.

Source: Laws 1997, LB 517, § 14.

71-5326 Delinquent payment; how treated.

If a municipality, county, or natural resources district fails to make any payment pursuant to a loan within sixty days of the date due, such payment shall be deducted from the amount of aid to municipalities, counties, or natural resources districts to which the municipality, county, or natural resources district is entitled under sections 77-27,136 to 77-27,137.03. Such amount shall be paid directly to the fund from which the loan was made.

Source: Laws 1997, LB 517, § 15; Laws 2009, LB218, § 3.
Operative date July 1, 2011.

71-5327 Reserves authorized.

At any time after the first year the fund is effective and prior to federal fiscal year 2002 the state may: (1) Reserve up to thirty-three percent of a capitalization grant made pursuant to section 1452 of the federal Safe Drinking Water Act and add the funds reserved to any funds provided to the state pursuant to section 601 of the federal Water Pollution Control Act; and (2) reserve in any year a dollar amount up to the dollar amount that may be reserved under subdivision (1) of this section from the capitalization grants made pursuant to section 601 of the federal Water Pollution Control Act and add the reserved

funds to any funds provided to the state pursuant to section 1452 of the federal Safe Drinking Water Act.

Source: Laws 1997, LB 517, § 16.

ARTICLE 54
DRUG PRODUCT SELECTION

Cross References

Automated Medication Systems Act, see section 71-2444.
Pharmacy Practice Act, see section 38-2801.
Rules and regulations, see section 38-2899.

Section
71-5401. Repealed. Laws 2003, LB 667, § 26.
71-5401.01. Act, how cited.
71-5401.02. Purposes of act.
71-5402. Terms, defined.
71-5403. Drug product selection; when.
71-5404. Pharmacist; drug product selection; effect on reimbursement; label; price.
71-5405. Drug product selection; pharmacist; practitioner; negligence; what constitutes.
71-5406. Drug; labeling; contents; violation; embargo; effect.
71-5407. Violations; penalty.
71-5408. Transferred to section 71-5401.01.
71-5409. Rules and regulations.

71-5401 Repealed. Laws 2003, LB 667, § 26.

71-5401.01 Act, how cited.

Sections 71-5401.01 to 71-5409 shall be known and may be cited as the Nebraska Drug Product Selection Act.

Source: Laws 1977, LB 103, § 8; R.S.1943, (1996), § 71-5408; Laws 2003, LB 667, § 13.

71-5401.02 Purposes of act.

The purposes of the Nebraska Drug Product Selection Act are to provide for the drug product selection of equivalent drug products and to promote the greatest possible use of such products.

Source: Laws 2003, LB 667, § 14.

71-5402 Terms, defined.

For purposes of the Nebraska Drug Product Selection Act, unless the context otherwise requires:

(1) Bioequivalent means drug products: (a) That are legally marketed under regulations promulgated by the federal Food and Drug Administration; (b) that are the same dosage form of the identical active ingredients in the identical amounts as the drug product prescribed; (c) that comply with compendial standards and are consistent from lot to lot with respect to (i) purity of ingredients, (ii) weight variation, (iii) uniformity of content, and (iv) stability; and (d) for which the federal Food and Drug Administration has established bioequivalent standards or has determined that no bioequivalence problems exist;

(2) Board means the Board of Pharmacy;

(3) Brand name means the proprietary or trade name selected by the manufacturer, distributor, or packager for a drug product and placed upon the labeling of such product at the time of packaging;

(4) Chemically equivalent means drug products that contain amounts of the identical therapeutically active ingredients in the identical strength, quantity, and dosage form and that meet present compendial standards;

(5) Department means the Department of Health and Human Services;

(6) Drug product means any drug or device as defined in section 38-2841;

(7) Drug product select means to dispense, without the practitioner's express authorization, an equivalent drug product in place of the brand-name drug product contained in a medical order of such practitioner;

(8) Equivalent means drug products that are both chemically equivalent and bioequivalent;

(9) Generic name means the official title of a drug or drug combination as determined by the United States Adopted Names Council and accepted by the federal Food and Drug Administration of those drug products having the same active chemical ingredients in the same strength and quantity;

(10) Medical order has the definition found in section 38-2828;

(11) Pharmacist means a pharmacist licensed under the Pharmacy Practice Act; and

(12) Practitioner has the definition found in section 38-2838.

Source: Laws 1977, LB 103, § 2; Laws 1983, LB 476, § 21; Laws 1989, LB 342, § 36; Laws 1996, LB 1044, § 720; Laws 1998, LB 1073, § 148; Laws 2001, LB 398, § 76; Laws 2003, LB 667, § 15; Laws 2005, LB 382, § 11; Laws 2007, LB296, § 622; Laws 2007, LB463, § 1232.

Cross References

Pharmacy Practice Act, see section 38-2801.

71-5403 Drug product selection; when.

(1) A pharmacist may drug product select except when:

(a) A practitioner designates that drug product selection is not permitted by specifying on the prescription or by telephonic, facsimile, or electronic transmission that there shall be no drug product selection. For written prescriptions, the practitioner shall specify in his or her own handwriting on the prescription the phrase ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', or ''no generic substitution'' or the notation ''N.D.P.S.'', ''D.A.W.'', or ''B.M.N.'' or words or notations of similar import to indicate that drug product selection is not permitted. The pharmacist shall note ''N.D.P.S.'', ''D.A.W.'', ''B.M.N.'', ''no drug product selection'', ''dispense as written'', ''brand medically necessary'', ''no generic substitution'', or words or notations of similar import on the prescription to indicate that drug product selection is not permitted if such is communicated orally by the prescribing practitioner; or

(b) A patient or designated representative or caregiver of such patient instructs otherwise.

(2) A pharmacist shall not drug product select a drug product unless:

(a) The drug product, if it is in solid dosage form, has been marked with an identification code or monogram directly on the dosage unit;

(b) The drug product has been labeled with an expiration date;

(c) The manufacturer, distributor, or packager of the drug product provides reasonable services, as determined by the board, to accept the return of drug products that have reached their expiration date; and

(d) The manufacturer, distributor, or packager maintains procedures for the recall of unsafe or defective drug products.

Source: Laws 1977, LB 103, § 3; Laws 1978, LB 689, § 2; Laws 1983, LB 476, § 22; Laws 1989, LB 353, § 1; Laws 1991, LB 363, § 1; Laws 1998, LB 1073, § 149; Laws 1999, LB 828, § 174; Laws 2003, LB 667, § 16; Laws 2005, LB 382, § 12; Laws 2007, LB247, § 54; Laws 2009, LB195, § 83.

71-5404 Pharmacist; drug product selection; effect on reimbursement; label; price.

(1) Whenever a drug product has been prescribed with the notation that no drug product selection is permitted for a patient who has a contract whereunder he or she is reimbursed for the cost of health care, directly or indirectly, the party that has contracted to reimburse the patient, directly or indirectly, shall make reimbursements on the basis of the price of the brand-name drug product and not on the basis of the equivalent drug product, unless the contract specifically requires generic reimbursement under the Code of Federal Regulations.

(2) A prescription drug or device when dispensed shall bear upon the label the name of the drug or device in the container unless the practitioner writes do not label or words of similar import on the prescription or so designates orally or in writing which may be transmitted by facsimile or electronic transmission.

(3) Nothing in this section shall (a) require a pharmacy to charge less than its established minimum price for the filling of any prescription or (b) prohibit any hospital from developing, using, and enforcing a formulary.

Source: Laws 1977, LB 103, § 4; Laws 1983, LB 476, § 23; Laws 1996, LB 1044, § 721; Laws 1998, LB 1073, § 150; Laws 2003, LB 667, § 17; Laws 2005, LB 382, § 13.

71-5405 Drug product selection; pharmacist; practitioner; negligence; what constitutes.

(1) The drug product selection of any drug product by a pharmacist pursuant to the Nebraska Drug Product Selection Act shall not constitute the practice of medicine.

(2) Drug product selection of drug products by a pharmacist pursuant to the act or any rules and regulations adopted and promulgated under the act shall not constitute evidence of negligence if the drug product selection was made within the reasonable and prudent practice of pharmacy.

(3) When drug product selection by a pharmacist is permissible under the act, such drug product selection shall not constitute evidence of negligence on the part of the prescribing practitioner. The failure of a prescribing practitioner to provide that there shall be no drug product selection in any case shall not

constitute evidence of negligence or malpractice on the part of such prescribing practitioner.

Source: Laws 1977, LB 103, § 5; Laws 2001, LB 398, § 77; Laws 2003, LB 667, § 18.

71-5406 Drug; labeling; contents; violation; embargo; effect.

The manufacturer, packager, or distributor of any legend drug sold, delivered, or offered for sale for human use in the State of Nebraska shall have the name and address of the manufacturer of the finished dosage form of the drug printed on the label on the container of such drug. Whenever a duly authorized agent of the department has probable cause to believe that any drug is without such labeling, the agent shall embargo such drug and shall affix an appropriate marking thereto. Such marking shall contain: (1) Adequate notice that the drug (a) is or is suspected of being sold, delivered, or offered for sale in violation of the Nebraska Drug Product Selection Act and (b) has been embargoed; and (2) a warning that it is unlawful for any person to remove or dispose of the embargoed drug by sale or otherwise without the permission of the agent or a court of competent jurisdiction.

Source: Laws 1977, LB 103, § 6; Laws 2001, LB 398, § 78; Laws 2003, LB 667, § 19.

Cross References

Labeling, misbranded drugs, see section 71-2402 et seq.

71-5407 Violations; penalty.

(1) In addition to any other penalties provided by law, any person who violates any provision of the Nebraska Drug Product Selection Act or any rule or regulation adopted and promulgated under the act is guilty of a Class IV misdemeanor for each violation.

(2) It is unlawful for any employer or such employer's agent to coerce a pharmacist to dispense a drug product against the professional judgment of the pharmacist or as ordered by a prescribing practitioner.

Source: Laws 1977, LB 103, § 7; Laws 1983, LB 476, § 24; Laws 1988, LB 1100, § 169; Laws 2001, LB 398, § 79; Laws 2003, LB 667, § 20.

71-5408 Transferred to section 71-5401.01.

71-5409 Rules and regulations.

The department may adopt and promulgate rules and regulations necessary to implement the Nebraska Drug Product Selection Act upon the joint recommendation of the Board of Medicine and Surgery and the Board of Pharmacy.

Source: Laws 2003, LB 667, § 21.

ARTICLE 55

EMERGENCY MEDICAL CARE

Section
71-5501. Repealed. Laws 1997, LB 138, § 57.
71-5501.01. Repealed. Laws 1997, LB 138, § 57.
71-5502. Repealed. Laws 1997, LB 138, § 57.

Section
71-5503. Repealed. Laws 1997, LB 138, § 57.
71-5504. Repealed. Laws 1997, LB 138, § 57.
71-5505. Repealed. Laws 1997, LB 138, § 57.
71-5505.01. Repealed. Laws 1997, LB 138, § 57.
71-5506. Repealed. Laws 1997, LB 138, § 57.
71-5507. Repealed. Laws 1997, LB 138, § 57.
71-5507.01. Repealed. Laws 1997, LB 138, § 57.
71-5508. Repealed. Laws 1997, LB 138, § 57.
71-5509. Repealed. Laws 1997, LB 138, § 57.
71-5510. Repealed. Laws 1997, LB 138, § 57.
71-5511. Repealed. Laws 1997, LB 138, § 57.
71-5512. Repealed. Laws 1997, LB 138, § 57.
71-5513. Repealed. Laws 1997, LB 138, § 57.
71-5514. Repealed. Laws 1997, LB 138, § 57.
71-5514.01. Repealed. Laws 1997, LB 138, § 57.
71-5514.02. Repealed. Laws 1997, LB 138, § 57.
71-5515. Repealed. Laws 1997, LB 138, § 57.
71-5515.01. Repealed. Laws 1997, LB 138, § 57.
71-5516. Repealed. Laws 1997, LB 138, § 57.
71-5517. Repealed. Laws 1997, LB 138, § 57.
71-5518. Repealed. Laws 1997, LB 138, § 57.
71-5519. Transferred to section 71-5501.01.
71-5520. Repealed. Laws 1997, LB 138, § 57.
71-5521. Repealed. Laws 1997, LB 138, § 57.
71-5521.01. Repealed. Laws 1997, LB 138, § 57.
71-5522. Transferred to section 71-5514.01.
71-5523. Repealed. Laws 1997, LB 138, § 57.

71-5501 Repealed. Laws 1997, LB 138, § 57.

71-5501.01 Repealed. Laws 1997, LB 138, § 57.

71-5502 Repealed. Laws 1997, LB 138, § 57.

71-5503 Repealed. Laws 1997, LB 138, § 57.

71-5504 Repealed. Laws 1997, LB 138, § 57.

71-5505 Repealed. Laws 1997, LB 138, § 57.

71-5505.01 Repealed. Laws 1997, LB 138, § 57.

71-5506 Repealed. Laws 1997, LB 138, § 57.

71-5507 Repealed. Laws 1997, LB 138, § 57.

71-5507.01 Repealed. Laws 1997, LB 138, § 57.

71-5508 Repealed. Laws 1997, LB 138, § 57.

71-5509 Repealed. Laws 1997, LB 138, § 57.

71-5510 Repealed. Laws 1997, LB 138, § 57.

71-5511 Repealed. Laws 1997, LB 138, § 57.

71-5512 Repealed. Laws 1997, LB 138, § 57.

71-5513 Repealed. Laws 1997, LB 138, § 57.

71-5514 Repealed. Laws 1997, LB 138, § 57.

71-5514.01 Repealed. Laws 1997, LB 138, § 57.

71-5514.02 Repealed. Laws 1997, LB 138, § 57.

71-5515 Repealed. Laws 1997, LB 138, § 57.

71-5515.01 Repealed. Laws 1997, LB 138, § 57.

71-5516 Repealed. Laws 1997, LB 138, § 57.

71-5517 Repealed. Laws 1997, LB 138, § 57.

71-5518 Repealed. Laws 1997, LB 138, § 57.

71-5519 Transferred to section 71-5501.01.

71-5520 Repealed. Laws 1997, LB 138, § 57.

71-5521 Repealed. Laws 1997, LB 138, § 57.

71-5521.01 Repealed. Laws 1997, LB 138, § 57.

71-5522 Transferred to section 71-5514.01.

71-5523 Repealed. Laws 1997, LB 138, § 57.

ARTICLE 56
RURAL HEALTH

Cross References

Primary Care Provider Act, see section 71-5210.

(a) COMMISSION ON RURAL HEALTH MANPOWER

Section
71-5601. Repealed. Laws 1991, LB 400, § 26.
71-5602. Repealed. Laws 1991, LB 400, § 26.
71-5603. Repealed. Laws 1991, LB 400, § 26.
71-5604. Repealed. Laws 1991, LB 400, § 26.
71-5605. Repealed. Laws 1991, LB 400, § 26.
71-5606. Repealed. Laws 1991, LB 400, § 26.
71-5607. Repealed. Laws 1991, LB 400, § 26.
71-5608. Repealed. Laws 1991, LB 400, § 26.
71-5609. Repealed. Laws 1991, LB 400, § 26.
71-5610. Repealed. Laws 1991, LB 400, § 26.
71-5611. Repealed. Laws 1991, LB 400, § 26.
71-5612. Repealed. Laws 1991, LB 400, § 26.

(b) NEBRASKA MEDICAL STUDENT ASSISTANCE ACT

71-5613. Repealed. Laws 1991, LB 400, § 26.
71-5614. Repealed. Laws 1991, LB 400, § 26.
71-5615. Repealed. Laws 1991, LB 400, § 26.
71-5616. Repealed. Laws 1991, LB 400, § 26.
71-5617. Repealed. Laws 1991, LB 400, § 26.
71-5618. Repealed. Laws 1991, LB 400, § 26.
71-5619. Repealed. Laws 1991, LB 400, § 26.
71-5620. Repealed. Laws 1991, LB 400, § 26.
71-5621. Repealed. Laws 1991, LB 400, § 26.
71-5622. Repealed. Laws 1991, LB 400, § 26.
71-5623. Repealed. Laws 1991, LB 400, § 26.
71-5624. Repealed. Laws 1979, LB 506, § 17.
71-5625. Repealed. Laws 1991, LB 400, § 26.

Section
71-5676. Repealed. Laws 1999, LB 242, § 4.
71-5677. Repealed. Laws 1999, LB 242, § 4.
71-5678. Repealed. Laws 1999, LB 242, § 4.
71-5679. Repealed. Laws 1999, LB 242, § 4.

(f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT

71-5680. Act, how cited.
71-5681. Legislative findings and declarations.
71-5682. Rural Behavioral Health Training and Placement Program; created.
71-5683. Funding under act; use.

(a) COMMISSION ON RURAL HEALTH MANPOWER

71-5601 Repealed. Laws 1991, LB 400, § 26.

71-5602 Repealed. Laws 1991, LB 400, § 26.

71-5603 Repealed. Laws 1991, LB 400, § 26.

71-5604 Repealed. Laws 1991, LB 400, § 26.

71-5605 Repealed. Laws 1991, LB 400, § 26.

71-5606 Repealed. Laws 1991, LB 400, § 26.

71-5607 Repealed. Laws 1991, LB 400, § 26.

71-5608 Repealed. Laws 1991, LB 400, § 26.

71-5609 Repealed. Laws 1991, LB 400, § 26.

71-5610 Repealed. Laws 1991, LB 400, § 26.

71-5611 Repealed. Laws 1991, LB 400, § 26.

71-5612 Repealed. Laws 1991, LB 400, § 26.

(b) NEBRASKA MEDICAL STUDENT ASSISTANCE ACT

71-5613 Repealed. Laws 1991, LB 400, § 26.

71-5614 Repealed. Laws 1991, LB 400, § 26.

71-5615 Repealed. Laws 1991, LB 400, § 26.

71-5616 Repealed. Laws 1991, LB 400, § 26.

71-5617 Repealed. Laws 1991, LB 400, § 26.

71-5618 Repealed. Laws 1991, LB 400, § 26.

71-5619 Repealed. Laws 1991, LB 400, § 26.

71-5620 Repealed. Laws 1991, LB 400, § 26.

71-5621 Repealed. Laws 1991, LB 400, § 26.

71-5622 Repealed. Laws 1991, LB 400, § 26.

71-5623 Repealed. Laws 1991, LB 400, § 26.

71-5624 Repealed. Laws 1979, LB 506, § 17.

71-5625 Repealed. Laws 1991, LB 400, § 26.

71-5626 Repealed. Laws 1991, LB 400, § 26.

71-5627 Repealed. Laws 1991, LB 400, § 26.

71-5628 Repealed. Laws 1991, LB 400, § 26.

71-5629 Repealed. Laws 1991, LB 400, § 26.

71-5630 Repealed. Laws 1991, LB 400, § 26.

71-5631 Repealed. Laws 1991, LB 400, § 26.

71-5632 Repealed. Laws 1979, LB 506, § 17.

71-5632.01 Repealed. Laws 1991, LB 400, § 26.

71-5633 Repealed. Laws 1991, LB 400, § 26.

71-5634 Repealed. Laws 1991, LB 400, § 26.

71-5635 Repealed. Laws 1991, LB 400, § 26.

71-5636 Repealed. Laws 1991, LB 400, § 26.

71-5637 Repealed. Laws 1979, LB 506, § 17.

71-5638 Repealed. Laws 1979, LB 506, § 17.

71-5639 Repealed. Laws 1991, LB 400, § 26.

71-5640 Repealed. Laws 1991, LB 400, § 26.

71-5641 Repealed. Laws 1991, LB 400, § 26.

71-5642 Repealed. Laws 1991, LB 400, § 26.

71-5643 Repealed. Laws 1991, LB 400, § 26.

71-5643.01 Repealed. Laws 1991, LB 400, § 26.

71-5644 Repealed. Laws 1991, LB 400, § 26.

71-5645 Repealed. Laws 1991, LB 400, § 26.

(c) OFFICE OF RURAL HEALTH

71-5646 Legislative findings.

The Legislature finds and recognizes that rural health care is in the process of transition. Many rural communities are finding it difficult to recruit and retain health care professionals, to keep hospitals open, and to provide quality care to their residents. Although recent national rankings show that Nebraskans are among the healthiest in the nation, continued stress on our rural health care system could leave areas of the state without adequate health care services.

The Legislature further finds that rural health care issues will be best addressed through a comprehensive approach that emphasizes two principles.

First, rural health care problems are seldom isolated in their causes or effects. Second, rural health care problems are most effectively resolved by residents of the area involved and state strategies should focus on assisting those residents to develop and implement their own solutions to such problems.

Source: Laws 1990, LB 994, § 1.

71-5647 Office of Rural Health; created; powers and duties.

The Office of Rural Health is hereby created within the Department of Health and Human Services. The office shall have the following powers and duties:

(1) To assist rural residents in obtaining high quality health care which includes the following:

(a) Assist in the recruitment and retention of health care professionals to rural areas, including specifically physicians and nurses;

(b) Assist rural communities in maintaining the viability of hospital services whenever feasible or, for communities in transition, in developing alternative systems to provide equivalent quality care to their residents;

(c) Assist rural communities in planning to meet changes needed due to the changing rural economy and demographics or new technology;

(d) Assist in the development of health care networks or cooperative ventures among rural communities or health care providers;

(e) Assist in promoting or developing demonstration projects to identify and establish alternative health care systems; and

(f) Assist rural communities in developing and identifying leaders and leadership skills among their residents to enable such communities to work toward appropriate and cost-effective solutions to the health care issues that confront them;

(2) To develop a comprehensive rural health policy to serve as a guide for the development of programs of the department aimed at improving health care in rural Nebraska and a rural health action plan to guide implementation of the policy;

(3) To establish liaison with other state agency efforts in the area of rural development and human services delivery to ensure that the programs of the office are appropriately coordinated with these efforts and to encourage use of the comprehensive rural health policy by other agencies as a guide to their plans and programs affecting rural health;

(4) To develop and maintain an appropriate data system to identify present and potential rural health issues and to evaluate the effectiveness of programs and demonstration projects;

(5) To encourage and facilitate increased public awareness of issues affecting rural health care;

(6) To carry out its duties under the Rural Health Systems and Professional Incentive Act;

(7) To carry out the duties required by section 71-5206.01; and

(8) To carry out related duties as directed by the Department of Health and Human Services.

Source: Laws 1990, LB 994, § 2; Laws 1991, LB 400, § 23; Laws 1993, LB 152, § 5; Laws 1996, LB 1044, § 725; Laws 1998, LB 1073, § 151; Laws 2005, LB 301, § 52; Laws 2007, LB296, § 623.

Cross References

Rural Health Systems and Professional Incentive Act, see section 71-5650.

71-5648 Repealed. Laws 1991, LB 400, § 26.

71-5649 Legislative appropriation.

The Legislature shall appropriate sufficient funds to the Department of Health and Human Services to enable the Office of Rural Health to carry out its duties pursuant to section 71-5647.

Source: Laws 1990, LB 994, § 4; Laws 1991, LB 400, § 24; Laws 1996, LB 1044, § 726; Laws 1998, LB 1073, § 152; Laws 2005, LB 301, § 53; Laws 2007, LB296, § 624.

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

71-5650 Act, how cited.

Sections 71-5650 to 71-5670 shall be known and may be cited as the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 1.

71-5651 Legislative findings.

(1) The Legislature finds that (a) residents of rural Nebraska frequently encounter difficulties in obtaining medical care due to the lack of health care providers, facilities, and services, (b) many rural communities experience problems in recruiting and retaining health care providers, (c) rural residents are often required to travel long distances in order to obtain health care services, (d) elderly and uninsured persons constitute a high proportion of the population in rural Nebraska, (e) many rural hospitals are experiencing declining patient revenue and are being forced to reconsider the scope and nature of the health care services they provide, (f) the physical and economic stresses of rural living can lead to an increased need for mental health services in rural Nebraska, (g) the conditions described in this section can lead to situations in which residents of rural Nebraska receive a lower level of health care services than their urban counterparts, and (h) some of the conditions described in this subsection also exist in underserved portions of metropolitan areas within the state.

(2) The Legislature further finds that the health care industry is a vital component of the economic base of many rural communities and that the maintenance and enhancement of this industry can play a significant role in efforts to further the economic development of rural communities.

(3) The Legislature further finds that the inherent limitations imposed upon health care delivery mechanisms by the rural environment can be partially overcome through a greater emphasis on the development of health care systems that emphasize the linkage and integration of health care resources in neighboring communities as well as the development of new resources.

(4) The Legislature further finds that postsecondary education of medical, dental, and mental health professionals is important to the welfare of the state. The Legislature further recognizes and declares that the state can help alleviate the problems of maldistribution and shortages of medical, dental, and mental health personnel through programs offering financial incentives to practice in areas of shortage.

Source: Laws 1991, LB 400, § 2; Laws 2004, LB 1005, § 99.

71-5652 Purposes of act.

The purposes of the Rural Health Systems and Professional Incentive Act are to (1) create the Nebraska Rural Health Advisory Commission and establish its powers and duties, (2) establish a student loan program that will provide financial incentives to medical, dental, master's level and doctorate-level mental health, and physician assistant students who agree to practice their profession in a designated health profession shortage area within Nebraska, and (3) establish a loan repayment program that will require community matching funds and will provide financial incentives to eligible health professionals who agree to practice their profession in a designated health profession shortage area within Nebraska.

Source: Laws 1991, LB 400, § 3; Laws 1994, LB 1223, § 55; Laws 1996, LB 1155, § 47; Laws 2000, LB 1115, § 79; Laws 2004, LB 1005, § 100.

71-5653 Terms, defined.

For purposes of the Rural Health Systems and Professional Incentive Act:

(1) Approved medical specialty means family practice, general practice, general internal medicine, general pediatrics, general surgery, obstetrics/gynecology, and psychiatry;

(2) Approved dental specialty means general practice, pediatric dentistry, and oral surgery;

(3) Approved mental health practice program means an approved educational program consisting of a master's or doctorate degree with the focus being primarily therapeutic mental health and meeting the educational requirements for licensure in mental health practice or psychology by the department;

(4) Commission means the Nebraska Rural Health Advisory Commission;

(5) Department means the Division of Public Health of the Department of Health and Human Services;

(6) Doctorate-level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a doctorate degree and meeting the educational requirements for licensure in psychology by the department;

(7) Full-time practice means a minimum of forty hours per week;

(8) Health care means both somatic and mental health care services;

(9) Master's level mental health student means a graduate student enrolled in or accepted for enrollment in an approved mental health practice program leading to a master's degree and meeting the educational requirements for licensure in mental health practice by the department;

(10) Office means the Office of Rural Health;

(11) Qualified educational debts means government and commercial loans obtained by students for postsecondary education tuition, other educational expenses, and reasonable living expenses, as determined by the department, but does not include loans received under the act or the Nebraska Medical Student Assistance Act; and

(12) Rural means located within any county in Nebraska having a population of less than fifteen thousand inhabitants and not included within a metropolitan statistical area as defined by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1991, LB 400, § 4; Laws 1992, LB 573, § 10; Laws 1994, LB 1223, § 56; Laws 1996, LB 1044, § 727; Laws 1996, LB 1155, § 48; Laws 1998, LB 1073, § 153; Laws 2000, LB 1115, § 80; Laws 2004, LB 1005, § 101; Laws 2005, LB 301, § 54; Laws 2007, LB296, § 625.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

71-5654 Nebraska Rural Health Advisory Commission; created; members; appointment; terms.

The Nebraska Rural Health Advisory Commission is hereby created as the direct and only successor to the Commission on Rural Health Manpower. The Nebraska Rural Health Advisory Commission shall consist of thirteen members as follows:

(1) The Director of Public Health of the Division of Public Health or his or her designee and another representative of the Department of Health and Human Services; and

(2) Eleven members to be appointed by the Governor with the advice and consent of the Legislature as follows:

(a) One representative of each medical school located in the state involved in training family physicians and one physician in family practice residency training; and

(b) From rural areas one physician, one consumer representative, one hospital administrator, one nursing home administrator, one nurse, one physician assistant, one mental health practitioner or psychologist licensed under the requirements of section 38-3114 or the equivalent thereof, and one dentist.

Members shall serve for terms of three years. When a vacancy occurs, appointment to fill the vacancy shall be made for the balance of the term. All appointed members shall be citizens and residents of Nebraska. The appointed membership of the commission shall, to the extent possible, represent the three congressional districts equally.

Source: Laws 1991, LB 400, § 5; Laws 1996, LB 1044, § 728; Laws 1996, LB 1155, § 49; Laws 1997, LB 577, § 1; Laws 2001, LB 411, § 1; Laws 2004, LB 1005, § 102; Laws 2007, LB296, § 626; Laws 2007, LB463, § 1233.

71-5655 Commission; purpose.

The purpose of the commission shall be to advise the department, the Legislature, the Governor, the University of Nebraska, and the citizens of Nebraska regarding all aspects of rural health care and to advise the office

regarding the administration of the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 6; Laws 1996, LB 1044, § 729; Laws 1998, LB 1073, § 154; Laws 2005, LB 301, § 55; Laws 2007, LB296, § 627.

71-5656 Commission; officers.

The commission shall annually elect from among its members a chairperson and a vice-chairperson. The commission shall receive assistance from the staff of the office.

Source: Laws 1991, LB 400, § 7; Laws 1996, LB 1044, § 730; Laws 1998, LB 1073, § 155.

71-5657 Commission members; expenses.

Members of the commission shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 from funds appropriated for the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 8.

71-5658 Commission; meetings; quorum.

The commission shall hold at least four meetings a year, at times and places fixed by the commission. At least one meeting each year shall be held at a site other than Lincoln or Omaha. A majority of the members of the commission shall constitute a quorum.

Source: Laws 1991, LB 400, § 9.

71-5659 Commission; powers and duties.

The commission shall have the following powers and duties:

(1) Advise the department regarding the development and implementation of a state rural health policy;

(2) Advise the department and other appropriate parties in all matters relating to rural health care;

(3) Serve as an advocate for rural Nebraska in health care issues;

(4) Maintain liaison with all agencies, groups, and organizations concerned with rural health care in order to facilitate integration of efforts and commonality of goals;

(5) Identify problems in the delivery of health care in rural Nebraska, in the education and training of health care providers in rural Nebraska, in the regulation of health care providers and institutions in rural Nebraska, and in any other matters relating to rural health care;

(6) Prepare recommendations to the appropriate bodies to alleviate the problems identified;

(7) Advise the department regarding the Rural Health Systems and Professional Incentive Act;

(8) Designate health profession shortage areas in Nebraska; and

(9) Select recipients of financial incentives available under the act.

Source: Laws 1991, LB 400, § 10; Laws 1994, LB 1223, § 57.

71-5660 Act; how administered.

The Rural Health Systems and Professional Incentive Act shall be administered by the office with the advice and consultation of the commission.

Source: Laws 1991, LB 400, § 11.

71-5661 Financial incentives; funding; Rural Health Professional Incentive Fund; created; use; investment.

(1) The financial incentives provided by the Rural Health Systems and Professional Incentive Act shall consist of (a) student loans to eligible students for attendance at an eligible school as determined pursuant to section 71-5662 and (b) the repayment of qualified educational debts owed by eligible health professionals as determined pursuant to such section. Funds for such incentives shall be appropriated from the General Fund to the department for such purposes.

(2) The Rural Health Professional Incentive Fund is created. The fund shall be used to carry out the purposes of the act. Money credited pursuant to section 71-5670.01 and payments received pursuant to sections 71-5666 and 71-5668 shall be remitted to the State Treasurer for credit to the fund. 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.

Source: Laws 1991, LB 400, § 12; Laws 1994, LB 1223, § 58; Laws 1995, LB 7, § 79; Laws 1996, LB 1155, § 50; Laws 1999, LB 242, § 1; Laws 2001, LB 214, § 3; Laws 2004, LB 1005, § 103.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-5662 Student loan; loan repayment; eligibility.

(1) To be eligible for a student loan under the Rural Health Systems and Professional Incentive Act, an applicant or a recipient shall be enrolled or accepted for enrollment in an accredited medical or dental education program or physician assistant education program or an approved mental health practice program in Nebraska.

(2) To be eligible for loan repayment under the act, an applicant or a recipient shall be a pharmacist, a dentist, a physical therapist, an occupational therapist, a mental health practitioner, a psychologist licensed before December 1, 2008, under the requirements of the Uniform Licensing Law or on or after December 1, 2008, under the requirements of section 38-3114 or the equivalent thereof, a nurse practitioner, a physician assistant, or a physician in an approved specialty and shall be licensed to practice in Nebraska, not be enrolled in a residency program, not be practicing under a provisional or temporary license, and enter practice in a designated health profession shortage area in Nebraska.

Source: Laws 1991, LB 400, § 13; Laws 1994, LB 1223, § 59; Laws 1996, LB 1155, § 51; Laws 1997, LB 577, § 2; Laws 2000, LB 1115, § 81; Laws 2004, LB 1005, § 104; Laws 2007, LB463, § 1234; Laws 2008, LB797, § 19.

71-5663 Amount of financial assistance; limitation.

(1) The amount of financial assistance provided through student loans pursuant to the Rural Health Systems and Professional Incentive Act shall be limited

to twenty thousand dollars for each recipient for each academic year and shall not exceed eighty thousand dollars per medical, dental, or doctorate-level mental health student or twenty thousand dollars per master's level mental health or physician assistant student.

(2) The amount of financial assistance provided by the state through loan repayments pursuant to the act (a) for physicians, dentists, and psychologists shall be limited to twenty thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed sixty thousand dollars per recipient and (b) for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners shall be limited to ten thousand dollars per recipient per year of full-time practice in a designated health profession shortage area and shall not exceed thirty thousand dollars per recipient.

Source: Laws 1991, LB 400, § 14; Laws 1994, LB 1223, § 60; Laws 1997, LB 577, § 3; Laws 2000, LB 1115, § 82; Laws 2004, LB 1005, § 105; Laws 2006, LB 962, § 2; Laws 2008, LB797, § 20.

71-5664 Financial incentives; commission; considerations.

In screening applicants for financial incentives, the commission shall consider the following factors:

(1) Motivation to practice in a health profession shortage area in Nebraska;

(2) Motivation and preference toward an approved specialty; and

(3) Other factors that would influence a choice to practice in a health profession shortage area in Nebraska.

The commission shall select recipients who are most likely to practice in a health profession shortage area in Nebraska.

Source: Laws 1991, LB 400, § 15; Laws 1994, LB 1223, § 61; Laws 1996, LB 1155, § 52.

71-5665 Commission; designate health profession shortage areas; factors.

The commission shall periodically designate health profession shortage areas within the state for the following professions: Medicine and surgery, physician assistants' practice, nurse practitioners' practice, psychology, and mental health practitioner's practice. The commission shall also periodically designate separate health profession shortage areas for each of the following professions: Pharmacy, dentistry, physical therapy, and occupational therapy. In making such designations the commission shall consider, after consultation with other appropriate agencies concerned with health services and with appropriate professional organizations, among other factors:

(1) The latest reliable statistical data available regarding the number of health professionals practicing in an area and the population to be served by such practitioners;

(2) Inaccessibility of health care services to residents of an area;

(3) Particular local health problems;

(4) Age or incapacity of local practitioners rendering services; and

(5) Demographic trends in an area both past and future.

Source: Laws 1991, LB 400, § 16; Laws 1994, LB 1223, § 62; Laws 1996, LB 1155, § 53; Laws 1997, LB 577, § 4; Laws 2000, LB 1115, § 83; Laws 2004, LB 1005, § 106; Laws 2008, LB797, § 21.

71-5666 Student loan recipient agreement; contents.

Each student loan recipient shall execute an agreement with the state. Such agreement shall be exempt from the requirements of sections 73-501 to 73-509 and shall include the following terms, as appropriate:

(1) The borrower agrees to practice the equivalent of one year of full-time practice of an approved specialty in a designated health profession shortage area in Nebraska for each year of education for which a loan is received and agrees to accept medicaid patients in his or her practice;

(2) If the borrower practices an approved specialty in a designated health profession shortage area in Nebraska, the loan shall be forgiven as provided in this section. Practice in a designated area shall commence within three months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty. The commission may approve exceptions to the three-month restriction upon showing good cause. Loan forgiveness shall occur on a quarterly basis, with completion of the equivalent of three months of full-time practice resulting in the cancellation of one-fourth of the annual loan amount;

(3) If the borrower practices an approved specialty in Nebraska but not in a designated health profession shortage area, practices a specialty other than an approved specialty in Nebraska, or practices outside Nebraska, the borrower shall repay one hundred fifty percent of the outstanding loan principal with interest at a rate of eight percent simple interest per year from the date of default. Such repayment shall commence within six months of the completion of formal education, which may include a period not to exceed five years to complete specialty training in an approved specialty, and shall be completed within a period not to exceed twice the number of years for which loans were awarded;

(4) If a borrower who is a medical, dental, or doctorate-level mental health student determines during the first or second year of medical, dental, or doctorate-level mental health education that his or her commitment to the loan program cannot be honored, the borrower may repay the outstanding loan principal, plus six percent simple interest per year from the date the loan was granted, prior to graduation from medical or dental school or a mental health practice program without further penalty or obligation. Master's level mental health and physician assistant student loan recipients shall not be eligible for this provision;

(5) If the borrower discontinues the course of study for which the loan was granted, the borrower shall repay one hundred percent of the outstanding loan principal. Such repayment shall commence within six months of the date of discontinuation of the course of study and shall be completed within a period of time not to exceed the number of years for which loans were awarded; and

(6) In the event of a borrower's total and permanent disability or death, the unpaid debt accrued under the Rural Health Systems and Professional Incentive Act shall be canceled.

Source: Laws 1991, LB 400, § 17; Laws 1994, LB 1223, § 63; Laws 1996, LB 1155, § 54; Laws 2001, LB 214, § 4; Laws 2004, LB 1005, § 107; Laws 2007, LB374, § 1; Laws 2009, LB196, § 1.

71-5667 Agreements under prior law; renegotiation.

Loan agreements executed prior to July 1, 2007, under the Nebraska Medical Student Assistance Act or the Rural Health Systems and Professional Incentive Act may be renegotiated and new agreements executed to reflect the terms required by section 71-5666. No funds repaid by borrowers under the terms of agreements executed prior to July 1, 2007, shall be refunded. Any repayments being made under the terms of prior agreements may be discontinued upon execution of a new agreement if conditions permit. Any agreement renegotiated pursuant to this section shall be exempt from the requirements of sections 73-501 to 73-509.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2; Laws 2009, LB196, § 2.

Note: The Nebraska Medical Student Assistance Act, sections 71-5613 to 71-5645, was repealed by Laws 1991, LB 400, § 26.

71-5668 Loan repayment recipient agreement; contents.

Each loan repayment recipient shall execute an agreement with the department and a local entity. Such agreement shall be exempt from the requirements of sections 73-501 to 73-509 and shall include, at a minimum, the following terms:

(1) The loan repayment recipient agrees to practice his or her profession, and a physician, dentist, nurse practitioner, or physician assistant also agrees to practice an approved specialty, in a designated health profession shortage area for at least three years and to accept medicaid patients in his or her practice;

(2) In consideration of the agreement by the recipient, the State of Nebraska and a local entity within the designated health profession shortage area will provide equal funding for the repayment of the recipient's qualified educational debts, in amounts up to twenty thousand dollars per year per recipient for physicians, dentists, and psychologists and up to ten thousand dollars per year per recipient for physician assistants, nurse practitioners, pharmacists, physical therapists, occupational therapists, and mental health practitioners toward qualified educational debts for up to three years. The department shall make payments directly to the recipient; and

(3) If the loan repayment recipient discontinues practice in the shortage area prior to completion of the three-year requirement, the recipient shall repay to the state one hundred twenty-five percent of the total amount of funds provided to the recipient for loan repayment. Upon repayment by the recipient to the department, the department shall reimburse the local entity its share of the funds.

Source: Laws 1991, LB 400, § 19; Laws 1993, LB 536, § 101; Laws 1994, LB 1223, § 64; Laws 1996, LB 1155, § 56; Laws 1997, LB 577, § 5; Laws 2000, LB 1115, § 84; Laws 2001, LB 214, § 5; Laws 2004, LB 1005, § 108; Laws 2006, LB 962, § 3; Laws 2008, LB797, § 22; Laws 2009, LB196, § 3.

71-5669 Loan repayment program; office; duties.

The office shall develop guidelines for community participation in the loan repayment program. The office shall provide consultation to potential commu-

nity participants and facilitate the matching of communities and health professionals.

Source: Laws 1991, LB 400, § 20; Laws 1994, LB 1223, § 65; Laws 1996, LB 1155, § 57.

71-5670 Department; rules and regulations.

The department shall adopt and promulgate rules and regulations necessary to the administration of the Rural Health Systems and Professional Incentive Act.

Source: Laws 1991, LB 400, § 21.

71-5670.01 Rural Health Opportunities Loan Pool Fund; transfers.

On and after August 28, 1999, any money remaining in the Rural Health Opportunities Loan Pool Fund and any money remitted to the State Treasurer for credit to such fund shall be credited by the State Treasurer to the Rural Health Professional Incentive Fund created under section 71-5661 and used to carry out the purposes of the Rural Health Systems and Professional Incentive Act.

Source: Laws 1999, LB 242, § 2.

Cross References

Rural Health Systems and Professional Incentive Act, see section 71-5650.

(e) RURAL HEALTH OPPORTUNITIES LOAN ACT

71-5671 Repealed. Laws 1999, LB 242, § 4.

71-5672 Repealed. Laws 1999, LB 242, § 4.

71-5673 Repealed. Laws 1999, LB 242, § 4.

71-5674 Repealed. Laws 1999, LB 242, § 4.

71-5675 Repealed. Laws 1999, LB 242, § 4.

71-5676 Repealed. Laws 1999, LB 242, § 4.

71-5677 Repealed. Laws 1999, LB 242, § 4.

71-5678 Repealed. Laws 1999, LB 242, § 4.

71-5679 Repealed. Laws 1999, LB 242, § 4.

(f) RURAL BEHAVIORAL HEALTH TRAINING AND PLACEMENT PROGRAM ACT

71-5680 Act, how cited.

Sections 71-5680 to 71-5683 shall be known and may be cited as the Rural Behavioral Health Training and Placement Program Act.

Source: Laws 2006, LB 994, § 38.

71-5681 Legislative findings and declarations.

The Legislature hereby finds and declares that:

(1) Eighty-eight of Nebraska's ninety-three counties are classified as mental and behavioral health profession shortage areas by the federal Health Resources and Services Administration and the Nebraska Department of Health and Human Services;

(2) The Department of Health and Human Services reports that seventy-four percent of the state's psychiatrists, psychologists, and licensed mental health practitioners live and practice in the urban areas of Omaha and Lincoln, which leaves the remaining seventy-two thousand square miles of Nebraska to be covered by approximately one-fourth of the professionals licensed to practice behavioral health in Nebraska;

(3) Thirty-eight Nebraska counties have one or no licensed behavioral health professional; and

(4) Reductions in federal funding will result in the elimination of over five thousand five hundred behavioral health patient visits in rural Nebraska.

Source: Laws 2006, LB 994, § 39; Laws 2007, LB296, § 628.

71-5682 Rural Behavioral Health Training and Placement Program; created.

The Rural Behavioral Health Training and Placement Program is created and shall be administered by the Munroe-Meyer Institute at the University of Nebraska Medical Center. The program shall address behavioral health professional shortages in rural areas by:

(1) Offering service learning opportunities for behavioral health professionals to provide integrated mental health services in rural areas;

(2) Educating physicians to integrate behavioral health into primary care practice;

(3) Providing outreach clinical training opportunities in rural areas for interns, fellows, and graduate students from public and private universities and colleges in Nebraska that offer behavioral health graduate education; and

(4) Placing program graduates in primary care practices for the purpose of providing behavioral health patient visits.

Source: Laws 2006, LB 994, § 40.

71-5683 Funding under act; use.

Funding under the Rural Behavioral Health Training and Placement Program Act shall support:

(1) Faculty clinical training activities;

(2) Internship stipends for behavioral health interns and postdoctoral fellows; and

(3) Training and service provision expenses, including, but not limited to, travel to rural clinic sites, equipment, clinic space, patient-record management, scheduling, and telehealth supervision.

Source: Laws 2006, LB 994, § 41.

ARTICLE 57
SMOKING AND TOBACCO

Cross References

Cigarette tax, disposition of proceeds, see section 77-2602.
Game and Parks Commission, regulation, see section 37-306.
License required, see section 28-1420 et seq.
Minors, use prohibited, see sections 28-1418 et seq. and 28-1427.
Natural resources districts, regulation, see section 2-3293.
Smokeless tobacco, see section 69-1901 et seq.
Tobacco product manufacturer, settlement, see section 69-2701 et seq.
Tobacco Products Tax Act, see section 77-4001 et seq.
Unfair Cigarette Sales Act, see section 59-1501.
Vending machines, restrictions, see section 28-1429.01 et seq.

(a) CLEAN INDOOR AIR

Section
71-5701. Repealed. Laws 2008, LB 395, § 22.
71-5702. Repealed. Laws 2008, LB 395, § 22.
71-5703. Repealed. Laws 2008, LB 395, § 22.
71-5704. Repealed. Laws 2008, LB 395, § 22.
71-5705. Repealed. Laws 2008, LB 395, § 22.
71-5706. Repealed. Laws 2008, LB 395, § 22.
71-5707. Repealed. Laws 2008, LB 395, § 22.
71-5708. Repealed. Laws 2008, LB 395, § 22.
71-5709. Repealed. Laws 2008, LB 395, § 22.
71-5710. Repealed. Laws 2008, LB 395, § 22.
71-5711. Repealed. Laws 2008, LB 395, § 22.
71-5712. Repealed. Laws 2008, LB 395, § 22.
71-5713. Repealed. Laws 2008, LB 395, § 22.

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

71-5714. Tobacco Prevention and Control Cash Fund; created; use; investment.

(c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT

71-5715. Repealed. Laws 2009, LB 154, § 27.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5716. Act, how cited.
71-5717. Purpose of act.
71-5718. Definitions, where found.
71-5719. Employed, defined.
71-5720. Employee, defined.
71-5721. Employer, defined.
71-5722. Guestroom or suite, defined.
71-5723. Indoor area, defined.
71-5724. Place of employment, defined.
71-5725. Proprietor, defined.
71-5726. Public place, defined.
71-5727. Smoke or smoking, defined.
71-5728. Tobacco retail outlet, defined.
71-5729. Smoking in place of employment or public place prohibited.
71-5730. Exemptions.
71-5731. Proprietor; duties.
71-5732. Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.
71-5733. Prohibited acts; penalties; act of employee or agent; how construed.
71-5734. Rules and regulations.

(a) CLEAN INDOOR AIR

71-5701 Repealed. Laws 2008, LB 395, § 22.

71-5702 Repealed. Laws 2008, LB 395, § 22.

71-5703 Repealed. Laws 2008, LB 395, § 22.

71-5704 Repealed. Laws 2008, LB 395, § 22.

71-5705 Repealed. Laws 2008, LB 395, § 22.

71-5706 Repealed. Laws 2008, LB 395, § 22.

71-5707 Repealed. Laws 2008, LB 395, § 22.

71-5708 Repealed. Laws 2008, LB 395, § 22.

71-5709 Repealed. Laws 2008, LB 395, § 22.

71-5710 Repealed. Laws 2008, LB 395, § 22.

71-5711 Repealed. Laws 2008, LB 395, § 22.

71-5712 Repealed. Laws 2008, LB 395, § 22.

71-5713 Repealed. Laws 2008, LB 395, § 22.

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

71-5714 Tobacco Prevention and Control Cash Fund; created; use; investment.

The Tobacco Prevention and Control Cash Fund is created. The fund shall be used for a comprehensive statewide tobacco-related public health program administered by the Department of Health and Human Services which includes, but is not limited to (1) community programs to reduce tobacco use, (2) chronic disease programs, (3) school programs, (4) statewide programs, (5) enforcement, (6) counter marketing, (7) cessation programs, (8) surveillance and evaluation, and (9) administration. Any money in the Tobacco Prevention and Control Cash 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.

Source: Laws 2000, LB 1436, § 3; Laws 2002, LB 1310, § 8; Laws 2003, LB 412, § 3; Laws 2005, LB 301, § 56; Laws 2007, LB296, § 633.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

(c) TEEN TOBACCO EDUCATION AND PREVENTION PROJECT

71-5715 Repealed. Laws 2009, LB 154, § 27.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5716 Act, how cited.

Sections 71-5716 to 71-5734 shall be known and may be cited as the Nebraska Clean Indoor Air Act.

Source: Laws 2008, LB395, § 1.

71-5717 Purpose of act.

The purpose of the Nebraska Clean Indoor Air Act is to protect the public health and welfare by prohibiting smoking in public places and places of employment. The act shall not be construed to prohibit or otherwise restrict smoking in outdoor areas. The act shall not be construed to permit smoking where it is prohibited or otherwise restricted by other applicable law, ordinance, or resolution. The act shall be liberally construed to further its purpose.

Source: Laws 2008, LB395, § 2.

71-5718 Definitions, where found.

For purposes of the Nebraska Clean Indoor Air Act, the definitions found in sections 71-5719 to 71-5728 apply.

Source: Laws 2008, LB395, § 3.

71-5719 Employed, defined.

Employed means hired, contracted, subcontracted, or otherwise engaged to furnish goods or services.

Source: Laws 2008, LB395, § 4.

71-5720 Employee, defined.

Employee means a person who is employed by an employer in consideration for direct or indirect monetary wages, profit, or other remuneration.

Source: Laws 2008, LB395, § 5.

71-5721 Employer, defined.

Employer means a person, nonprofit entity, sole proprietorship, partnership, joint venture, corporation, limited partnership, limited liability company, cooperative, firm, trust, association, organization, or other business entity, including retail establishments where goods or services are sold, who or which employs one or more employees.

Source: Laws 2008, LB395, § 6.

71-5722 Guestroom or suite, defined.

Guestroom or suite means a sleeping room and directly associated private areas, such as a bathroom, a living room, and a kitchen area, if any, rented to the public for their exclusive transient occupancy, including, but not limited to, a guestroom or suite in a hotel, motel, inn, lodge, or other such establishment.

Source: Laws 2008, LB395, § 7.

71-5723 Indoor area, defined.

Indoor area means an area enclosed by a floor, a ceiling, and walls on all sides that are continuous and solid except for closeable entry and exit doors and windows and in which less than twenty percent of the total wall area is permanently open to the outdoors. For walls in excess of eight feet in height, only the first eight feet shall be used in determining such percentage.

Source: Laws 2008, LB395, § 8.

71-5724 Place of employment, defined.

Place of employment means an indoor area under the control of a proprietor that an employee accesses as part of his or her employment without regard to whether the employee is present or work is occurring at any given time. The indoor area includes, but is not limited to, any work area, employee breakroom, restroom, conference room, meeting room, classroom, employee cafeteria, and hallway. A private residence is a place of employment when such residence is being used as a licensed child care program and one or more children who are not occupants of such residence are present.

Source: Laws 2008, LB395, § 9.

71-5725 Proprietor, defined.

Proprietor means any employer, owner, operator, supervisor, manager, or other person who controls, governs, or directs the activities in a place of employment or public place.

Source: Laws 2008, LB395, § 10.

71-5726 Public place, defined.

Public place means an indoor area to which the public is invited or in which the public is permitted, whether or not the public is always invited or permitted. A private residence is not a public place.

Source: Laws 2008, LB395, § 11.

71-5727 Smoke or smoking, defined.

Smoke or smoking means the lighting of any cigarette, cigar, pipe, or other smoking material or the possession of any lighted cigarette, cigar, pipe, or other smoking material, regardless of its composition.

Source: Laws 2008, LB395, § 12.

71-5728 Tobacco retail outlet, defined.

Tobacco retail outlet means a store that sells only tobacco and products directly related to tobacco. Products directly related to tobacco do not include alcohol, coffee, soft drinks, candy, groceries, or gasoline.

Source: Laws 2008, LB395, § 13.

71-5729 Smoking in place of employment or public place prohibited.

Except as otherwise provided in section 71-5730, it is unlawful for any person to smoke in a place of employment or a public place.

Source: Laws 2008, LB395, § 14.

71-5730 Exemptions.

The following indoor areas are exempt from section 71-5729:

(1) Guestrooms and suites that are rented to guests and are designated as smoking rooms, except that not more than twenty percent of rooms rented to guests in an establishment may be designated as smoking rooms. All smoking rooms on the same floor shall be contiguous, and smoke from such rooms shall not infiltrate into areas where smoking is prohibited under the Nebraska Clean Indoor Air Act;

(2) Indoor areas used in connection with a research study on the health effects of smoking conducted in a scientific or analytical laboratory under state or federal law or at a college or university approved by the Coordinating Commission for Postsecondary Education;

(3) Tobacco retail outlets; and

(4) Cigar bars as defined in section 53-103.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6.

71-5731 Proprietor; duties.

A proprietor of a place of employment or public place where smoking is prohibited under the Nebraska Clean Indoor Air Act shall take necessary and appropriate steps to ensure compliance with the act at such place.

Source: Laws 2008, LB395, § 16.

71-5732 Department of Health and Human Services; local public health department; enjoin violations; retaliation prohibited; waiver of act.

(1) The Department of Health and Human Services or a local public health department as defined in section 71-1626 may institute an action in any court with jurisdiction to enjoin a violation of the Nebraska Clean Indoor Air Act. Any interested party may report possible violations of the act to such departments.

(2) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to report a violation of the act.

(3) The Department of Health and Human Services may waive provisions of the Nebraska Clean Indoor Air Act upon good cause shown and shall provide for appropriate protection of the public health and safety in the granting of such waivers.

Source: Laws 2008, LB395, § 17.

71-5733 Prohibited acts; penalties; act of employee or agent; how construed.

(1) A person who smokes in a place of employment or a public place in violation of the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses. A person charged with such offense may voluntarily participate, at his or her own expense, in a smoking cessation program approved by the Department of Health and Human Services, and such charge shall be dismissed upon successful completion of the program.

(2) A proprietor who fails, neglects, or refuses to perform a duty under the Nebraska Clean Indoor Air Act is guilty of a Class V misdemeanor for the first offense and a Class IV misdemeanor for the second and any subsequent offenses.

(3) Each day that a violation continues to exist shall constitute a separate and distinct violation.

(4) Every act or omission constituting a violation of the Nebraska Clean Indoor Air Act by an employee or agent of a proprietor is deemed to be the act

or omission of such proprietor, and such proprietor shall be subject to the same penalty as if the act or omission had been committed by such proprietor.

Source: Laws 2008, LB395, § 18.

71-5734 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations necessary to implement the Nebraska Clean Indoor Air Act. The department shall consult with interested persons and professional organizations before adopting such rules and regulations.

Source: Laws 2008, LB395, § 19.

ARTICLE 58

HEALTH CARE; CERTIFICATE OF NEED

Cross References

Health Care Facility Licensure Act, see section 71-401.
Health Care Facility-Provider Cooperation Act, see section 71-7701.
Nonprofit Hospital Sale Act, see section 71-20,102.

Section
71-5801. Act, how cited.
71-5802. Repealed. Laws 1997, LB 798, § 39.
71-5803. Definitions, where found.
71-5803.01. Acute care bed, defined.
71-5803.02. Ambulatory surgical center, defined.
71-5803.03. Certificate of need, defined.
71-5803.04. Department, defined.
71-5803.05. Assisted-living facility, defined.
71-5803.06. Health care facility, defined.
71-5803.07. Health planning region, defined.
71-5803.08. Hospital, defined.
71-5803.09. Intermediate care facility, intermediate care facility for the mentally retarded, defined.
71-5803.10. Long-term care bed, defined.
71-5803.11. Nursing facility, defined.
71-5803.12. Person, defined.
71-5803.13. Rehabilitation bed, defined.
71-5803.14. Repealed. Laws 1997, LB 608, § 30.
71-5803.15. Skilled nursing facility, defined.
71-5804. Transferred to section 71-5803.02.
71-5805. Repealed. Laws 1997, LB 798, § 39.
71-5805.01. Repealed. Laws 1997, LB 798, § 39.
71-5806. Transferred to section 71-5803.03.
71-5807. Repealed. Laws 1997, LB 798, § 39.
71-5808. Transferred to section 71-5803.04.
71-5809. Repealed. Laws 1997, LB 798, § 39.
71-5809.01. Transferred to section 71-5803.05.
71-5809.02. Transferred to section 71-5803.11.
71-5810. Transferred to section 71-5803.06.
71-5811. Repealed. Laws 1997, LB 798, § 39.
71-5812. Repealed. Laws 1997, LB 798, § 39.
71-5813. Repealed. Laws 1997, LB 798, § 39.
71-5814. Repealed. Laws 1997, LB 798, § 39.
71-5815. Repealed. Laws 1997, LB 798, § 39.
71-5816. Transferred to section 71-5803.08.
71-5817. Repealed. Laws 1997, LB 798, § 39.
71-5818. Repealed. Laws 1997, LB 798, § 39.
71-5818.01. Transferred to section 71-5803.13.
71-5818.02. Transferred to section 71-5803.14.

Section
71-5818.03. Repealed. Laws 1997, LB 798, § 39.
71-5819. Transferred to section 71-5803.09.
71-5820. Repealed. Laws 1997, LB 798, § 39.
71-5821. Repealed. Laws 1997, LB 798, § 39.
71-5821.01. Repealed. Laws 1997, LB 798, § 39.
71-5822. Transferred to section 71-5803.12.
71-5823. Repealed. Laws 1997, LB 798, § 39.
71-5824. Transferred to section 71-5803.15.
71-5825. Repealed. Laws 1997, LB 798, § 39.
71-5826. Repealed. Laws 1997, LB 798, § 39.
71-5827. Repealed. Laws 1982, LB 378, § 57.
71-5828. Repealed. Laws 1997, LB 798, § 39.
71-5829. Repealed. Laws 1997, LB 798, § 39.
71-5829.01. Repealed. Laws 2009, LB 195, § 111.
71-5829.02. Repealed. Laws 2009, LB 195, § 111.
71-5829.03. Certificate of need; activities requiring.
71-5829.04. Long-term care beds; moratorium; exceptions; department; duties.
71-5829.05. Long-term care beds; certificate of need; issuance; conditions.
71-5829.06. Rehabilitation beds; moratorium; exceptions.
71-5830. Repealed. Laws 1997, LB 798, § 39.
71-5830.01. Certificate of need; exempt activities.
71-5831. Repealed. Laws 1997, LB 798, § 39.
71-5832. Repealed. Laws 1997, LB 798, § 39.
71-5832.01. Repealed. Laws 1997, LB 798, § 39.
71-5832.02. Repealed. Laws 1989, LB 429, § 43.
71-5833. Repealed. Laws 1997, LB 798, § 39.
71-5834. Repealed. Laws 1997, LB 798, § 39.
71-5835. Repealed. Laws 1997, LB 798, § 39.
71-5836. Department; duties.
71-5836.01. Repealed. Laws 1997, LB 798, § 39.
71-5836.02. Repealed. Laws 1997, LB 798, § 39.
71-5837. Certificate of need application; filing; fee.
71-5838. Repealed. Laws 1997, LB 798, § 39.
71-5839. Repealed. Laws 1982, LB 378, § 57.
71-5840. Repealed. Laws 1997, LB 798, § 39.
71-5841. Repealed. Laws 1997, LB 798, § 39.
71-5842. Transferred to section 71-5859.01.
71-5843. Transferred to section 71-5859.02.
71-5844. Transferred to section 71-5859.04.
71-5844.01. Repealed. Laws 1989, LB 429, § 43.
71-5845. Transferred to section 71-5859.03.
71-5846. Certificate of need; decision; department; duties.
71-5847. Repealed. Laws 1989, LB 429, § 43.
71-5848. Application; decision; findings and conclusions.
71-5848.01. Certificate of need; period valid; renewal.
71-5849. Repealed. Laws 1997, LB 798, § 39.
71-5850. Repealed. Laws 1989, LB 429, § 43.
71-5851. Repealed. Laws 1997, LB 798, § 39.
71-5852. Repealed. Laws 1997, LB 798, § 39.
71-5853. Repealed. Laws 1997, LB 798, § 39.
71-5854. Repealed. Laws 1997, LB 798, § 39.
71-5855. Repealed. Laws 1997, LB 798, § 39.
71-5856. Repealed. Laws 1982, LB 378, § 57.
71-5857. Repealed. Laws 1997, LB 798, § 39.
71-5858. Repealed. Laws 1989, LB 429, § 43.
71-5859. Department; decision; appeal procedures.
71-5859.01. Repealed. Laws 1997, LB 798, § 39.
71-5859.02. Repealed. Laws 1997, LB 798, § 39.
71-5859.03. Repealed. Laws 1997, LB 798, § 39.
71-5859.04. Repealed. Laws 1997, LB 798, § 39.
71-5860. Repealed. Laws 1989, LB 429, § 43.

Section
71-5861. Repealed. Laws 1989, LB 429, § 43.
71-5862. Repealed. Laws 1989, LB 429, § 43.
71-5863. Repealed. Laws 1989, LB 429, § 43.
71-5864. Repealed. Laws 1989, LB 429, § 43.
71-5865. Certificate of need; appeal; burden of proof.
71-5866. Repealed. Laws 1997, LB 798, § 39.
71-5867. Transferred to section 71-5848.01.
71-5868. Violation; department; maintain action.
71-5869. Health care facility; license or permit; denial, revocation, or suspension; grounds.
71-5870. Violation; penalty.
71-5871. Repealed. Laws 1980, LB 725, § 1.
71-5872. Repealed. Laws 1993, LB 9, § 3.

71-5801 Act, how cited.

Sections 71-5801 to 71-5870 shall be known and may be cited as the Nebraska Health Care Certificate of Need Act.

Source: Laws 1979, LB 172, § 1; Laws 1982, LB 378, § 1; Laws 1989, LB 429, § 2; Laws 1991, LB 244, § 9; Laws 1993, LB 9, § 1; Laws 1996, LB 1155, § 58; Laws 1997, LB 798, § 3.

Consideration of a certificate of need application under the Nebraska Health Care Certificate of Need Act is governed by three authorities: (1) The act, (2) department regulations promulgated under the act, and (3) the state health plan. Gramercy Hill Enters. v. State of Nebraska, Department of Health, 255 Neb. 717, 587 N.W.2d 378 (1998).

Under the Nebraska Health Care Certificate of Need Act, need for nursing beds is not synonymous with demand. Need focuses on long-range plans for services to an entire population, while demand connotes an immediate preference on the part of an individual to live in a particular nursing facility. Beatrice Manor v. Department of Health, 219 Neb. 141, 362 N.W.2d 45 (1985).

71-5802 Repealed. Laws 1997, LB 798, § 39.

71-5803 Definitions, where found.

For purposes of the Nebraska Health Care Certificate of Need Act, unless the context otherwise requires, the definitions found in sections 71-5803.01 to 71-5803.15 shall be used.

Source: Laws 1979, LB 172, § 3; Laws 1982, LB 378, § 3; Laws 1989, LB 429, § 4; Laws 1991, LB 244, § 10; Laws 1996, LB 1155, § 59; Laws 1997, LB 798, § 4.

71-5803.01 Acute care bed, defined.

Acute care bed means a bed in a hospital that is or will be licensed under the Health Care Facility Licensure Act for acute care services or a bed that is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act, as amended, as a rehabilitation hospital or rehabilitation unit.

Source: Laws 1997, LB 798, § 5; Laws 2000, LB 819, § 112.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-5803.02 Ambulatory surgical center, defined.

Ambulatory surgical center has the same meaning as in section 71-405.

Source: Laws 1979, LB 172, § 4; Laws 1989, LB 429, § 5; Laws 1994, LB 1210, § 145; R.S.1943, (1996), § 71-5804; Laws 1997, LB 798, § 6; Laws 2000, LB 819, § 113.

71-5803.03 Certificate of need, defined.

Certificate of need means a written authorization by the department for a person to implement the project under review.

Source: Laws 1979, LB 172, § 6; R.S.1943, (1996), § 71-5806; Laws 1997, LB 798, § 7.

71-5803.04 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 1979, LB 172, § 8; Laws 1996, LB 1044, § 736; R.S.1943, (1996), § 71-5808; Laws 1997, LB 798, § 8; Laws 2007, LB296, § 634.

71-5803.05 Assisted-living facility, defined.

Assisted-living facility has the same meaning as in section 71-406.

Source: Laws 1989, LB 429, § 7; Laws 1997, LB 608, § 18; R.S.1943, (1996), § 71-5809.01; Laws 1997, LB 798, § 9; Laws 2000, LB 819, § 114.

71-5803.06 Health care facility, defined.

Health care facility means hospitals, skilled nursing facilities, intermediate care facilities, and nursing facilities.

Source: Laws 1979, LB 172, § 10; Laws 1982, LB 378, § 6; Laws 1989, LB 429, § 8; Laws 1991, LB 244, § 12; Laws 1993, LB 121, § 443; Laws 1994, LB 1210, § 146; Laws 1996, LB 1155, § 62; Laws 1997, LB 608, § 19; R.S.1943, (1996), § 71-5810; Laws 1997, LB 798, § 10.

71-5803.07 Health planning region, defined.

Health planning region means one of the twenty-six health planning regions established in the Nebraska State Health Plan, 1986-1991.

Source: Laws 1997, LB 798, § 11.

71-5803.08 Hospital, defined.

Hospital has the same meaning as in section 71-419.

Source: Laws 1979, LB 172, § 16; R.S.1943, (1996), § 71-5816; Laws 1997, LB 798, § 12; Laws 2000, LB 819, § 115.

71-5803.09 Intermediate care facility, intermediate care facility for the mentally retarded, defined.

Intermediate care facility has the same meaning as in section 71-420 and includes an intermediate care facility for the mentally retarded that has sixteen or more beds. Intermediate care facility for the mentally retarded has the same meaning as in section 71-421.

Source: Laws 1979, LB 172, § 19; Laws 1988, LB 1100, § 174; R.S.1943, (1996), § 71-5819; Laws 1997, LB 798, § 13; Laws 2000, LB 819, § 116; Laws 2009, LB511, § 1.

71-5803.10 Long-term care bed, defined.

Long-term care bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act as a skilled nursing facility, intermediate care facility, nursing facility, or long-term care hospital. Long-term care beds do not include residential care beds, domiciliary beds, or swing beds. For purposes of this section, swing beds means beds which may be used by a hospital for acute or long-term care in a facility located in an area which is not designated as urban by the United States Bureau of the Census and which has up to one hundred beds, excluding beds for newborns and intensive-care-type inpatient units.

Source: Laws 1997, LB 798, § 14; Laws 2000, LB 819, § 117.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-5803.11 Nursing facility, defined.

Nursing facility has the same meaning as in section 71-424.

Source: Laws 1991, LB 244, § 11; R.S.1943, (1996), § 71-5809.02; Laws 1997, LB 798, § 15; Laws 2000, LB 819, § 118.

71-5803.12 Person, defined.

Person means an individual, a trust or estate, a partnership, a limited liability company, a corporation, including associations, joint-stock companies, and insurance companies, a state, a political subdivision or instrumentality, including a municipal corporation, of a state, or any legal entity recognized by the state.

Source: Laws 1979, LB 172, § 22; Laws 1982, LB 378, § 13; Laws 1993, LB 121, § 445; R.S.1943, (1996), § 71-5822; Laws 1997, LB 798, § 16.

71-5803.13 Rehabilitation bed, defined.

Rehabilitation bed means a bed in a health care facility that is or will be licensed under the Health Care Facility Licensure Act if the bed is in an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under professional supervision and if the bed is part of a hospital or unit of a hospital that is excluded from the prospective payment system under Title XVIII of the federal Social Security Act as a rehabilitation hospital or rehabilitation unit.

Source: Laws 1982, LB 378, § 9; R.S.1943, (1996), § 71-5818.01; Laws 1997, LB 798, § 17; Laws 2000, LB 819, § 119.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-5803.14 Repealed. Laws 1997, LB 608, § 30.

71-5803.15 Skilled nursing facility, defined.

Skilled nursing facility has the same meaning as in section 71-429.

Source: Laws 1979, LB 172, § 24; R.S.1943, (1996), § 71-5824; Laws 1997, LB 798, § 19; Laws 2000, LB 819, § 120.

71-5804 Transferred to section 71-5803.02.

71-5805 Repealed. Laws 1997, LB 798, § 39.

71-5805.01 Repealed. Laws 1997, LB 798, § 39.

71-5806 Transferred to section 71-5803.03.

71-5807 Repealed. Laws 1997, LB 798, § 39.

71-5808 Transferred to section 71-5803.04.

71-5809 Repealed. Laws 1997, LB 798, § 39.

71-5809.01 Transferred to section 71-5803.05.

71-5809.02 Transferred to section 71-5803.11.

71-5810 Transferred to section 71-5803.06.

71-5811 Repealed. Laws 1997, LB 798, § 39.

71-5812 Repealed. Laws 1997, LB 798, § 39.

71-5813 Repealed. Laws 1997, LB 798, § 39.

71-5814 Repealed. Laws 1997, LB 798, § 39.

71-5815 Repealed. Laws 1997, LB 798, § 39.

71-5816 Transferred to section 71-5803.08.

71-5817 Repealed. Laws 1997, LB 798, § 39.

71-5818 Repealed. Laws 1997, LB 798, § 39.

71-5818.01 Transferred to section 71-5803.13.

71-5818.02 Transferred to section 71-5803.14.

71-5818.03 Repealed. Laws 1997, LB 798, § 39.

71-5819 Transferred to section 71-5803.09.

71-5820 Repealed. Laws 1997, LB 798, § 39.

71-5821 Repealed. Laws 1997, LB 798, § 39.

71-5821.01 Repealed. Laws 1997, LB 798, § 39.

71-5822 Transferred to section 71-5803.12.

71-5823 Repealed. Laws 1997, LB 798, § 39.

71-5824 Transferred to section 71-5803.15.

71-5825 Repealed. Laws 1997, LB 798, § 39.

71-5826 Repealed. Laws 1997, LB 798, § 39.

71-5827 Repealed. Laws 1982, LB 378, § 57.

71-5828 Repealed. Laws 1997, LB 798, § 39.

71-5829 Repealed. Laws 1997, LB 798, § 39.

71-5829.01 Repealed. Laws 2009, LB 195, § 111.

71-5829.02 Repealed. Laws 2009, LB 195, § 111.

71-5829.03 Certificate of need; activities requiring.

Except as provided in section 71-5830.01, no person, including persons acting for or on behalf of a health care facility, shall engage in any of the following activities without having first applied for and received the necessary certificate of need:

(1) The initial establishment of long-term care beds or rehabilitation beds except as permitted under subdivisions (4) and (5) of this section;

(2) An increase in the long-term care beds of a health care facility by more than ten long-term care beds or more than ten percent of the total long-term care bed capacity of such facility, whichever is less, over a two-year period;

(3) An increase in the rehabilitation beds of a health care facility by more than ten rehabilitation beds or more than ten percent of the total rehabilitation bed capacity of such facility, whichever is less, over a two-year period;

(4) Any initial establishment of long-term care beds through conversion by a hospital of any type of hospital beds to long-term care beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period;

(5) Any initial establishment of rehabilitation beds through conversion by a hospital of any type of hospital beds to rehabilitation beds if the total beds converted by the hospital are more than ten beds or more than ten percent of the total bed capacity of such hospital, whichever is less, over a two-year period; or

(6) Any relocation of rehabilitation beds in Nebraska from one health care facility to another health care facility.

Source: Laws 1997, LB 798, § 22; Laws 2008, LB765, § 1; Laws 2009, LB195, § 84.

71-5829.04 Long-term care beds; moratorium; exceptions; department; duties.

(1) All long-term care beds which require a certificate of need under section 71-5829.03 are subject to a moratorium unless one of the following exceptions applies:

(a) An exception to the moratorium may be granted if the department establishes that the needs of individuals whose medical and nursing needs are complex or intensive and are above the level of capabilities of staff and above the services ordinarily provided in a long-term care bed are not currently being met by the long-term care beds licensed in the health planning region; or

(b) If the average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site have exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing and there is a long-term care bed

need as determined under this section, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines average occupancy for all licensed long-term care beds located in a twenty-five mile radius of the proposed site has not exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the application filing, the department shall deny the application.

(2) The department shall review applications which require a certificate of need under section 71-5829.03 and determine if there is a need for additional long-term care beds as provided in this section. No such application shall be approved if the current supply of licensed long-term care beds in the health planning region of the proposed site exceeds the long-term care bed need for that health planning region. For purposes of this section:

(a) Long-term care bed need is equal to the population of the health planning region, multiplied by the utilization rate of long-term care beds within the health planning region, and the result divided by the minimum occupancy rate of long-term care beds within the health planning region;

(b) Population is the most recent projection of population for the health planning region for the year which is closest to the fifth year immediately following the date of the application. The applicant shall provide such projection as part of the application using data from the University of Nebraska-Lincoln Bureau of Business Research or other source approved by the department;

(c) The utilization rate is the number of people using long-term care beds living in the health planning region in which the proposed project is located divided by the population of the health planning region; and

(d) The minimum occupancy rate is ninety-five percent for health planning regions which are part of or contain a Metropolitan Statistical Area as defined by the United States Bureau of the Census. For all other health planning regions in the state, the minimum occupancy rate is ninety percent.

(3) To facilitate the review and determination required by this section, each health care facility with long-term care beds shall report on a quarterly basis to the department the number of residents at such facility on the last day of the immediately preceding quarter on a form provided by the department. Such report shall be provided to the department no later than ninety days after the last day of the immediately preceding quarter. The department shall provide the occupancy data collected from such reports upon request. Any facility failing to timely report such information shall be ineligible for any exception to the requirement for a certificate of need under section 71-5830.01 and any exception to the moratorium imposed under this section and may not receive, transfer, or relocate long-term care beds.

Source: Laws 1997, LB 798, § 23; Laws 2009, LB195, § 85.

71-5829.05 Long-term care beds; certificate of need; issuance; conditions.

If two or more applications are submitted within thirty days after the receipt of the first application for the same health planning region and the approval of all the applications would result in long-term care beds in the health planning region in excess of the long-term care bed need established in section 71-5829.04, the department shall grant the application and issue a certificate of need, subject to any reduction in beds required by section 71-5846 to the

applicant which is better able to: (1) Provide quality care; (2) operate a long-term care facility in a cost-effective manner based on annual cost reports submitted to the department; (3) accumulate financial resources to complete the project; and (4) serve medicare, medicaid, and medically indigent long-term care patients in the area. The department shall show a preference to an application filed by an applicant with facilities in Nebraska. Information to make these determinations shall be limited to the application and data currently collected by the state. If the applicant does not have a facility in Nebraska, the department may request information from other states in which the applicant is offering services to make its determination.

Source: Laws 1997, LB 798, § 24; Laws 2007, LB296, § 635.

71-5829.06 Rehabilitation beds; moratorium; exceptions.

All rehabilitation beds which require a certificate of need are subject to a moratorium, unless one of the following exceptions applies:

(1) If the average occupancy for all rehabilitation beds located in Nebraska has exceeded ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department may grant an exception to the moratorium and issue a certificate of need. If the department determines the average occupancy for all rehabilitation beds located in Nebraska does not exceed ninety percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application, the department shall deny the application; or

(2) If the average occupancy for all rehabilitation beds within a health planning region exceeds eighty percent occupancy during the most recent three consecutive calendar quarters as reported at the time of the filing of the application and no other comparable services are otherwise available in the health planning region, the department shall grant an exception to the moratorium and issue a certificate of need for up to three rehabilitation beds.

Source: Laws 1997, LB 798, § 25; Laws 2008, LB765, § 2.

71-5830 Repealed. Laws 1997, LB 798, § 39.

71-5830.01 Certificate of need; exempt activities.

Notwithstanding any other provisions of the Nebraska Health Care Certificate of Need Act, a certificate of need is not required for:

(1) A change in classification between an intermediate care facility, a nursing facility, or a skilled nursing facility;

(2) A project of a county in which is located a city of the metropolitan class for which a bond issue has been approved by the electorate of such county on or after January 1, 1994;

(3) A project of a federally recognized Indian tribe to be located on tribal lands within the exterior boundaries of the State of Nebraska where (a) a determination has been made by the tribe's governing body that the cultural needs of the tribe's members cannot be adequately met by existing facilities if such project has been approved by the tribe's governing body and (b) the tribe has a self-determination agreement in place with the Indian Health Service of the United States Department of Health and Human Services so that payment for enrolled members of a federally recognized Indian tribe who are served at

such facility will be made with one hundred percent federal reimbursement; and

(4) A transfer or relocation of long-term care beds from one facility to another entity in the same health planning region or any other health planning region. The receiving entity shall obtain a license for the transferred or relocated beds within two years after the transfer or relocation. The department shall grant an extension of such time if the receiving entity is making progress toward the licensure of such beds.

Source: Laws 1982, LB 378, § 56; Laws 1989, LB 429, § 16; Laws 1997, LB 798, § 26; Laws 1999, LB 594, § 60; Laws 2008, LB928, § 31; Laws 2009, LB195, § 86.

71-5831 Repealed. Laws 1997, LB 798, § 39.

71-5832 Repealed. Laws 1997, LB 798, § 39.

71-5832.01 Repealed. Laws 1997, LB 798, § 39.

71-5832.02 Repealed. Laws 1989, LB 429, § 43.

71-5833 Repealed. Laws 1997, LB 798, § 39.

71-5834 Repealed. Laws 1997, LB 798, § 39.

71-5835 Repealed. Laws 1997, LB 798, § 39.

71-5836 Department; duties.

The department, after consulting with appropriate governmental agencies and affected persons, shall:

(1) Prescribe the form to be used in applying for certificates of need and for applying for renewal of such certificates. The application shall contain (a) the name and address of the sponsor, (b) the anticipated date for placing the beds in service, (c) the location, (d) the number of new beds, (e) a concise, narrative description of the project showing the type and description of proposed acute care beds, rehabilitation beds, or long-term care beds, and (f) the certification and telephone number of a responsible officer; and

(2) By rule and regulation describe and clarify the procedures to be followed in the review of an application. Such procedures shall be issued with each application form.

Source: Laws 1979, LB 172, § 36; Laws 1982, LB 378, § 25; Laws 1989, LB 429, § 22; Laws 1997, LB 798, § 27.

71-5836.01 Repealed. Laws 1997, LB 798, § 39.

71-5836.02 Repealed. Laws 1997, LB 798, § 39.

71-5837 Certificate of need application; filing; fee.

An application for a certificate of need shall be filed with the department. All applications for a certificate of need shall be accompanied by a one-thousand-

dollar nonrefundable fee. Such fee shall be remitted to the State Treasurer for credit to the General Fund.

Source: Laws 1979, LB 172, § 37; Laws 1982, LB 378, § 28; Laws 1989, LB 429, § 24; Laws 1993, LB 840, § 1; Laws 1997, LB 798, § 28.

71-5838 Repealed. Laws 1997, LB 798, § 39.

71-5839 Repealed. Laws 1982, LB 378, § 57.

71-5840 Repealed. Laws 1997, LB 798, § 39.

71-5841 Repealed. Laws 1997, LB 798, § 39.

71-5842 Transferred to section 71-5859.01.

71-5843 Transferred to section 71-5859.02.

71-5844 Transferred to section 71-5859.04.

71-5844.01 Repealed. Laws 1989, LB 429, § 43.

71-5845 Transferred to section 71-5859.03.

71-5846 Certificate of need; decision; department; duties.

The department shall make a decision in writing to (1) approve the application and issue a certificate of need, (2) disapprove the application and deny a certificate of need, or (3) if the application is for more long-term care beds than allowed under section 71-5829.04, approve the application but issue a certificate of need only for the reduced number of beds that section 71-5829.04 allows. The department shall make its decision within sixty days after the date the application was received.

Source: Laws 1979, LB 172, § 46; Laws 1982, LB 378, § 37; Laws 1989, LB 429, § 27; Laws 1996, LB 1155, § 65; Laws 1997, LB 798, § 29.

71-5847 Repealed. Laws 1989, LB 429, § 43.

71-5848 Application; decision; findings and conclusions.

The department shall, when it approves or rejects an application, provide in writing to the applicant the decision and the findings and conclusions on which it based the decision.

Source: Laws 1979, LB 172, § 48; Laws 1982, LB 378, § 39; Laws 1989, LB 429, § 28; Laws 1997, LB 798, § 30.

71-5848.01 Certificate of need; period valid; renewal.

A new or modified certificate of need shall be valid for a period of one year from the date of issuance and may be renewed at the expiration of such period for up to one year if the holder of the certificate establishes that the holder is meeting the timetable or making a good faith effort to meet it. The department shall give written notice to an applicant for a renewal certificate of its decision within thirty days after receipt of an application. Such decision shall be

considered a final decision of the department for purposes of appeal. If the decision is not appealed, it shall be final as of the date issued.

Source: Laws 1979, LB 172, § 67; Laws 1982, LB 378, § 53; R.S.1943, (1986), § 71-5867; Laws 1989, LB 429, § 29; Laws 1997, LB 798, § 31.

71-5849 Repealed. Laws 1997, LB 798, § 39.

71-5850 Repealed. Laws 1989, LB 429, § 43.

71-5851 Repealed. Laws 1997, LB 798, § 39.

71-5852 Repealed. Laws 1997, LB 798, § 39.

71-5853 Repealed. Laws 1997, LB 798, § 39.

71-5854 Repealed. Laws 1997, LB 798, § 39.

71-5855 Repealed. Laws 1997, LB 798, § 39.

71-5856 Repealed. Laws 1982, LB 378, § 57.

71-5857 Repealed. Laws 1997, LB 798, § 39.

71-5858 Repealed. Laws 1989, LB 429, § 43.

71-5859 Department; decision; appeal procedures.

The department shall adopt and promulgate rules and regulations establishing procedures in accordance with the Administrative Procedure Act by which the applicant may appeal a decision by the department. The applicant may appeal a final decision of the department to the district court in accordance with the Administrative Procedure Act.

Source: Laws 1979, LB 172, § 59; Laws 1982, LB 378, § 49; Laws 1989, LB 429, § 31; Laws 1997, LB 798, § 32; Laws 2007, LB296, § 636.

Cross References

Administrative Procedure Act, see section 84-920.

71-5859.01 Repealed. Laws 1997, LB 798, § 39.

71-5859.02 Repealed. Laws 1997, LB 798, § 39.

71-5859.03 Repealed. Laws 1997, LB 798, § 39.

71-5859.04 Repealed. Laws 1997, LB 798, § 39.

71-5860 Repealed. Laws 1989, LB 429, § 43.

71-5861 Repealed. Laws 1989, LB 429, § 43.

71-5862 Repealed. Laws 1989, LB 429, § 43.

71-5863 Repealed. Laws 1989, LB 429, § 43.

71-5864 Repealed. Laws 1989, LB 429, § 43.

71-5865 Certificate of need; appeal; burden of proof.

In an appeal of a decision to deny a certificate of need, the person requesting the appeal shall bear the burden of proving that the project meets the applicable criteria established in sections 71-5829.03 to 71-5829.06.

Source: Laws 1979, LB 172, § 65; Laws 1982, LB 378, § 51; Laws 1989, LB 429, § 36; Laws 1997, LB 798, § 33; Laws 2009, LB195, § 87.

In an appeal from a decision granting a certificate of need, the party appealing bears the burden of proof that the application does not meet the applicable criteria. Department of Health v. Lutheran Hosp. & Homes Inc., 227 Neb. 116, 416 N.W.2d 222 (1987).

In an appeal of a decision to grant a certificate of need, the party appealing that decision shall bear the burden of proof that the application does not meet the applicable criteria. Department of Health v. Grand Island Health Care, 223 Neb. 587, 391 N.W.2d 582 (1986).

71-5866 Repealed. Laws 1997, LB 798, § 39.

71-5867 Transferred to section 71-5848.01.

71-5868 Violation; department; maintain action.

The department may, in accordance with the laws of the state governing injunctions and other process, maintain an action in the name of the state against any person who is engaging in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without first having a valid certificate of need or who is engaging in an activity prohibited under the act.

Source: Laws 1979, LB 172, § 68; Laws 1982, LB 378, § 54; Laws 1989, LB 429, § 38; Laws 1997, LB 798, § 34.

71-5869 Health care facility; license or permit; denial, revocation, or suspension; grounds.

(1) A license or permit which has been issued by the department under the Health Care Facility Licensure Act or any other state statute to a health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act is subject to revocation or suspension. Nothing contained in this section shall limit the rights of appeal of a health care facility from such decision as provided in the Health Care Facility Licensure Act.

(2) No license or permit may be issued or renewed by the department under the Health Care Facility Licensure Act or any other state statute, nor may any type of approval be granted to any health care facility which engaged in an activity identified as requiring a certificate of need under the Nebraska Health Care Certificate of Need Act without having first obtained a certificate of need or which engaged in an activity prohibited under the act.

Source: Laws 1979, LB 172, § 69; Laws 1997, LB 798, § 35; Laws 2000, LB 819, § 121.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-5870 Violation; penalty.

Any person who violates the Nebraska Health Care Certificate of Need Act by engaging in any activity which requires a certificate of need without first obtaining a certificate of need as required by the act or by engaging in an activity prohibited under the act is guilty of a Class IV misdemeanor. Each day

of violation constitutes a separate offense. The magnitude of the violation is the primary consideration in establishing the amount of the fine.

Source: Laws 1979, LB 172, § 70; Laws 1982, LB 378, § 55; Laws 1989, LB 429, § 39; Laws 1997, LB 798, § 36.

71-5871 Repealed. Laws 1980, LB 725, § 1.

71-5872 Repealed. Laws 1993, LB 9, § 3.

ARTICLE 59
ASSISTED-LIVING FACILITY ACT

Section
71-5901. Act, how cited.
71-5902. Purposes of act.
71-5903. Terms, defined.
71-5904. Admission requirements.
71-5905. Admission or retention; conditions; health maintenance activities; requirements.
71-5906. Drugs, devices, biologicals, and supplements; list required; duties.
71-5907. Life Safety Code classification.
71-5908. Rules and regulations.
71-5909. Repealed. Laws 2000, LB 819, § 162.

71-5901 Act, how cited.

Sections 71-5901 to 71-5908 shall be known and may be cited as the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 45.

71-5902 Purposes of act.

The purposes of the Assisted-Living Facility Act are to supplement provisions of the Health Care Facility Licensure Act relating to the licensure and regulation of assisted-living facilities and to provide for the health and safety of residents of such facilities.

Source: Laws 2004, LB 1005, § 46.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-5903 Terms, defined.

For purposes of the Assisted-Living Facility Act:

(1) Activities of daily living means transfer, ambulation, exercise, toileting, eating, self-administration of medication, and similar activities;

(2) Administrator means the operating officer of an assisted-living facility and includes a person with a title such as administrator, chief executive officer, manager, superintendent, director, or other similar designation;

(3) Assisted-living facility has the same meaning as in section 71-406;

(4) Authorized representative means (a) a person holding a durable power of attorney for health care, (b) a guardian, or (c) a person appointed by a court to manage the personal affairs of a resident of an assisted-living facility other than the facility;

(5) Chemical restraint means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat medical symptoms;

(6) Complex nursing interventions means interventions which require nursing judgment to safely alter standard procedures in accordance with the needs of the resident, which require nursing judgment to determine how to proceed from one step to the next, or which require a multidimensional application of the nursing process. Complex nursing interventions does not include a nursing assessment;

(7) Department means the Department of Health and Human Services;

(8) Health maintenance activities means noncomplex interventions which can safely be performed according to exact directions, which do not require alteration of the standard procedure, and for which the results and resident responses are predictable;

(9) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(10) Physical restraint means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that he or she cannot remove easily and that restricts freedom of movement or normal access to his or her own body; and

(11) Stable or predictable means that a resident's clinical and behavioral status and nursing care needs are determined to be (a) nonfluctuating and consistent or (b) fluctuating in an expected manner with planned interventions, including an expected deteriorating condition.

Source: Laws 1997, LB 608, § 13; R.S.Supp.,1998, § 71-20,115; Laws 2000, LB 819, § 60; R.S.1943, (2003), § 71-460; Laws 2004, LB 1005, § 47; Laws 2007, LB296, § 637.

71-5904 Admission requirements.

Assisted living promotes resident self-direction and participation in decisions which emphasize independence, individuality, privacy, dignity, and residential surroundings.

To be eligible for admission to an assisted-living facility, a person shall be in need of or wish to have available room, board, assistance with or provision of personal care, activities of daily living, or health maintenance activities or supervision due to age, illness, or physical disability. The administrator shall have the discretion regarding admission or retention of residents subject to the Assisted-Living Facility Act and rules and regulations adopted and promulgated under the act.

Source: Laws 1997, LB 608, § 14; R.S.Supp.,1998, § 71-20,116; Laws 2000, LB 819, § 61; R.S.1943, (2003), § 71-461; Laws 2004, LB 1005, § 48.

71-5905 Admission or retention; conditions; health maintenance activities; requirements.

(1) An assisted-living facility shall not admit or retain a resident who requires complex nursing interventions or whose condition is not stable or predictable unless:

(a) The resident, if he or she is not a minor and is competent to make a rational decision as to his or her needs or care, or his or her authorized representative, and his or her physician or a registered nurse agree that admission or retention of the resident is appropriate;

(b) The resident or his or her authorized representative agrees to arrange for the care of the resident through appropriate private duty personnel, a licensed home health agency, or a licensed hospice; and

(c) The resident's care does not compromise the facility operations or create a danger to others in the facility.

(2) Health maintenance activities at an assisted-living facility shall be performed in accordance with the Nurse Practice Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2004, LB 1005, § 49.

Cross References

Nurse Practice Act, see section 38-2201.

71-5906 Drugs, devices, biologicals, and supplements; list required; duties.

(1) On and after January 1, 2005, every person seeking admission to an assisted-living facility or the authorized representative of such person shall, upon admission and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by the person, including dosage, instructions for use, and reported use.

(2) Every person residing in an assisted-living facility on January 1, 2005, or the authorized representative of such person shall, within sixty days after January 1, 2005, and annually thereafter, provide the facility with a list of drugs, devices, biologicals, and supplements being taken or being used by such person, including dosage, instructions for use, and reported use.

(3) An assisted-living facility shall not be subject to disciplinary action by the department for the failure of any person seeking admission to or residing at such facility or the authorized representative of such person to comply with subsections (1) and (2) of this section.

(4) Each assisted-living facility shall provide for a registered nurse to review medication administration policies and procedures and to be responsible for the training of medication aides at such facility.

Source: Laws 2004, LB 1005, § 50.

71-5907 Life Safety Code classification.

For purposes of the Life Safety Code under section 81-502, an assisted-living facility shall be classified as (1) residential board and care if the facility meets the residential board and care classification requirements of the Life Safety Code or (2) limited care if the facility meets the limited care classification requirements of the Life Safety Code.

Source: Laws 2004, LB 1005, § 51.

71-5908 Rules and regulations.

The department shall adopt and promulgate rules and regulations necessary to carry out the Assisted-Living Facility Act, including, but not limited to, rules and regulations which:

(1) Prohibit the use of chemical or physical restraints at an assisted-living facility;

(2) Require that a criminal background check be conducted on all persons employed as direct care staff at an assisted-living facility;

(3) Establish initial and ongoing training requirements for administrators and approved curriculum for such training. Such requirements shall consist of thirty hours of initial training, including, but not limited to, training in resident care and services, social services, financial management, administration, gerontology, and rules, regulations, and standards relating to the operation of an assisted-living facility. The department may waive initial training requirements established under this subdivision for persons employed as administrators of assisted-living facilities on January 1, 2005, upon application to the department and documentation of equivalent training or experience satisfactory to the department. Training requirements established under this subdivision shall not apply to an administrator who is also a nursing home administrator or a hospital administrator; and

(4) Provide for acceptance of accreditation by a recognized independent accreditation body or public agency, which has standards that are at least as stringent as those of the State of Nebraska, as evidence that the assisted-living facility complies with rules and regulations adopted and promulgated under the Assisted-Living Facility Act.

Source: Laws 2004, LB 1005, § 52.

71-5909 Repealed. Laws 2000, LB 819, § 162.

ARTICLE 60

NURSING HOMES

Cross References

Assistance to the aged, blind, or disabled, see section 68-1001 et seq.
Elections, voter assistance, see section 32-944.
Health Care Facility Licensure Act, see section 71-401.
Hospital districts, see Chapter 23, article 35.
Long-Term Care Insurance Act, see section 44-4501.
Medical Assistance Act, see section 68-901.
Medication Aide Act, see section 71-6718.
Nursing Home Administrator Practice Act, see section 38-2401.
Restrictions on appointment as visitor, guardian, or conservator, see sections 30-2624, 30-2627, and 30-2639.
Veterans' homes, see Chapter 80, article 3.

(a) RECEIVERS

Section
71-6001. Transferred to section 71-2084.
71-6002. Transferred to section 71-2085.
71-6003. Transferred to section 71-2086.
71-6004. Transferred to section 71-2092.
71-6005. Transferred to section 71-2093.
71-6006. Transferred to section 71-2095.
71-6007. Transferred to section 71-2096.

(b) NEBRASKA NURSING HOME ACT

71-6008. Definitions, where found.
71-6009. Repealed. Laws 1998, LB 1354, § 48.
71-6010. Department, defined.
71-6011. Repealed. Laws 2007, LB 296, § 815.
71-6012. Nursing home, defined.
71-6013. Resident, defined.

(a) RECEIVERS

71-6001 Transferred to section 71-2084.

71-6002 Transferred to section 71-2085.

71-6003 Transferred to section 71-2086.

71-6004 Transferred to section 71-2092.

71-6005 Transferred to section 71-2093.

71-6006 Transferred to section 71-2095.

71-6007 Transferred to section 71-2096.

(b) NEBRASKA NURSING HOME ACT

71-6008 Definitions, where found.

As used in the Nebraska Nursing Home Act, unless the context otherwise requires, the definitions found in sections 71-6010 to 71-6017.01 shall apply.

Source: Laws 1983, LB 235, § 1; Laws 1986, LB 782, § 4; Laws 1998, LB 1354, § 38.

71-6009 Repealed. Laws 1998, LB 1354, § 48.

71-6010 Department, defined.

Department shall mean the Department of Health and Human Services.

Source: Laws 1983, LB 235, § 3; Laws 1996, LB 1044, § 745; Laws 2007, LB296, § 638.

71-6011 Repealed. Laws 2007, LB 296, § 815.

71-6012 Nursing home, defined.

Nursing home shall mean a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1983, LB 235, § 5; Laws 2000, LB 819, § 122.

71-6013 Resident, defined.

Resident shall mean any person domiciled, residing, or receiving care and treatment, for a period in excess of twenty-four hours, in a nursing home.

Source: Laws 1983, LB 235, § 6.

71-6014 Repealed. Laws 2004, LB 1005, § 145.

71-6015 Repealed. Laws 2004, LB 1005, § 145.

71-6016 License, defined.

License shall mean a license to operate a nursing home issued under the Health Care Facility Licensure Act.

Source: Laws 1983, LB 235, § 9; Laws 2000, LB 819, § 123.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-6017 Licensee, defined.

Licensee shall mean the holder of a license.

Source: Laws 1983, LB 235, § 10.

71-6017.01 Medicaid, defined.

Medicaid means the medical assistance program established pursuant to the Medical Assistance Act.

Source: Laws 1986, LB 782, § 1; Laws 2006, LB 1248, § 78.

Cross References

Medical Assistance Act, see section 68-901.

71-6018 Repealed. Laws 2000, LB 819, § 162.

71-6018.01 Nursing facility; nursing requirements; waiver; procedure.

(1) Unless a waiver is granted pursuant to subsection (2) of this section, a nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive either the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse for at least eight consecutive hours per day, seven days per week, or the requirement that a nursing facility or long-term care hospital certified under Title XIX of the federal Social Security Act, as amended, use the services of a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week, including the requirement for a charge nurse on each tour of duty, if:

(a)(i) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, including offering wages

at the community prevailing rate for the facilities or hospitals, to recruit appropriate personnel;

(ii) The department determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility or hospital; and

(iii) The department finds that, for any periods in which licensed nursing services are not available, a licensed registered nurse or physician is obligated to respond immediately to telephone calls from the facility or hospital; or

(b) The department has been granted any waiver by the federal government of staffing standards for certification under Title XIX of the federal Social Security Act, as amended, and the requirements of subdivisions (a)(ii) and (iii) of this subsection have been met.

(3) The department shall apply for such a waiver from the federal government to carry out subdivision (1)(b) of this section.

(4) A waiver granted under this section shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel. The department may grant a waiver under this section if it determines that the waiver will not cause the State of Nebraska to fail to comply with any of the applicable requirements of medicaid so as to make the state ineligible for the receipt of all funds to which it might otherwise be entitled.

(5) The department shall provide notice of the granting of a waiver to the office of the state long-term care ombudsman and to the Nebraska Advocacy Services or any successor designated for the protection of and advocacy for persons with mental illness or mental retardation. A nursing facility granted a waiver shall provide written notification to each resident of the facility or, if appropriate, to the guardian, legal representative, or immediate family of the resident.

Source: Laws 2000, LB 819, § 126; Laws 2007, LB296, § 639.

71-6018.02 Skilled nursing facility; nursing requirements; waiver; procedure.

(1) Unless a waiver is granted pursuant to subsection (2) of this section, a skilled nursing facility shall use the services of (a) a licensed registered nurse for at least eight consecutive hours per day, seven days per week and (b) a licensed registered nurse or licensed practical nurse on a twenty-four-hour basis seven days per week. Except when waived under subsection (2) of this section, a skilled nursing facility shall designate a licensed registered nurse or licensed practical nurse to serve as a charge nurse on each tour of duty. The Director of Nursing Services shall be a licensed registered nurse, and this requirement shall not be waived. The Director of Nursing Services may serve as a charge nurse only when the skilled nursing facility has an average daily occupancy of sixty or fewer residents.

(2) The department may waive the evening and night staffing requirements for skilled nursing facilities or for long-term care hospitals certified under Title XVIII of the federal Social Security Act, as amended, except the requirement that the Director of Nursing Services be a licensed registered nurse, if:

(a) The facility or hospital demonstrates to the satisfaction of the department that it has been unable, despite diligent efforts, to hire enough licensed

registered nurses and licensed practical nurses to fulfill such requirements. For purposes of this subdivision, diligent efforts include, but are not limited to, offering wages equal to or greater than the community prevailing wage rate being paid such nurses at nursing facilities;

(b) The department determines that a waiver of the requirement will not endanger the health or safety of residents of the facility or hospital; and

(c) The department finds that, for any period in which staffing requirements cannot be met, a licensed registered nurse or a physician is obligated to respond immediately to telephone calls from the facility or hospital.

A waiver granted under this subsection shall be subject to annual review by the department. As a condition of granting or renewing a waiver, a facility or hospital may be required to employ other qualified licensed personnel.

(3) The department may waive the requirement that a skilled nursing facility or long-term care hospital certified under Title XVIII of the federal Social Security Act, as amended, provide a licensed registered nurse on duty at the facility or hospital for more than forty hours per week if:

(a) The facility or hospital is located in a nonurban area where the supply of skilled nursing facility services is not sufficient to meet the needs of individuals residing in the area;

(b) The facility or hospital has one full-time licensed registered nurse who is regularly on duty at the facility or hospital forty hours per week; and

(c) The facility or hospital (i) has only patients whose physicians have indicated through orders or admission or progress notes that the patients do not require the services of a licensed registered nurse or a physician for more than forty hours per week or (ii) has made arrangements for a licensed registered nurse or a physician to spend time at the facility or hospital, as determined necessary by the physician, to provide the necessary services on days when the regular, full-time licensed registered nurse is not on duty.

A waiver may be granted under this subsection for a period of up to one year by the department.

Source: Laws 2000, LB 819, § 127.

71-6019 Access to residents; when permitted.

Any employee, representative, or agent of the department, the office of the state long-term care ombudsman, a law enforcement agency, or the local county attorney shall be permitted access at any hour to any resident of any nursing home. Friends and relatives of a resident shall have access during normal visiting and business hours of the facility. Representatives of community legal services programs, volunteers, and members of community organizations shall have access, after making arrangements with proper personnel of the home, during regular visiting and business hours if the purpose of such access is to:

(1) Visit, talk with, and make personal, social, and legal services available to all residents;

(2) Inform residents of their rights and entitlements and their corresponding obligations under federal and state laws by means of educational materials and discussions in groups and with individual residents;

(3) Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or

(4) Engage in other methods of asserting, advising, and representing residents so as to extend to them full enjoyment of their rights.

Source: Laws 1983, LB 235, § 12; Laws 1992, LB 677, § 32; Laws 1996, LB 1044, § 747; Laws 2007, LB296, § 640.

71-6020 Visitor; visitation procedures.

Any person entering a nursing home pursuant to section 71-6019 shall first notify appropriate nursing home personnel of his or her presence. He or she shall, upon request, produce identification to establish his or her identity. No such person shall enter the immediate living area of any resident without first identifying himself or herself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected.

Source: Laws 1983, LB 235, § 13.

71-6021 Administrator refuse access; hearing; procedure; access authorized.

(1) Notwithstanding the provisions of sections 71-6019 and 71-6020, the administrator of a nursing home may refuse access to the nursing home to any person if the presence of such person in the nursing home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the nursing home or if the person seeks access to the nursing home for commercial purposes. Any person refused access to a nursing home may, within thirty days of such refusal, request a hearing by the department. The wrongful refusal of a nursing home to grant access to any person as required in sections 71-6019 and 71-6020 shall constitute a violation of the Nebraska Nursing Home Act. A nursing home may appeal any citation issued pursuant to this section in the manner provided in sections 71-452 to 71-455.

(2) Nothing in sections 71-6019 to 71-6021 shall be construed to prevent (a) an employee of the department, acting in his or her official capacity, from entering a nursing home for any inspection authorized by the act or any rule or regulation adopted and promulgated pursuant thereto or (b) a state long-term care ombudsman or an ombudsman advocate, acting in his or her official capacity, from entering a nursing home to conduct an investigation authorized by any rules and regulations promulgated by the department.

Source: Laws 1983, LB 235, § 14; Laws 1992, LB 677, § 33; Laws 1996, LB 1044, § 748; Laws 2000, LB 819, § 124; Laws 2007, LB296, § 641.

71-6022 Transfer or discharge of resident; conditions; procedure; involuntary transfer or discharge; notice requirements.

(1) A nursing home shall not transfer or discharge a resident except (a) upon his or her consent, (b) for medical reasons, (c) for the resident's safety or the safety of other residents or nursing home employees, (d) when rehabilitation is such that movement to a less restrictive setting is possible, or (e) for nonpay-

ment for the resident's stay, except as prohibited by section 71-6023.01 or by Title XVIII or XIX of the Social Security Act as amended.

(2) Involuntary transfer from a nursing home or discharge of a resident shall be preceded by a minimum written notice of thirty days, except when subdivision (d) of subsection (1) of this section applies, five days written notice shall be given to the resident or his or her representative and when subdivision (e) of subsection (1) of this section applies, a resident shall be given ten days' written notice if his or her charges are five days or more in arrears. This subsection shall not apply when (a) an emergency transfer or discharge is mandated by the resident's health care needs and is in accord with the written orders and medical justification of the attending physician or (b) the transfer is mandated by the physical safety of other residents or nursing home employees, as documented in the nursing home records.

Source: Laws 1983, LB 235, § 15; Laws 1986, LB 782, § 5.

71-6023 Involuntary transfer or discharge; notice; contents.

(1) The notice required by subsection (2) of section 71-6022 shall contain:

(a) The stated reason for the proposed transfer or discharge;

(b) The effective date of the proposed transfer or discharge; and

(c) In not less than twelve-point type, the text of section 71-445.

(2) A copy of the notice required by subsection (2) of section 71-6022 shall be transmitted to the resident and the resident's representative, if a representative has been designated.

Source: Laws 1983, LB 235, § 16; Laws 2000, LB 819, § 125.

71-6023.01 Licensure; retention of medicaid resident required; when.

A nursing home seeking or renewing a license shall be required to retain a resident whose economic status changes so that such resident receives medicaid or becomes eligible for medicaid if such resident has resided in the nursing home for a period of at least one year after July 17, 1986, unless ten percent of such nursing home's residents are receiving medicaid or are eligible for medicaid. Such requirement shall constitute a condition of licensure. The department shall notify the nursing home of such requirement ninety days prior to the renewal of a license or upon application for a license. For purposes of this section, nursing homes shall include long-term care hospitals, including long-term care units of a hospital. This section shall not apply to the Nebraska veterans homes established pursuant to Chapter 80, article 3.

Source: Laws 1986, LB 782, § 2; Laws 1990, LB 1064, § 30.

71-6024 Repealed. Laws 2000, LB 819, § 162.

71-6025 Repealed. Laws 2000, LB 819, § 162.

71-6026 Repealed. Laws 2000, LB 819, § 162.

71-6027 Repealed. Laws 2000, LB 819, § 162.

71-6028 Repealed. Laws 2000, LB 819, § 162.

71-6029 Repealed. Laws 2000, LB 819, § 162.

71-6030 Repealed. Laws 2000, LB 819, § 162.

71-6031 Repealed. Laws 2000, LB 819, § 162.

71-6032 Repealed. Laws 2000, LB 819, § 162.

71-6033 Repealed. Laws 2000, LB 819, § 162.

71-6034 Repealed. Laws 2000, LB 819, § 162.

71-6035 Repealed. Laws 2000, LB 819, § 162.

71-6036 Repealed. Laws 2000, LB 819, § 162.

71-6037 Act, how cited.

Sections 71-6008 to 71-6037 shall be known and may be cited as the Nebraska Nursing Home Act.

Source: Laws 1983, LB 235, § 30; Laws 1986, LB 782, § 6; Laws 2000, LB 819, § 128.

(c) TRAINING REQUIREMENTS

71-6038 Terms, defined.

For purposes of sections 71-6038 to 71-6042:

(1) Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube or parenteral or intravenous feedings;

(2) Department means the Department of Health and Human Services;

(3) Nursing assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the performance of nonspecialized tasks related to the personal care and comfort of residents other than a paid dining assistant or a licensed registered or practical nurse;

(4) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-421, 71-422, 71-424, and 71-429; and

(5) Paid dining assistant means any person employed by a nursing home for the purpose of aiding a licensed registered or practical nurse through the feeding of residents other than a nursing assistant or a licensed registered or practical nurse.

Source: Laws 1983, LB 273, § 1; Laws 1984, LB 416, § 10; Laws 1988, LB 190, § 4; Laws 1990, LB 1080, § 6; Laws 1994, LB 1210, § 148; Laws 1996, LB 1044, § 749; Laws 1998, LB 1354, § 40; Laws 2004, LB 1005, § 110; Laws 2007, LB296, § 642; Laws 2007, LB463, § 1235.

71-6039 Nursing assistant; qualifications; training requirements; department; duties; licensure as nurse; effect.

(1) No person shall act as a nursing assistant in a nursing home unless such person:

(a) Is at least sixteen years of age and has not been convicted of a crime involving moral turpitude;

(b) Is able to speak and understand the English language or a language understood by a substantial portion of the nursing home residents; and

(c) Has successfully completed a basic course of training approved by the department for nursing assistants within one hundred twenty days of initial employment in the capacity of a nursing assistant at any nursing home.

(2)(a) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not act as a nursing assistant in a nursing home.

(b) If a person registered as a nursing assistant becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a nursing assistant becomes null and void as of the date of licensure.

(c) A person listed on the Nurse Aide Registry with respect to whom a finding of conviction has been placed on the registry may petition the department to have such finding removed at any time after one year has elapsed since the date such finding was placed on the registry.

(3) The department may prescribe a curriculum for training nursing assistants and may adopt and promulgate rules and regulations for such courses of training. The content of the courses of training and competency evaluation programs shall be consistent with federal requirements unless exempted. The department may approve courses of training if such courses of training meet the requirements of this section. Such courses of training shall include instruction on the responsibility of each nursing assistant to report suspected abuse or neglect pursuant to sections 28-372 and 28-711. Nursing homes may carry out approved courses of training within the nursing home, except that nursing homes may not conduct the competency evaluation part of the program. The prescribed training shall be administered by a licensed registered nurse.

(4) For nursing assistants at intermediate care facilities for the mentally retarded, such courses of training shall be no less than twenty hours in duration and shall include at least fifteen hours of basic personal care training and five hours of basic therapeutic and emergency procedure training, and for nursing assistants at all nursing homes other than intermediate care facilities for the mentally retarded, such courses shall be no less than seventy-five hours in duration.

(5) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Source: Laws 1983, LB 273, § 2; Laws 1984, LB 416, § 11; Laws 1986, LB 921, § 11; Laws 1988, LB 463, § 49; Laws 1990, LB 1080, § 7; Laws 1994, LB 1210, § 149; Laws 2004, LB 1005, § 111; Laws 2007, LB185, § 43; Laws 2007, LB463, § 1236.

71-6039.01 Paid dining assistant; qualifications.

No person shall act as a paid dining assistant in a nursing home unless such person:

(1) Is at least sixteen years of age;

(2) Is able to speak and understand the English language or a language understood by the nursing home resident being fed by such person;

(3) Has successfully completed at least eight hours of training as prescribed by the department for paid dining assistants;

(4) Has no adverse findings on the Nurse Aide Registry or the Adult Protective Services Central Registry; and

(5) Has no adverse findings on the central register created in section 28-718 if the nursing home which employs such person as a paid dining assistant has at any one time more than one resident under the age of nineteen years.

Source: Laws 2004, LB 1005, § 115.

71-6039.02 Paid dining assistant; permitted activities.

A paid dining assistant shall:

(1) Only feed residents who have no complicated feeding problems as selected by the nursing home based on the resident's latest assessment and plan of care and a determination by the charge nurse that the resident's condition at the time of such feeding meets that plan of care;

(2) Work under the supervision of a licensed registered or practical nurse who is in the nursing home and immediately available; and

(3) Call a supervisor for help in an emergency.

Source: Laws 2004, LB 1005, § 116.

71-6039.03 Paid dining assistant; training requirements.

(1) The department may prescribe a curriculum for training paid dining assistants and may adopt and promulgate rules and regulations for such courses of training. Such courses shall be no less than eight hours in duration. The department may approve courses of training for paid dining assistants that meet the requirements of this section. Nursing homes may carry out approved courses of training and competency evaluation programs at the nursing home. Training of paid dining assistants shall be administered by a licensed registered nurse.

(2) Courses of training and competency evaluation programs for paid dining assistants shall include:

(a) Feeding techniques;

(b) Assistance with feeding and hydration;

(c) Communication and interpersonal skills;

(d) Appropriate responses to resident behavior;

(e) Safety and emergency procedures, including the abdominal thrust maneuver;

(f) Infection control;

(g) Resident rights;

(h) Recognizing changes in residents that are inconsistent with their normal behavior and the importance of reporting those changes to the supervisory nurse;

(i) Special needs; and

(j) Abuse and neglect, including the responsibility to report suspected abuse or neglect pursuant to sections 28-372 and 28-711.

(3) This section shall not prohibit any facility from exceeding the minimum hourly or training requirements.

Source: Laws 2004, LB 1005, § 117.

71-6039.04 Paid dining assistant registry.

The department shall maintain a paid dining assistant registry and shall include in the registry individuals who have successfully completed a paid dining assistant course of training and a competency evaluation program.

Source: Laws 2004, LB 1005, § 118.

71-6039.05 Paid dining assistant; nursing home; duties.

Each nursing home shall maintain (1) a record of all paid dining assistants employed by such facility, (2) verification of successful completion of a training course for each paid dining assistant, and (3) verification that the facility has made checks with the Nurse Aide Registry, the Adult Protective Services Central Registry, and the central register created in section 28-718, if applicable under section 71-6039.01, with respect to each paid dining assistant.

Source: Laws 2004, LB 1005, § 119.

71-6039.06 Eligibility for Licensee Assistance Program.

Nursing assistants and paid dining assistants are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 2007, LB463, § 1240.

71-6040 Department; approve programs and materials.

The department shall approve all courses, lectures, seminars, course materials, or other instructional programs used to meet the requirements of sections 71-6038 to 71-6042.

Source: Laws 1983, LB 273, § 3; Laws 1996, LB 1044, § 750; Laws 2004, LB 1005, § 112; Laws 2007, LB463, § 1237.

71-6041 Department; adopt rules and regulations.

To protect the health, safety, and welfare of nursing home residents and the public, the department shall adopt and promulgate such rules and regulations as are necessary for the effective administration of sections 71-6038 to 71-6042. Such rules and regulations shall be consistent with federal requirements developed by the United States Department of Health and Human Services.

Source: Laws 1983, LB 273, § 4; Laws 1994, LB 1210, § 150; Laws 1996, LB 1044, § 751; Laws 2004, LB 1005, § 113; Laws 2007, LB463, § 1238.

71-6042 Chief medical officer; enforcement; powers.

The chief medical officer as designated in section 81-3115 shall have the authority to enforce sections 71-6038 to 71-6042 and rules and regulations adopted under section 71-6041 by any of the following means: Denial, suspension, restriction, or revocation of a nursing home's license, refusal of the

renewal of a nursing home's license, restriction of a nursing home's admissions, or any other enforcement provision granted to the department.

Source: Laws 1983, LB 273, § 5; Laws 2004, LB 1005, § 114; Laws 2007, LB296, § 643; Laws 2007, LB463, § 1239.

(d) NURSING HOME ADVISORY COUNCIL

71-6043 Terms, defined.

As used in sections 71-6043 to 71-6052, unless the context otherwise requires:

(1) Council means the Nursing Home Advisory Council as established by sections 71-6043 to 71-6052;

(2) Department means the Division of Public Health of the Department of Health and Human Services; and

(3) Nursing home means a nursing facility or a skilled nursing facility as defined in section 71-424 or 71-429.

Source: Laws 1967, c. 452, § 1, p. 1399; Laws 1982, LB 566, § 1; R.S.1943, (1986), § 71-2031; Laws 1996, LB 1044, § 752; Laws 1997, LB 307, § 193; Laws 2000, LB 819, § 129; Laws 2007, LB296, § 644.

71-6044 Nursing Home Advisory Council; created; duties.

There is hereby established a Nursing Home Advisory Council to advise and assist the department in carrying out the administration of the Health Care Facility Licensure Act and the rules, regulations, and standards adopted and promulgated pursuant thereto, as the same apply to nursing homes.

Source: Laws 1967, c. 452, § 2, p. 1400; Laws 1982, LB 566, § 2; R.S.1943, (1986), § 71-2032; Laws 2000, LB 819, § 130.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-6045 Council; members; qualifications.

The council shall consist of sixteen members appointed by the Governor as follows:

(1) One member shall be a licensed registered nurse in the State of Nebraska;

(2) One member shall be a licensed physician and surgeon in the State of Nebraska;

(3) One member shall be a licensed dentist in the State of Nebraska;

(4) One member shall be a licensed pharmacist in the State of Nebraska;

(5) Three members shall be representatives of the Department of Health and Human Services with interest in or responsibilities for aging programs, medicaid, and regulation and licensure of nursing homes;

(6) One member shall be a representative of an agency of state or local government, other than the Department of Health and Human Services, with interests in or responsibilities for nursing homes or programs related thereto;

(7) Four members shall be laypersons representative of the public;

(8) Two members shall be administrators or owners of proprietary nursing homes; and

(9) Two members shall be administrators or owners of voluntary nursing homes.

Members serving on July 1, 2007, may serve until a replacement is appointed.

Source: Laws 1967, c. 452, § 3, p. 1400; Laws 1989, LB 344, § 17; R.S.Supp.,1989, § 71-2033; Laws 1996, LB 1044, § 753; Laws 2001, LB 398, § 80; Laws 2007, LB296, § 645.

71-6046 Council; certain members; limitation on service.

Any member of the council who is representative of a state or local governmental agency may serve only during his continuance as an officer or employee of such state or local agency. No member of the council shall serve more than two successive terms. For the purpose of this section, service for more than eighteen months of a full term shall be deemed service for the full term.

Source: Laws 1967, c. 452, § 4, p. 1400; R.S.1943, (1986), § 71-2034.

71-6047 Council; members; terms; vacancies.

Members shall be appointed for three-year terms. Vacancies in any position on the council shall be filled for the unexpired portion of the term by appointment by the Governor in the same manner as provided for the original appointments.

Source: Laws 1967, c. 452, § 5, p. 1401; Laws 1989, LB 344, § 18; R.S.Supp.,1989, § 71-2035.

71-6048 Council; meetings; chairperson; secretary.

The council shall meet at least once during each calendar year and upon call of its chairperson or at the written request of a majority of its members. The council shall annually elect one of its members as chairperson and one of its members as secretary. The Director of Public Health or his or her designee shall represent the department at all meetings.

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2036; Laws 1997, LB 307, § 194; Laws 2007, LB296, § 646.

71-6049 Council; members; compensation; expenses.

Members of the council shall serve without compensation but shall be entitled to receive reimbursement for their reasonable expenses incurred in connection with their duties as members of such council from the Nebraska Health Care Association or the Nebraska Association of Homes for the Aging or such other association or group of nursing home licensees as voluntarily agrees to provide reimbursement for such expenses. No funds or state money shall be drawn upon to pay the expenses of administering sections 71-6043 to 71-6052.

Source: Laws 1967, c. 452, § 6, p. 1401; R.S.1943, (1986), § 71-2037; Laws 2000, LB 819, § 131.

71-6050 Council; duties.

(1) The council shall advise and make recommendations to the department on all matters pertaining to the licensure and regulation of nursing homes in this state.

(2) In furtherance of such powers, the council shall:

(a) Study, review, and make recommendations from time to time to the department for rules and standards governing the licensing and operation of nursing homes in this state;

(b) Recommend procedures to the department in making inspections, reviewing applications, conducting hearings, and performing other duties of the department relative to nursing homes;

(c) Assist the department in the formulation of minimum standards and regulations for nursing homes in this state; and

(d) Perform such other duties as may be necessary to carry out the purposes and intent of sections 71-6043 to 71-6052.

Source: Laws 1967, c. 452, § 8, p. 1401; Laws 1982, LB 566, § 3; R.S.1943, (1986), § 71-2038; Laws 1998, LB 1070, § 19; Laws 2000, LB 1427, § 1; Laws 2000, LB 819, § 132; Laws 2001, LB 692, § 12.

71-6051 Council; nursing home operating without license; report.

The council may study the operation and activities of any person, firm, association, or corporation suspected of operating a nursing home without first having obtained a license therefor. If the council obtains information concerning violations of the Health Care Facility Licensure Act, such information shall be furnished to the department for appropriate action. The department shall make a complete report to the council on the progress and results of the appropriate action taken.

Source: Laws 1967, c. 452, § 9, p. 1402; Laws 1982, LB 566, § 4; R.S.1943, (1986), § 71-2039; Laws 2000, LB 819, § 133.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-6052 Act and sections, purpose.

It is the purpose and intent of the Nebraska Nursing Home Act and sections 71-6043 to 71-6052 that licensing and regulation of nursing homes in this state shall be governed by the Health Care Facility Licensure Act, the Nebraska Nursing Home Act, and sections 71-6043 to 71-6052.

Source: Laws 1967, c. 452, § 10, p. 1402; Laws 1983, LB 235, § 34; Laws 1986, LB 782, § 3; R.S.1943, (1986), § 71-2040; Laws 2000, LB 819, § 134.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Nursing Home Act, see section 71-6037.

(e) NURSING HOME ADMINISTRATION

71-6053 Repealed. Laws 2007, LB 463, § 1319.

71-6054 Transferred to section 38-2419.

71-6055 Transferred to section 38-2420.

71-6056 Transferred to section 38-2421.

71-6057 Repealed. Laws 2007, LB 463, § 1319.

71-6058 Transferred to section 38-2422.

71-6059 Repealed. Laws 2007, LB 463, § 1319.

71-6060 Transferred to section 38-2424.

71-6061 Repealed. Laws 2007, LB 463, § 1319.

71-6062 Transferred to section 38-2418.

71-6063 Transferred to section 38-2423.

71-6064 Repealed. Laws 2007, LB 463, § 1319.

71-6065 Transferred to section 38-2417.

71-6066 Repealed. Laws 2007, LB 463, § 1319.

71-6067 Repealed. Laws 2007, LB 463, § 1319.

71-6068 Repealed. Laws 2007, LB 463, § 1319.

ARTICLE 61
OCCUPATIONAL THERAPY

Section
71-6101. Transferred to section 38-2501.
71-6102. Transferred to section 38-2502.
71-6103. Transferred to section 38-2503.
71-6104. Transferred to section 38-2516.
71-6105. Transferred to section 38-2517.
71-6106. Transferred to section 38-2518.
71-6107. Transferred to section 38-2519.
71-6108. Transferred to section 38-2520.
71-6109. Repealed. Laws 2007, LB 463, § 1319.
71-6110. Repealed. Laws 2007, LB 463, § 1319.
71-6111. Repealed. Laws 2007, LB 463, § 1319.
71-6112. Repealed. Laws 2007, LB 463, § 1319.
71-6113. Transferred to section 38-2521.
71-6114. Transferred to section 38-2524.
71-6115. Transferred to section 38-2515.
71-6116. Repealed. Laws 2003, LB 242, § 154.
71-6117. Transferred to section 38-2525.
71-6118. Transferred to section 38-2526.
71-6119. Transferred to section 38-2527.
71-6120. Transferred to section 38-2528.
71-6121. Transferred to section 38-2529.
71-6122. Transferred to section 38-2530.
71-6123. Transferred to section 38-2531.

71-6101 Transferred to section 38-2501.

71-6102 Transferred to section 38-2502.

71-6103 Transferred to section 38-2503.

71-6104 Transferred to section 38-2516.

71-6105 Transferred to section 38-2517.

71-6106 Transferred to section 38-2518.

71-6107 Transferred to section 38-2519.

71-6108 Transferred to section 38-2520.

71-6109 Repealed. Laws 2007, LB 463, § 1319.

71-6110 Repealed. Laws 2007, LB 463, § 1319.

71-6111 Repealed. Laws 2007, LB 463, § 1319.

71-6112 Repealed. Laws 2007, LB 463, § 1319.

71-6113 Transferred to section 38-2521.

71-6114 Transferred to section 38-2524.

71-6115 Transferred to section 38-2515.

71-6116 Repealed. Laws 2003, LB 242, § 154.

71-6117 Transferred to section 38-2525.

71-6118 Transferred to section 38-2526.

71-6119 Transferred to section 38-2527.

71-6120 Transferred to section 38-2528.

71-6121 Transferred to section 38-2529.

71-6122 Transferred to section 38-2530.

71-6123 Transferred to section 38-2531.

ARTICLE 62

NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

Cross References

Asbestos Control Act, see section 71-6301.
Home health aides, see sections 71-6601 to 71-6615.
Medication Aide Act, see section 71-6718.
Nursing assistants, see sections 71-6038 to 71-6042.
Paid dining assistants, see section 71-6039.01 et seq.
Residential Lead-Based Paint Professions Practice Act, see section 71-6318.
Rules and regulations for regulated health professions and occupations, see section 71-2610.01.
State Board of Health, see section 71-2601 et seq.
Uniform Credentialing Act, see section 38-101.

Section

Section

71-6201 Act, how cited.

Sections 71-6201 to 71-6229 shall be known and may be cited as the Nebraska Regulation of Health Professions Act.

Source: Laws 1985, LB 407, § 1; Laws 1988, LB 384, § 1; Laws 1993, LB 536, § 102.

71-6202 Purpose of act.

The purpose of the Nebraska Regulation of Health Professions Act is to establish guidelines for the regulation of health professions not licensed or regulated prior to January 1, 1985, and those licensed or regulated health professions which seek to change their scope of practice. The act is not intended and shall not be construed to apply to any regulatory entity created prior to January 1, 1985, or to any remedial or technical amendments to any laws which licensed or regulated activity prior to January 1, 1985, except as provided in such act. The Legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public.

Source: Laws 1985, LB 407, § 2.

71-6203 Definitions, where found.

For purposes of the Nebraska Regulation of Health Professions Act, unless the context otherwise requires, the definitions found in sections 71-6204 to 71-6220.01 shall be used.

Source: Laws 1985, LB 407, § 3; Laws 1988, LB 384, § 2; Laws 1993, LB 536, § 103.

71-6204 Applicant group, defined.

Applicant group shall mean any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not previously regulated be regulated or which proposes to change the scope of practice of a regulated health profession.

Source: Laws 1985, LB 407, § 4.

71-6205 Board, defined.

Board shall mean the State Board of Health.

Source: Laws 1985, LB 407, § 5.

71-6206 Certificate or certification, defined.

Certificate or certification shall mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who has met certain prerequisite qualifications specified by such regulatory entity and who may assume or use certified in the title or designation to perform prescribed health professional tasks.

Source: Laws 1985, LB 407, § 6.

71-6206.01 Chairperson, defined.

Chairperson shall mean the chairperson of the Health and Human Services Committee of the Legislature.

Source: Laws 1993, LB 536, § 104.

71-6207 Committee, defined.

Committee shall mean the technical committee created in section 71-6224.

Source: Laws 1985, LB 407, § 7.

71-6207.01 Credentialing, defined.

Credentialing shall mean the process of regulating health professions by means of registration, certification, or licensure.

Source: Laws 1988, LB 384, § 3.

71-6207.02 Directed review, defined.

Directed review shall mean a review conducted at the request of the director and the chairperson in which (1) there shall be no applicant group or application, (2) the duty of the committee shall be to formulate an initial proposal on the issues subject to review, and (3) the duty of the board and the director shall be to evaluate the proposal using the appropriate criteria and to make recommendations to the Legislature.

Source: Laws 1993, LB 536, § 105.

71-6208 Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652.

71-6209 Grandfather clause, defined.

Grandfather clause shall mean a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

Source: Laws 1985, LB 407, § 9.

71-6210 Health profession, defined.

Health profession shall mean any regulated health profession or any health professional group not previously regulated.

Source: Laws 1985, LB 407, § 10.

71-6211 Health professional group not previously regulated, defined.

Health professional group not previously regulated shall mean those persons or groups who are not currently licensed or otherwise regulated under the Uniform Credentialing Act, who are determined by the director to be qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

(1) Preventing physical, mental, or emotional injury or illness, excluding persons acting in their capacity as clergy;

(2) Facilitating recovery from injury or illness; or

(3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6212 Inspection, defined.

Inspection shall mean the periodic examination of practitioners by a state agency in order to ascertain whether the practitioner's occupation is being carried out in a manner consistent with the public health, safety, and welfare.

Source: Laws 1985, LB 407, § 12.

71-6213 License, licensing, or licensure, defined.

License, licensing, or licensure shall mean permission to engage in a health profession which would otherwise be unlawful in this state in the absence of such permission and which is granted to individuals who meet prerequisite qualifications and allows them to perform prescribed health professional tasks and use a particular title.

Source: Laws 1985, LB 407, § 13.

71-6214 Professional license, defined.

Professional license shall mean an individual nontransferable authorization to work in a health profession based on qualifications which include graduation

from an accredited or approved program and acceptable performance on a qualifying examination or series of examinations.

Source: Laws 1985, LB 407, § 14.

71-6215 Practitioner, defined.

Practitioner shall mean an individual who has achieved knowledge and skill by the practice of a specified health profession and is actively engaged in such profession.

Source: Laws 1985, LB 407, § 15.

71-6216 Public member, defined.

Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

Source: Laws 1985, LB 407, § 16.

71-6217 Registration, defined.

Registration shall mean the formal notification which, prior to rendering services, a practitioner submits to a state agency setting forth the name and address of the practitioner, the location, nature, and operation of the health activity to be practiced, and such other information which is required by the regulatory entity. A registered practitioner may be subject to discipline and standards of professional conduct established by the regulatory entity but shall not be required to meet any test of education, experience, or training in order to render services.

Source: Laws 1985, LB 407, § 17; Laws 1988, LB 384, § 5.

71-6218 Regulated health professions, defined.

Regulated health professions shall mean those persons or groups who are currently licensed or otherwise regulated under the Uniform Credentialing Act, who are qualified by training, education, or experience to perform the functions prescribed in this section, and whose principal functions, customarily performed for remuneration, are to render services directly or indirectly to individuals for the purpose of:

(1) Preventing physical, mental, or emotional injury or illness;

(2) Facilitating recovery from injury or illness; or

(3) Providing rehabilitative or continuing care following injury or illness.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6219 Regulatory entity, defined.

Regulatory entity shall mean any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

Source: Laws 1985, LB 407, § 19.

71-6219.01 Review body, defined.

Review body shall mean the committee, the board, or the director charged with reviewing applications for new credentialing or change in scope of practice.

Source: Laws 1988, LB 384, § 6.

71-6220 State agency, defined.

State agency shall include every state office, department, board, commission, regulatory entity, and agency of the state and, when provided specifically by law to be a state agency for purposes of this section, programs and activities involving less than the full responsibility of a state agency.

Source: Laws 1985, LB 407, § 20; Laws 1991, LB 81, § 5.

71-6220.01 Welfare, defined.

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

Source: Laws 1988, LB 384, § 4.

71-6221 Regulation of health profession; change in scope of practice; when.

(1) After January 1, 1985, a health profession shall be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest;

(c) The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(2) If it is determined that practitioners of a health profession not currently regulated are prohibited from the full practice of their profession in Nebraska, then the following criteria shall be used to determine whether regulation is necessary:

(a) Absence of a separate regulated profession creates a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public;

(c) Creation of a separate regulated profession would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(3) After March 18, 1988, the scope of practice of a regulated health profession shall be changed only when:

(a) The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(c) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public; and

(d) The public cannot be effectively protected by other means in a more cost-effective manner.

(4) The Division of Public Health shall, by rule and regulation, establish standards for the application of each criterion which shall be used by the review bodies in recommending whether proposals for credentialing or change in scope of practice meet the criteria.

Source: Laws 1985, LB 407, § 21; Laws 1988, LB 384, § 7; Laws 1996, LB 1044, § 759; Laws 2007, LB296, § 653.

71-6222 Least restrictive method of regulation; how implemented.

After evaluating the criteria in sections 71-6221 to 71-6223 and considering governmental and societal costs and benefits, if the Legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation shall be implemented, consistent with the public interest and this section, as follows:

(1) When the threat to the public health, safety, welfare, or economic well-being is relatively small, regulation shall be by means other than direct credentialing of the health profession. Such regulation may include, but shall not be limited to:

(a) Inspection requirements;

(b) Enabling an appropriate state agency to bring an end to a harmful practice by injunctive relief in court;

(c) Regulating the business activity or entity providing the service rather than the employees of the business or entity; or

(d) Regulating or modifying the regulation of the health profession supervising or responsible for the service being performed;

(2) When there exists a diversity of approaches, methods, and theories by which services may be rendered and when the right of the consumer to choose freely among such options is considered to be of equal importance with the need to protect the public from harm, the regulation shall implement a system of registration;

(3) When the consumer may have a substantial basis for relying on the services of a practitioner, the regulation shall implement a system of certification; or

(4) When it is apparent that adequate regulation cannot be achieved by means other than licensing, the regulation shall implement a system of licensing.

Source: Laws 1985, LB 407, § 22; Laws 1988, LB 384, § 8.

71-6223 Letter of intent; application; contents.

An applicant group shall submit a letter of intent to file an application to the director on forms prescribed by the director. The letter of intent shall identify the applicant group, the proposed regulation or change in scope of practice sought, and information sufficient for the director to determine whether the application is eligible for review. The director shall notify the applicant group as to whether it is eligible for review within fifteen days of the receipt of the letter of intent. The final application shall be submitted to the director who shall notify the applicant group of its acceptance for review within fifteen days of receipt of the final application. If more than one application is received in a given year, the director may establish the order in which applications shall be reviewed. The application shall include an explanation of:

(1) The problem and why regulation or change of the scope of practice of a health profession is necessary, including (a) the nature of the potential harm to the public if the health profession is not regulated or the scope of practice of a health profession is not changed and the extent to which there is a threat to public health and safety, (b) the extent to which consumers need, and will benefit from, a method of regulation identifying competent practitioners and indicating typical employers, if any, of practitioners in the health profession, and (c) the extent of autonomy a practitioner has, as indicated by the extent to which the health profession calls for independent judgment, the extent of skill or experience required in making the independent judgment, and the extent to which practitioners are supervised;

(2) The efforts made to address the problem, including (a) voluntary efforts, if any, by members of the health profession to establish a code of ethics or help resolve disputes between health practitioners and consumers and (b) recourse to, and the extent of use of, applicable law and whether present law could be strengthened to control the problem;

(3) If the application is for the regulation of an unregulated health profession, an analysis of all feasible methods of regulation, including those methods listed in section 71-6222, identifying why each method is or is not appropriate for regulation of the profession;

(4) The benefit to the public if the health profession is regulated or the scope of practice of a health profession is changed, including:

(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent, as determined by:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examination and revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the adoption and promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certified, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and if an examination is required, by whom it will be developed and how the costs of development will be met; and

(d) Assurance of the public that practitioners have maintained their competence, including whether the registration, certification, or licensure will carry an expiration date and whether renewal will be based only upon payment of a fee or will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation or the change of scope of practice might harm the public, including:

(a) The extent to which regulation will restrict entry into the health profession as determined by (i) whether the proposed standards are more restrictive than necessary to ensure safe and effective performance and (ii) whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards, including (a) whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards or a code of ethics, and (b) how the proposed legislation will assure quality as determined by the extent to which a code of ethics, if any, will be adopted and the grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and

(8) The expected costs of regulation, including (a) the impact registration, certification, or licensure will have on the costs of the services to the public and (b) the cost to the state and to the general public of implementing the proposed legislation.

Source: Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9.

71-6223.01 Application fee; disposition; waiver.

Each application shall be accompanied by an application fee of five hundred dollars to be submitted at the time the letter of intent is filed. All application fees shall be deposited in the Nebraska Regulation of Health Professions Fund. The application fee shall not be refundable, but the director may waive all or part of the fee if he or she finds it to be in the public interest to do so. Such a finding by the director may include, but shall not be limited to, circumstances in which the director determines that the application would be eligible for review and:

(1) The applicant group is an agency of state government;

(2) Members of the applicant group will not be materially affected by the implementation of the proposed regulation or change in scope of practice; or

(3) Payment of the application fee would impose unreasonable hardship on members of the applicant group.

Source: Laws 1988, LB 384, § 14.

71-6223.02 Directed review; initiation; procedure; report.

At any time the director and the chairperson may initiate a directed review to determine the advisability of credentialing a health professional group not previously regulated, of changing the scope of practice of a regulated health profession, or of other issues regarding the regulation of health professions. Before initiating a directed review, the director and the chairperson shall determine that no appropriate applicant group exists. No letter of intent, applicant group, application, or application fee shall be required in a directed review. The duty of the committee in a directed review shall be to investigate the issues that are the subject of the review, to hold a public hearing to receive information from the public on the issues, to develop a specific proposal to address the issues investigated taking into account the appropriate criteria as set forth in section 71-6221, and to prepare a final report containing the committee's proposal, other options considered, and other relevant information.

Source: Laws 1993, LB 536, § 106.

71-6224 Technical committee; appointment; membership; meetings; duties.

(1) The director with the advice of the board shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group, any

health profession sought to be regulated by the application, or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than two members of the same regulated health profession, the applicant group, or the health profession sought to be regulated by an application serve on a technical committee.

(2) As soon as possible after its appointment, the committee shall meet and review the application assigned to it. Each committee shall conduct public factfinding hearings and shall otherwise investigate the application. Each committee shall comply with the Open Meetings Act.

(3) Applicant groups shall have the burden of bringing forth evidence upon which the committee shall make its findings. Each committee shall detail its findings in a report and file the report with the board and the director. Each committee shall evaluate the application presented to it on the basis of the appropriate criteria as established in sections 71-6221 to 71-6223. If a committee finds that all appropriate criteria are not met, it shall recommend denial of the application. If it finds that all appropriate criteria are met by the application as submitted, it shall recommend approval. If the committee finds that the criteria would be met if amendments were made to the application, it may recommend such amendments to the applicant group and it may allow such amendments to be made before making its final recommendations. If the committee recommends approval of an application for regulation of a health profession not currently regulated, it shall also recommend the least restrictive method of regulation to be implemented consistent with the cost-effective protection of the public and with section 71-6222. The committee may recommend a specific method of regulation not listed in section 71-6222 if it finds that such method is the best alternative method of regulation. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20.

Cross References

Open Meetings Act, see section 84-1407.

71-6225 Board; review technical committee report; report to director.

The board shall receive reports from the technical committees and shall meet to review and discuss each report. The board shall apply the criteria established in sections 71-6221 to 71-6223 and compile its own report, including its findings and recommendations, and submit such report, together with the committee report, to the director. The recommendation of the board shall be developed in a manner consistent with subsection (3) of section 71-6224.

Source: Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11.

71-6226 Director; prepare final report; recommendations.

(1) After receiving and considering reports from the committee or the board, the director shall prepare a final report for the Legislature. The final report shall include copies of the committee report and the board report, if any, but the director shall not be bound by the findings and recommendations of such

reports. The director in compiling his or her report shall apply the criteria established in sections 71-6221 to 71-6223 and may consult with the board or the committee. The recommendation of the director shall be developed in a manner consistent with subsection (3) of section 71-6224. The final report shall be submitted to the Speaker of the Legislature, the Chairperson of the Executive Board of the Legislature, and the Chairperson of the Health and Human Services Committee of the Legislature no later than nine months after the application is submitted to the director and shall be made available to all other members of the Legislature upon request.

(2) The director may recommend that no legislative action be taken on an application. If the director recommends that an application of an applicant group be approved, the director shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to such applicant group.

(3) An application which is resubmitted shall be considered the same as a new application.

Source: Laws 1985, LB 407, § 26; Laws 1988, LB 384, § 12.

71-6227 Rules and regulations; professional and clerical services; expenses.

(1) The director may, with the advice of the board, adopt and promulgate rules and regulations necessary to carry out the Nebraska Regulation of Health Professions Act.

(2) The director shall provide all necessary professional and clerical services to assist the committees and the board. Records of all official actions and minutes of all business coming before the committees and the board shall be kept. The director shall be the custodian of all records, documents, and other property of the committees and the board.

(3) Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177 for state employees.

Source: Laws 1985, LB 407, § 27.

71-6228 Nebraska Regulation of Health Professions Fund; created; use; investment.

The Nebraska Regulation of Health Professions Fund is hereby created. All money in the fund shall be used exclusively for the operation and administration of the Nebraska Regulation of Health Professions Act. The director shall annually determine the percent of all fees collected during that year pursuant to the licensing or regulation of regulated health professions to be credited to the fund, except that such percentage shall not be greater than five percent. 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.

Source: Laws 1985, LB 407, § 28; Laws 1988, LB 384, § 13; Laws 1995, LB 7, § 81; Laws 1996, LB 1044, § 760; Laws 1999, LB 828, § 175.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-6229 Act, how construed.

Nothing in the Nebraska Regulation of Health Professions Act shall apply to the practice of the religious tenets of any recognized church or religious denomination which includes healing solely by spiritual means through prayer.

Source: Laws 1985, LB 407, § 29.

71-6230 Repealed. Laws 1993, LB 536, § 128.

ARTICLE 63

ENVIRONMENTAL HAZARDS

Cross References

State Board of Health, powers and duties, see section 71-2610.01.
Uniform Credentialing Act, see section 38-101.

(a) ASBESTOS CONTROL

Section
71-6301. Terms, defined.
71-6302. Asbestos project; business entity; license required; exceptions; training course.
71-6303. Administration of act; rules and regulations; fees; department; powers and duties.
71-6304. Business entity; license; qualifications.
71-6305. License; application; contents.
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71-6307. Licensee or business entity; records required; contents.
71-6308. Repealed. Laws 1988, LB 1073, § 20.
71-6309. Waiver of requirements; when authorized.
71-6309.01. Repealed. Laws 1995, LB 406, § 96.
71-6310. Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications.
71-6310.01. Asbestos occupations; training courses; approval.
71-6310.02. Asbestos occupations; license; renewal; continuing competency requirements.
71-6310.03. Project designer or project monitor; duties.
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71-6311. Governmental body; contract with nonlicensee prohibited.
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(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT

71-6318. Act, how cited.
71-6318.01. Act; purpose and applicability.
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71-6319.02. Abatement or abatement project, defined.
71-6319.03. Accredited training program, defined.
71-6319.04. Licensed abatement worker, defined.
71-6319.05. Licensed firm, defined.
71-6319.06. Licensed inspector, defined.
71-6319.07. Licensed project designer, defined.
71-6319.08. Licensed risk assessor, defined.

(a) ASBESTOS CONTROL

71-6301 Terms, defined.

For purposes of the Asbestos Control Act, unless the context otherwise requires:

(1) Asbestos means asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite;

(2) Asbestos encapsulation project means activities which include the coating of asbestos-containing surface material with a bridging or penetrating type of sealing material for the intended purpose of preventing the continued release of asbestos fibers from the material into the air. Such project does not include the repainting of a previously painted nonfriable asbestos-containing surface which is not damaged primarily for improving the appearance of such surface;

(3) Asbestos enclosure project means activities which physically isolate friable asbestos and which control and contain fibers released from asbestos-containing material by constructing a permanent airtight barrier between the asbestos-containing material and the occupied building space;

(4) Asbestos occupation means an inspector, management planner, project designer, project monitor, supervisor, or worker;

(5) Asbestos project means an asbestos enclosure project, an asbestos encapsulation project, an asbestos removal project, an asbestos-related demolition project, or an asbestos-related dismantling project but does not include (a) any activities which affect three square feet or less or three linear feet or less of asbestos-containing material on or in a structure or equipment or any appurtenances thereto or (b) any activities physically performed by a homeowner, a member of the homeowner's family, or an unpaid volunteer on or in the homeowner's residential property of four units or less;

(6) Asbestos removal project means activities which include the physical removal of friable asbestos-containing material from the surface of a structure or from equipment which is intended to remain in place after the removal. Such project also includes the physical removal of asbestos from a structure or equipment after such structure or equipment has been removed as part of an asbestos-related dismantling project;

(7) Asbestos-related demolition project means activities which include the razing of all or a portion of a structure which contains friable asbestos-containing materials or other asbestos-containing materials which may become friable when such materials are cut, crushed, ground, abraded, or pulverized;

(8) Asbestos-related dismantling project means activities which include the disassembly, handling, and moving of the components of any structure or equipment which has been coated with asbestos-containing material without first removing such material from the structure or from the equipment;

(9) Business entity means a partnership, limited liability company, firm, association, corporation, sole proprietorship, public entity, or other public or private business concern involved in an asbestos project except an entity solely involved as a management planner or project designer;

(10) Demolition means the wrecking, razing, or removal of any structure or load-supporting structural item of any structure, including any related material handling operations, and includes the intentional burning of any structure;

(11) Department means the Department of Health and Human Services;

(12) Enclosure means the construction of an airtight, impermeable, permanent barrier around asbestos-containing material to control the release of asbestos fibers into the air;

(13) Friable asbestos means asbestos in a form which can be crumbled, pulverized, or reduced to powder by hand pressure;

(14) Inspector means an individual who is licensed by the department to identify and assess the condition of asbestos-containing material;

(15) Instructor means an individual who is approved by the department to teach an asbestos-related training course;

(16) License means an authorization issued by the department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization;

(17) Management planner means an individual who is licensed by the department to assess the hazard of materials containing asbestos, to determine the appropriate response actions, and to write management plans;

(18) Project designer means an individual who is licensed by the department to formulate plans and write specifications for conducting asbestos projects;

(19) Project monitor means an individual who is licensed by the department to observe abatement activities performed by contractors, to represent the building owner to ensure work is completed according to specifications and in compliance with statutes and regulations, and to perform air monitoring to determine final clearance;

(20) Project review means review of a licensed business entity's proposed asbestos project;

(21) Renovation means the altering of a structure, one or more structural items, or one or more equipment items in any way, including any asbestos project performed on a structure, structural item, or equipment item;

(22) Supervisor means an individual who is licensed by the department to supervise and direct an asbestos project in accordance with the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to such act; and

(23) Worker means an individual who is licensed by the department to clean, handle, repair, remove, encapsulate, haul, dispose of, or otherwise work with asbestos material in a nonsupervisory capacity.

Source: Laws 1986, LB 1051, § 1; Laws 1988, LB 1073, § 1; Laws 1990, LB 923, § 1; Laws 1993, LB 121, § 454; Laws 1995, LB 406, § 73; Laws 1996, LB 1044, § 761; Laws 2007, LB296, § 654; Laws 2007, LB463, § 1243.

71-6302 Asbestos project; business entity; license required; exceptions; training course.

Except as otherwise provided in this section or section 71-6309, a business entity shall not engage in an asbestos project unless the business entity holds a license for that purpose. A business entity which (1) only performs asbestos projects which are less than two hundred sixty linear feet or which are less than one hundred sixty square feet and linear feet in any combination or (2) uses its own employees for an asbestos project for the purpose of renovating, maintaining, or repairing its own facilities shall not be required to hold a license. Business entities not required to hold a license shall provide a training course to inform the employees of the health and safety aspects of the asbestos project, including the applicable state standards. The training course shall meet the standards for such course as prescribed in section 71-6310.01 and the rules and regulations adopted and promulgated pursuant to such section. The train-

ing course shall be available for review and approval upon inspection by the department.

Source: Laws 1986, LB 1051, § 2; Laws 1988, LB 1073, § 2; Laws 1990, LB 923, § 2; Laws 2002, LB 1021, § 98.

71-6303 Administration of act; rules and regulations; fees; department; powers and duties.

(1) The department shall administer the Asbestos Control Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out the act. The department shall adopt state standards governing asbestos projects and may adopt or incorporate part or all of any federal standards in the state standards so long as state standards are no less stringent than federal standards.

(3)(a) The department shall prescribe fees based upon the following schedule:

(i) For a business entity license or license renewal, not less than two thousand dollars or more than five thousand dollars;

(ii) For waiver on an emergency basis of a business entity license, not less than two thousand dollars or more than five thousand dollars;

(iii) For waiver of a license for a business entity not primarily engaged in asbestos projects, not less than two thousand dollars or more than five thousand dollars;

(iv) For approval of an initial training course, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(v) For approval of a review course or a four-hour course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if the inspection is required by the department;

(vi) For an onsite inspection of an asbestos project other than an initial inspection, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual asbestos project is in progress; and

(vii) For a project review of each asbestos project of a licensed business entity which is equal to or greater than two hundred sixty linear feet or any combination which is equal to or greater than one hundred sixty square feet and linear feet, including any initial onsite inspection, not less than two hundred dollars or more than five hundred dollars.

(b) Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of three hundred dollars for a license and one hundred dollars for approval of a training course shall be retained by the department.

(c) All fees shall be based on the costs of administering the Asbestos Control Act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and

Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an asbestos project, the department shall conduct an onsite inspection of each licensed business entity's procedures for performing asbestos projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for asbestos projects. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of asbestos occupations and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act.

Source: Laws 1986, LB 1051, § 3; Laws 1988, LB 1073, § 3; Laws 1991, LB 703, § 52; Laws 1995, LB 406, § 74; Laws 1996, LB 1044, § 762; Laws 2002, LB 1021, § 99; Laws 2003, LB 242, § 144; Laws 2007, LB296, § 655; Laws 2007, LB463, § 1244.

71-6304 Business entity; license; qualifications.

To qualify for a license, a business entity shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in asbestos projects;

(2) Ensure that each employee or agent of the business entity who will come into contact with asbestos or who will be present on an asbestos project is licensed as required by the Asbestos Control Act;

(3) Demonstrate to the satisfaction of the department that the business entity is capable of complying with all applicable requirements, procedures, and standards pertaining to the asbestos project;

(4) Have access to at least one approved asbestos disposal site for deposit of all asbestos waste that the business entity will generate during the term of the license; and

(5) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 4; Laws 1988, LB 1073, § 4; Laws 2007, LB463, § 1245.

71-6305 License; application; contents.

(1) To apply for a license, a business entity shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

(a) The name, address, and nature of the business entity;

(b) A statement that all individuals who will engage in any asbestos project for the business entity will be licensed as required by the Asbestos Control Act;

(c) A description of the protective clothing and respirators that the business entity will use;

(d) The name and address of each asbestos disposal site that the business entity will use;

(e) A description of the site decontamination procedures that the business entity will use;

(f) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the business entity will use;

(g) A description of the procedures that the business entity will use for handling waste containing asbestos;

(h) A description of the air monitoring procedures that the business entity will use;

(i) A description of the procedures that the business entity will use in cleaning up the asbestos project;

(j) The signature of the chief executive officer of the business entity or his or her designee; and

(k) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of the general public and all classes of asbestos occupations.

Source: Laws 1986, LB 1051, § 5; Laws 1988, LB 1073, § 5; Laws 2007, LB463, § 1246.

71-6306 License; term; renewal.

(1) A license of a business entity shall expire on the first anniversary of its effective date unless it is renewed for one year as provided in this section.

(2) At least thirty days before the license expires, the department shall send to the licensee at his or her last-known address a renewal notice which states:

(a) The date on which the current license expires;

(b) The date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license expires; and

(c) The amount of the renewal fee.

(3) Before the license expires, the licensee may renew it for an additional one-year period if the licensee:

(a) Is otherwise entitled to be licensed;

(b) Submits a renewal application to the department in the form required by the department; and

(c) Pays the renewal fee prescribed by the department.

Source: Laws 1986, LB 1051, § 6; Laws 1988, LB 1073, § 6; Laws 2007, LB463, § 1247.

71-6307 Licensee or business entity; records required; contents.

The licensee or a business entity, whether excepted from the requirements for licensure by section 71-6302 or whether operating under a waiver, shall keep a

record of each asbestos project and shall make the record available to the department at any reasonable time. All such records shall be kept for at least thirty years. Each record shall include:

(1) The name, address, and license number of the individual who supervised the asbestos project and of each employee or agent who worked on the project;

(2) The location and description of the project and the amount of asbestos material that was removed;

(3) The starting and completion dates of each instance of asbestos encapsulation, demolition, dismantling, maintenance, or removal;

(4) A summary of the procedures that were used to comply with all applicable standards;

(5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and

(6) Such other information as the department may deem necessary for the efficient administration and enforcement of the Asbestos Control Act and for the protection of the health, safety, and welfare of all classes of asbestos occupations and the general public.

Source: Laws 1986, LB 1051, § 7; Laws 1988, LB 1073, § 7; Laws 2007, LB463, § 1248.

71-6308 Repealed. Laws 1988, LB 1073, § 20.

71-6309 Waiver of requirements; when authorized.

(1) In the event of an emergency in which, in the opinion of the department, there is created a situation of present and severe danger which poses an immediate threat to the public health, safety, and welfare, the department may waive the requirement for licensure of an individual or business entity upon application and payment of the fee prescribed by the department. Such emergency waiver shall be limited to the time required to take protective measures.

(2) The department may, on a case-by-case basis, approve an alternative to a specific worker protection requirement for an asbestos project if the business entity submits a written description of the alternative procedure and demonstrates to the department's satisfaction that the proposed alternative procedure provides equivalent protection to the health, safety, and welfare of all classes of asbestos occupations and the general public.

(3) If the business entity is not primarily engaged in asbestos projects, the department may waive the requirement for a license upon application and payment of the fee prescribed by the department if worker protection requirements are met or an alternative procedure is approved pursuant to subsection (2) of this section and the health, safety, and welfare of the general public is protected.

Source: Laws 1986, LB 1051, § 9; Laws 1988, LB 1073, § 8; Laws 2007, LB296, § 656; Laws 2007, LB463, § 1249.

71-6309.01 Repealed. Laws 1995, LB 406, § 96.

71-6310 Individual worker; license required; qualifications; disciplinary actions; applications; current certificate holder; how treated; limited license; instructors; qualifications.

(1) An individual shall not be eligible to work on an asbestos project unless the individual holds the appropriate class of license issued by the department. Application for a license shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the act as provided in section 71-6314.

(2) The department shall issue the following classes of licenses: Worker; supervisor; inspector; management planner; project monitor; and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator, and (c) passed an examination approved or administered by the department with at least the minimum score prescribed by the department. An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

(3) As an alternative to the qualifications in subdivision (2)(a) of this section, an individual shall have completed a fully accredited United States Environmental Protection Agency Asbestos Hazard Emergency Response Act of 1986 training program or the individual shall be currently accredited by a United States Environmental Protection Agency fully accredited state asbestos model accreditation plan adopted pursuant to 40 C.F.R. 763. In addition to the alternative qualifications, the individual shall successfully complete a four-hour course approved by the department on Nebraska law, rules, and regulations and shall pass an examination thereon which shall be approved and may be administered by the department.

(4) The department may issue a limited license to a project designer or management planner who does not intend to enter any management plan, project design, or asbestos project worksite. An applicant for a limited license under this subsection shall not be required to comply with the requirements of subdivision (2)(b) of this section. A holder of a limited license shall not enter any management plan, project design, or asbestos project worksite. The limitation shall be endorsed upon the license. Violation of the limitation shall be grounds for disciplinary action against the license pursuant to section 71-6314. An individual holding a limited certificate on December 1, 2008, shall be deemed to be holding a limited license under the Uniform Credentialing Act and the Asbestos Control Act on such date. The certificate holder may continue to practice under such limited certificate as a limited license in accordance with such acts until the limited certificate would have expired under its terms.

(5) The department shall approve instructors of training courses. To qualify for approval, an individual shall have (a) graduated from high school or obtained a general educational development certificate or equivalent document as determined by the department, (b) successfully completed an approved four-hour course on Nebraska law, rules, and regulations, and (c) at least one year of actual work experience in the asbestos industry.

Source: Laws 1986, LB 1051, § 10; Laws 1988, LB 352, § 144; Laws 1988, LB 1073, § 9; Laws 1995, LB 406, § 75; Laws 1997, LB 752, § 195; Laws 2007, LB463, § 1250.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6310.01 Asbestos occupations; training courses; approval.

(1) The department shall approve training courses for each classification of asbestos occupation. Applicants for course approval shall meet the requirements for each course and shall submit an application on forms provided by the department together with the prescribed fee. Approved course providers shall use only approved instructors to teach each training course. The department shall conduct onsite inspections of the training courses offered by course providers.

(2) In order to be approved by the department, an initial inspector training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, at least four hours of hands-on training, individual respirator-fit testing, and a written examination; background information on asbestos and potential health effects related to exposure to asbestos; functions, qualifications, and the role of inspectors; legal liabilities and defenses; understanding building systems; public, employee, and occupant relations; preinspection planning and review of previous inspection records and inspecting for friable and nonfriable asbestos-containing material and assessing the condition of asbestos-containing material; bulk sampling and documentation of asbestos; inspector respiratory protection and personal protective equipment; and record keeping and inspection report writing, regulatory review, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(3) In order to be approved by the department, an initial management planner training course shall meet the following requirements: A three-day inspector training course as outlined in subsection (2) of this section and a two-day management planner training course including lectures, demonstrations, and a written examination; course overview; evaluation and interpretation of survey results, hazard assessment, and legal implications; evaluation and selection of control options; role of other professionals; developing an operations and maintenance plan; and regulatory review, record keeping for the management planner, assembling and submitting the management plan, financing abatement actions, and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(4) In order to be approved by the department, an initial project designer training course shall meet the following requirements: A three-day training course including lectures, demonstrations, a field trip, and a written examination; background information on asbestos and potential health effects related to asbestos exposure; overview of abatement construction projects; safety system design specifications, employee personal protective equipment, and additional safety hazards; fiber aerodynamics and control, designing abatement solutions, final clearance process, and budgeting and cost estimation; writing abatement specifications and preparing abatement drawings; contract preparation and administration and legal liabilities and defenses; replacement of asbestos with asbestos-free substitutes; role of other consultants; occupied buildings; and

relevant federal, state, and local regulatory requirements and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(5) In order to be approved by the department, an initial project monitor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least six hours of hands-on training, and a written examination; roles and responsibilities of the project monitor; characteristics of asbestos and asbestos-containing materials; federal and state asbestos regulation overview; understanding building construction and building systems; asbestos abatement contracts, specifications, and drawings; response actions and abatement practices; asbestos abatement equipment; personal protective equipment; air monitoring strategies; safety and health issues other than asbestos; conducting visual inspections; final clearance process; legal responsibilities and liabilities of project monitors; record keeping and report writing; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(6) In order to be approved by the department, an initial supervisor training course shall meet the following requirements: A five-day asbestos training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; the physical characteristics of asbestos and asbestos-containing materials and potential health effects related to asbestos exposure; employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements; respiratory protection programs, medical surveillance programs, and insurance and liability issues; record keeping for asbestos abatement projects and supervisory techniques for asbestos abatement activity; contract specifications; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(7) In order to be approved by the department, an initial worker training course shall meet the following requirements: A four-day training course including lectures, demonstrations, at least fourteen hours of hands-on training, individual respirator-fit testing, and a written examination; physical characteristics of asbestos, potential health effects related to asbestos exposure, employee personal protective equipment, state-of-the-art work practices, personal hygiene, additional safety hazards, medical monitoring, and air monitoring; relevant federal, state, and local regulatory requirements, procedures, and standards; establishment of respiratory protection programs; and course review. The written examination shall be approved and may be administered by the department and shall be composed of questions covering subjects dealing with the course content. The passing score shall be determined by the department.

(8) In order to be approved by the department, a course on Nebraska law, rules, and regulations required by subsection (3) of section 71-6310 shall consist of at least four hours of training on Nebraska law, rules, and regulations relating to asbestos. The written examination shall be approved and may be

administered by the department. The passing score shall be determined by the department.

Source: Laws 1988, LB 1073, § 14; Laws 1995, LB 406, § 76; Laws 2007, LB463, § 1251.

71-6310.02 Asbestos occupations; license; renewal; continuing competency requirements.

(1) Any individual licensed in any of the asbestos occupations prescribed in section 71-6310, as a condition for license renewal, shall complete continuing competency activities as required by the department and shall be examined and approved by a physician as prescribed for initial applicants in section 71-6310. The licensee shall submit evidence as required by the department of satisfaction of the requirements of this section.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

Source: Laws 1988, LB 1073, § 13; Laws 2002, LB 1021, § 100; Laws 2007, LB463, § 1252.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6310.03 Project designer or project monitor; duties.

If a project designer or a project monitor is selected by the structure's owner or operator for an asbestos project, the project designer and project monitor shall be responsible for the following:

(1) Project designers shall prepare plans and specifications for business entities conducting asbestos projects. The plans and specifications shall be consistent with the criteria, requirements, and best interests of the structure's owner or operator and the requirements of the Asbestos Control Act. The project designer shall represent the owner or operator and ensure that these objectives are achieved by the business entity conducting the project throughout the project;

(2) Prior to preparing plans and specifications for any renovation project, a project designer shall ensure that any equipment items and any structural items of a structure affected by the renovation were inspected and assessed by a licensed inspector. Prior to preparing plans and specifications for any demolition, a project designer shall ensure that the entire structure was inspected and assessed by a licensed inspector. No dismantling or salvage operation shall begin before the inspection and assessment is completed;

(3) If a project designer or project monitor is selected by the owner or operator of the structure on or in which the asbestos project is conducted, he or she shall be independent of the business entity selected to perform the asbestos project. A private or public business entity which uses its own trained and licensed employees to perform asbestos projects may also use its own employees who are trained and licensed as project designers or project monitors to design and monitor projects conducted on or in its own structures; and

(4) If a project designer or project monitor is selected by the structure's owner or operator for an asbestos project, the project designer or project monitor shall oversee the activities of a business entity conducting an asbestos project to ensure that the requirements of the Asbestos Control Act and the rules and regulations adopted and promulgated pursuant to the act are met. Prior to allowing an asbestos project site to be returned to normal occupancy or function, a project designer or project monitor shall ensure that all waste, debris, and residue have been removed from the site in compliance with the act and the rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 1995, LB 406, § 78; Laws 2007, LB463, § 1253.

71-6310.04 Fees.

The department shall establish and collect fees for issuance and renewal of licenses as provided in sections 38-151 to 38-157 for individuals licensed under section 71-6310.

Source: Laws 2007, LB463, § 1254.

71-6311 Governmental body; contract with nonlicensee prohibited.

No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any asbestos project which is two hundred sixty or more linear feet or one hundred sixty or more square feet and linear feet in any combination from a business entity which does not hold a license from the department at the time the bid is submitted.

Source: Laws 1986, LB 1051, § 11; Laws 1995, LB 406, § 77.

71-6312 Violations; penalties.

(1) An individual or business entity which engages in an asbestos project without a valid license, except as otherwise provided in the Asbestos Control Act, shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in an asbestos occupation without a valid license, except as otherwise provided in the act, shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any business entity which knowingly engages in an asbestos project but which uses employees who do not hold a license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) The civil penalties prescribed in subsections (1), (2), and (3) of this section shall be assessed in a civil action brought for such purpose by the Attorney General in the district court of the county in which the violation occurred.

(5) An individual or business entity which has been assessed a civil penalty under this section and subsequently engages in an asbestos project or an asbestos occupation without a valid license or using employees who do not hold a license, except as otherwise provided in the Asbestos Control Act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Source: Laws 1986, LB 1051, § 12; Laws 1988, LB 1073, § 10; Laws 1990, LB 923, § 3; Laws 2007, LB463, § 1255.

71-6313 Violations; action to enjoin.

The Attorney General may institute an action in the name of the state for an injunction or other process against any business entity or individual to restrain or prevent any violation of the Asbestos Control Act or of any rules and regulations adopted and promulgated pursuant to such act.

Source: Laws 1986, LB 1051, § 13; Laws 1988, LB 1073, § 11; Laws 2007, LB463, § 1256.

71-6314 Violations; citation; disciplinary actions; procedures; civil penalty; lien; enforcement.

(1) When the department determines that a business entity that holds a license has violated the Asbestos Control Act or any rule and regulation adopted and promulgated pursuant to the act, the department may, rather than initially instituting disciplinary proceedings pursuant to subsection (2) of this section, within seven working days after a finding of a violation is made, issue a citation to the licensee. The citation shall be served upon the licensee personally or by certified mail. Each citation shall specifically describe the nature of the violation and identify the statute, rule, or regulation violated. When a citation is served upon the licensee, the licensee shall have seven working days to remedy the violation. If such violation has not been remedied at the end of such time, the department may take such other action as is deemed appropriate pursuant to the Asbestos Control Act and the Administrative Procedure Act.

(2) Independent of the provisions of subsection (1) of this section, a license or approval issued pursuant to the Asbestos Control Act may be denied, refused renewal, suspended, or revoked when the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license or approval, fails at any time to meet the qualifications for a license or approval, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for asbestos projects, or employs or permits an unlicensed individual to work in an asbestos occupation. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Asbestos Control Act or the rules and regulations adopted and promulgated under the acts.

(3) In addition to the disciplinary actions provided for in subsection (2) of this section, the department may assess a civil penalty of not less than one thousand dollars nor more than twenty-five thousand dollars for each offense committed by any business entity licensed under the Asbestos Control Act or not less than

one hundred dollars nor more than five thousand dollars for each offense committed by an individual licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(4) Whenever the department determines to deny, refuse to renew, suspend, or revoke a license or approval or assess a civil penalty, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed, and the appeal shall be in accordance with the Administrative Procedure Act.

(5) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act and the rules and regulations adopted and promulgated by the department under such act.

(6) Any civil penalty assessed and unpaid under the Asbestos Control Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1986, LB 1051, § 14; Laws 1988, LB 352, § 145; Laws 1988, LB 1073, § 12; Laws 1995, LB 406, § 79; Laws 2007, LB463, § 1257.

Cross References

Administrative Procedure Act, see section 84-920.
Uniform Credentialing Act, see section 38-101.

71-6315 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Asbestos Control Act shall continue to be effective to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Asbestos Control Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Asbestos

Control Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1258.

71-6316 Act; districts exempt.

The Asbestos Control Act shall not apply to a district as defined in section 70-601 or a district subject to sections 14-2101 to 14-2157.

Source: Laws 1988, LB 1073, § 17; Laws 1992, LB 746, § 74.

71-6317 Act, how cited.

Sections 71-6301 to 71-6317 shall be known and may be cited as the Asbestos Control Act.

Source: Laws 1988, LB 1073, § 18; Laws 1995, LB 406, § 80; Laws 2007, LB463, § 1259.

Cross References

Asbestos removal, credentialing provisions, see sections 38-1,119 to 38-1,123.

(b) RESIDENTIAL LEAD-BASED PAINT PROFESSIONS PRACTICE ACT

71-6318 Act, how cited.

Sections 71-6318 to 71-6331.01 shall be known and may be cited as the Residential Lead-Based Paint Professions Practice Act.

Source: Laws 1994, LB 1210, § 166; Laws 1995, LB 147, § 1; Laws 1999, LB 863, § 1; Laws 2007, LB463, § 1260.

Cross References

Lead-based paint removal, credentialing provisions, see sections 38-1,119 to 38-1,123.

71-6318.01 Act; purpose and applicability.

(1) The Residential Lead-Based Paint Professions Practice Act contains procedures and requirements for the accreditation of training programs, procedures and requirements for the licensure of individuals and firms engaged in lead-based paint activities, and work practice standards for performing lead-based paint activities. The act also requires that, except as otherwise provided in the act, all lead-based paint activities be performed by licensed individuals and firms.

(2) The act applies to all individuals and firms who are engaged in lead-based paint activities, except persons who perform lead-based paint activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed or unless a child residing in the building has been identified as having an elevated blood-lead level.

(3) While the act establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in the act requires that the owner or occupant undertake any particular lead-based paint activity.

Source: Laws 1999, LB 863, § 2; Laws 2007, LB463, § 1261.

71-6319 Repealed. Laws 1999, LB 863, § 57.

71-6319.01 Definitions, where found.

For purposes of the Residential Lead-Based Paint Professions Practice Act, the definitions found in sections 71-6319.02 to 71-6319.40 apply.

Source: Laws 1999, LB 863, § 3; Laws 2007, LB463, § 1262.

71-6319.02 Abatement or abatement project, defined.

Abatement or abatement project means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures; and

(3)(a) Projects for which there is a written contract or other documentation which provides that a firm or an individual will be conducting activities in or to a residential dwelling or child-occupied facility that (i) will result in the permanent elimination of lead-based paint hazards or (ii) are designed to permanently eliminate lead-based paint hazards and are described in subdivision (1) or (2) of this section;

(b) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals licensed in accordance with the Residential Lead-Based Paint Professions Practice Act unless such projects are excluded from the definition of abatement or abatement project under this section;

(c) Projects resulting in the permanent elimination of lead-based paint hazards conducted by firms or individuals who or which, through company name or promotional literature, hold themselves out to be in the business of performing lead-based paint activities unless such projects are excluded from the definition of abatement or abatement project under this section; or

(d) Projects resulting in the permanent elimination of lead-based paint hazards that are conducted in response to state or local abatement orders.

Abatement does not include renovation, remodeling, landscaping, or other activities when such activities are not designed to permanently eliminate lead-based paint hazards but instead are designed to repair, restore, or remodel a structure or dwelling even if such activities may incidentally result in a reduction or elimination of lead-based paint hazards. Abatement does not include interim controls, operations, and maintenance activities or other measures and activities designed to temporarily but not permanently reduce lead-based paint hazards.

Source: Laws 1999, LB 863, § 4; Laws 2007, LB463, § 1263.

71-6319.03 Accredited training program, defined.

Accredited training program means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

Source: Laws 1999, LB 863, § 5.

71-6319.04 Licensed abatement worker, defined.

Licensed abatement worker means an individual who has been trained by an accredited training program and licensed by the department to perform abatement projects.

Source: Laws 1999, LB 863, § 6; Laws 2007, LB463, § 1264.

71-6319.05 Licensed firm, defined.

Licensed firm means a firm to which the department has issued a license.

Source: Laws 1999, LB 863, § 7; Laws 2007, LB463, § 1265.

71-6319.06 Licensed inspector, defined.

Licensed inspector means an individual who has been trained by an accredited training program and licensed by the department to conduct inspections and sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Source: Laws 1999, LB 863, § 8; Laws 2007, LB463, § 1266.

71-6319.07 Licensed project designer, defined.

Licensed project designer means an individual who has been trained by an accredited training program and licensed by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

Source: Laws 1999, LB 863, § 9; Laws 2007, LB463, § 1267.

71-6319.08 Licensed risk assessor, defined.

Licensed risk assessor means an individual who has been trained by an accredited training program and licensed by the department to conduct risk assessments and to sample for the presence of lead in dust and soil for the purposes of abatement clearance testing.

Source: Laws 1999, LB 863, § 10; Laws 2007, LB463, § 1268.

71-6319.09 Licensed supervisor, defined.

Licensed supervisor means an individual who has been trained by an accredited training program and licensed by the department to supervise and conduct abatement projects and to prepare occupant protection plans and abatement reports.

Source: Laws 1999, LB 863, § 11; Laws 2007, LB463, § 1269.

71-6319.10 Licensed visual lead-hazard advisor, defined.

Licensed visual lead-hazard advisor means an individual who has been trained by an accredited training program and licensed by the department to conduct a visual lead-hazard screen.

Source: Laws 1999, LB 863, § 12; Laws 2007, LB463, § 1270.

71-6319.11 Child-occupied facility, defined.

Child-occupied facility means a building or portion of a building, constructed prior to 1978, visited regularly by the same child six years of age or under, on at least two different days within any seven-day period running from Sunday through Saturday, if each daily visit lasts at least three hours, the combined weekly visits last at least six hours, and the combined annual visits last at least sixty hours. Child-occupied facility may include, but is not limited to, a day-care center, a preschool, or a kindergarten classroom.

Source: Laws 1999, LB 863, § 13.

71-6319.12 Common area, defined.

Common area means a portion of a building that is generally accessible to all occupants and may include, but is not limited to, a hallway, stairway, laundry or recreational room, playground, community center, garage, or boundary fence.

Source: Laws 1999, LB 863, § 14.

71-6319.13 Component or building component, defined.

Component or building component means a specific design or structural element or a fixture of a building, residential dwelling, or child-occupied facility that is distinguished from others by form, function, and location and may include, but is not limited to, (1) interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim including sashes, window heads, jambs, or sills or stools and troughs, built-in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners and (2) exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascia, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells, and air conditioners.

Source: Laws 1999, LB 863, § 15.

71-6319.14 Containment, defined.

Containment means a process to protect workers and the environment by controlling exposure to the lead-contaminated dust and debris created during an abatement project.

Source: Laws 1999, LB 863, § 16.

71-6319.15 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 1999, LB 863, § 17; Laws 2007, LB296, § 657.

71-6319.16 Deteriorated paint, defined.

Deteriorated paint means paint that is cracking, flaking, chipping, peeling, or otherwise separating from the substrate of a building component.

Source: Laws 1999, LB 863, § 18.

71-6319.17 Repealed. Laws 2007, LB 296, § 815.

71-6319.18 Elevated blood-lead level, defined.

Elevated blood-lead level means a confirmed concentration of lead in whole blood of twenty micrograms of lead per deciliter of whole blood for a single venous test or of fifteen to nineteen micrograms of lead per deciliter of whole blood in two consecutive tests taken three to four months apart.

Source: Laws 1999, LB 863, § 20.

71-6319.19 Encapsulant, defined.

Encapsulant means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating, with or without reinforcement materials, or an adhesively bonded covering material.

Source: Laws 1999, LB 863, § 21.

71-6319.20 Encapsulation, defined.

Encapsulation means the application of an encapsulant.

Source: Laws 1999, LB 863, § 22.

71-6319.21 Enclosure, defined.

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

Source: Laws 1999, LB 863, § 23.

71-6319.22 Firm, defined.

Firm means a company, partnership, corporation, sole proprietorship, association, or other business entity that conducts lead-based paint abatement or abatement projects.

Source: Laws 1999, LB 863, § 24.

71-6319.23 Guest instructor, defined.

Guest instructor means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

Source: Laws 1999, LB 863, § 25.

71-6319.24 Inspection, defined.

Inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Source: Laws 1999, LB 863, § 26.

71-6319.25 Interim controls, defined.

Interim controls means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

Source: Laws 1999, LB 863, § 27.

71-6319.26 Lead-based paint, defined.

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of one milligram per square centimeter or more than five-tenths of one percent by weight in a residential dwelling or child-occupied facility.

Source: Laws 1999, LB 863, § 28.

71-6319.27 Lead-based paint activities, defined.

Lead-based paint activities means, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement.

Source: Laws 1999, LB 863, § 29.

71-6319.28 Lead-based paint hazard, defined.

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated paint or is present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the department.

Source: Laws 1999, LB 863, § 30; Laws 2007, LB296, § 658.

71-6319.29 Lead-based paint profession, defined.

Lead-based paint profession means one of the specific types or categories of lead-based paint activities identified in the Residential Lead-Based Paint Professions Practice Act for which individuals may receive training from an accredited training program and become licensed by the department.

Source: Laws 1999, LB 863, § 31; Laws 2007, LB463, § 1271.

71-6319.30 Lead-contaminated dust, defined.

Lead-contaminated dust means surface dust in a residential dwelling or child-occupied facility that contains an area or mass concentration of lead at or in excess of levels identified by the department.

Source: Laws 1999, LB 863, § 32; Laws 2007, LB296, § 659.

71-6319.31 Lead-contaminated soil, defined.

Lead-contaminated soil means bare soil on residential real property or on the property of a child-occupied facility that contains lead at or in excess of levels identified by the department.

Source: Laws 1999, LB 863, § 33; Laws 2007, LB296, § 660.

71-6319.32 Person, defined.

Person means any natural or judicial person, including any individual, corporation, partnership, or association, any state, or political subdivision thereof, any interstate body, and any department, agency, or instrumentality of the United States Government.

Source: Laws 1999, LB 863, § 34.

71-6319.33 Principal instructor, defined.

Principal instructor means the individual who has the primary responsibility for organizing and teaching a particular course.

Source: Laws 1999, LB 863, § 35.

71-6319.34 Reduction, defined.

Reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and abatement.

Source: Laws 1999, LB 863, § 36.

71-6319.35 Residential dwelling, defined.

Residential dwelling means a detached single-family dwelling unit, including attached structures such as porches and stoops, or a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit which is used or occupied or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

Source: Laws 1999, LB 863, § 37.

71-6319.36 Risk assessment, defined.

Risk assessment means an onsite investigation to determine the existence, nature, severity, and location of lead-based paint hazards and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

Source: Laws 1999, LB 863, § 38.

71-6319.37 Target housing, defined.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities unless one or more children six years of age or under resides or is expected to reside in such housing for the elderly or persons with disabilities or any zero-bedroom dwelling.

Source: Laws 1999, LB 863, § 39.

71-6319.38 Training curriculum, defined.

Training curriculum means an established set of course topics for instruction in an accredited training program for a particular lead-based paint profession designed to provide specialized knowledge and skills.

Source: Laws 1999, LB 863, § 40.

71-6319.39 Training program manager, defined.

Training program manager means the individual responsible for administering an accredited training program and monitoring the performance of principal instructors and guest instructors.

Source: Laws 1999, LB 863, § 41.

71-6319.40 Visual lead-hazard screen, defined.

Visual lead-hazard screen means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility. Visual lead-hazard screen includes a written report explaining the results and limitations of the assessment. The written report will be provided to the person requesting the inspection, the residents of the dwelling, and the owner of the dwelling or child-occupied facility. A licensed visual lead-hazard advisor shall retain a copy of the report in his or her files for three years.

Source: Laws 1999, LB 863, § 42; Laws 2007, LB463, § 1272.

71-6320 Lead abatement project; firm; license required.

Except as otherwise provided in the Residential Lead-Based Paint Professions Practice Act, a firm shall not engage in an abatement project unless the firm holds a license for that purpose.

Source: Laws 1994, LB 1210, § 168; Laws 1999, LB 863, § 43; Laws 2007, LB463, § 1273.

71-6321 Administration of act; rules and regulations; department; powers and duties.

(1) The department shall administer the Residential Lead-Based Paint Professions Practice Act.

(2) The department shall adopt and promulgate rules and regulations necessary to carry out such act. The department shall adopt state standards governing abatement projects and may adopt or incorporate part or all of any federal standards in such state standards so long as state standards are no less stringent than federal standards.

(3) The department shall prescribe fees based upon the following schedule:

(a) For an annual firm license or license renewal, not less than two hundred dollars or more than five hundred dollars;

(b) For accreditation of a training program, not less than one thousand dollars or more than two thousand five hundred dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(c) For accreditation of a review course or a course on Nebraska law, rules, and regulations, not less than five hundred dollars or more than one thousand dollars, which fee shall include one onsite inspection if such inspection is required by the department;

(d) For onsite inspections other than initial inspections, not less than one hundred fifty dollars or more than two hundred fifty dollars. Such fees shall not be assessed for more than three onsite inspections per year during the period an actual abatement project is in progress; and

(e) For a project review of each abatement project of a licensed firm, not less than two hundred dollars or more than five hundred dollars.

Any business applicant whose application is rejected shall be allowed the return of the application fee, except that an administrative charge of one hundred dollars for a firm license and for accreditation of a training program shall be retained by the department.

All fees shall be based on the costs of administering the act. In addition to the fees prescribed in this section, the department may charge and receive the actual costs for board, room, and travel by employees in excess of three hundred dollars, which costs shall not exceed the amounts allowable in sections 81-1174 to 81-1177. All such fees collected by the department shall be remitted to the State Treasurer for credit to the Health and Human Services Cash Fund. Money credited to the fund pursuant to this section shall be used by the department for the purpose of administering the act.

(4) At least once a year during the continuation of an abatement project the department shall conduct an onsite inspection of each licensed firm's procedures for performing abatement projects.

(5) The department may enter into agreements or contracts with public agencies to conduct any inspections required under the act if such agencies have the appropriate licensure or accreditation as described in the act.

(6) The department shall adopt and promulgate rules and regulations defining work practices for abatement projects, for the licensure of lead-based paint professions, for the accreditation of training programs, for the accreditation of training program providers, for the dissemination of prerenovation information to homeowners and occupants, for the facilitation of compliance with federal lead-based paint hazard control grant programs, and for the implementation of lead-based paint compliance monitoring and enforcement activities. The department may provide for alternatives to specific work practices when the health, safety, and welfare of all classes of lead-based paint professions and the general public are adequately protected.

(7) The department may apply for and receive funds from the federal government and any other public or private entity for the purposes of administering the act. Any funds applied for, received, or used by the department or any political subdivision from the federal government or any public entity may be used only to abate lead-based paint hazards and for the administration of lead-based paint programs which address health and environmental hazards caused by lead-based paint.

Source: Laws 1994, LB 1210, § 169; Laws 1996, LB 1044, § 764; Laws 1999, LB 863, § 44; Laws 2001, LB 668, § 3; Laws 2002, LB 1021, § 101; Laws 2003, LB 242, § 145; Laws 2007, LB296, § 661; Laws 2007, LB463, § 1274.

71-6322 Firm; license; qualifications.

To qualify for a license, a firm shall:

(1) Own or demonstrate immediate and continuing access to and maintain in operable condition modern and effective equipment, as prescribed by the department, which is designed for use in abatement projects;

(2) Ensure that each employee or agent of the firm who will participate in an abatement project is licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(3) Demonstrate to the satisfaction of the department that the firm is capable of complying with all applicable requirements, procedures, and standards pertaining to abatement projects; and

(4) Meet any other standards which the department may deem necessary to protect the health, safety, and welfare of all classes of lead-based paint professions and the general public.

Source: Laws 1994, LB 1210, § 170; Laws 1999, LB 863, § 45; Laws 2007, LB463, § 1275.

71-6323 License; application; contents; current certificate holder; how treated.

(1) To apply for a license, a firm shall submit an application to the department in the form required by the department and shall pay the fee prescribed by the department.

(2) The application shall include, but not be limited to:

(a) The name, address, and nature of the firm;

(b) A statement that all individuals who will engage in any abatement project for the firm will be licensed as required by the Residential Lead-Based Paint Professions Practice Act;

(c) A description of the removal, enclosure, encapsulation, demolition, dismantling, and maintenance methods that the firm will use;

(d) A description of the procedures that the firm will use for handling lead-containing waste;

(e) A description of the procedures that the firm will use in cleaning up the abatement project;

(f) The signature of the chief executive officer of the firm or his or her designee; and

(g) Such other information as may be necessary for the efficient administration and enforcement of the act and for the protection of the health, safety, and welfare of all classes of lead-based paint professions and the general public.

(3) A firm holding a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1994, LB 1210, § 171; Laws 1999, LB 863, § 46; Laws 2007, LB463, § 1276.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6324 Repealed. Laws 1999, LB 863, § 57.

71-6325 Repealed. Laws 1999, LB 863, § 57.

71-6326 Individuals; license required; qualifications; term; renewal; applications; current certificate holder; how treated.

(1) An individual shall not be eligible to work on an abatement project unless the individual holds a license issued by the department.

(2) The department shall issue the following classes of licenses: Worker, supervisor, inspector, risk assessor, visual lead-hazard advisor, elevated blood-lead level inspector, and project designer. To qualify for a license of a particular class, an individual shall have (a) successfully completed a training course approved or administered by the department, (b) passed an examination approved or administered by the department with at least the minimum score prescribed by the department, and (c) for the classes of worker and supervisor, been examined by a physician within the preceding year and declared by the physician to be physically capable of working while wearing a respirator.

(3) An individual holding such a certificate on December 1, 2008, shall be deemed to be holding a license under the Residential Lead-Based Paint Professions Practice Act and the Uniform Credentialing Act on such date. The certificate holder may continue to practice under such certificate as a license in accordance with such acts until the certificate would have expired under its terms.

Source: Laws 1994, LB 1210, § 174; Laws 1997, LB 752, § 196; Laws 1999, LB 863, § 47; Laws 2007, LB463, § 1277.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6327 Lead-based paint professions; license; application; disciplinary actions; fees; continuing competency requirements.

(1) An applicant for a license in any of the lead-based paint professions prescribed in the Residential Lead-Based Paint Professions Practice Act shall be made as provided in the Uniform Credentialing Act. An individual shall be credentialed in the same manner as an individual under subsection (1) of section 38-121 and shall be subject to the disciplinary provisions of the Uniform Credentialing Act as provided in section 71-6331. The department shall establish and collect license and renewal fees as provided in sections 38-151 to 38-157.

(2) The department shall adopt and promulgate rules and regulations to establish the continuing competency requirements pursuant to the Uniform Credentialing Act. Continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, one or more of the continuing competency activities listed in section 38-145 which a licensee may select as an alternative to continuing education.

Source: Laws 1994, LB 1210, § 175; Laws 1999, LB 863, § 48; Laws 2002, LB 1021, § 102; Laws 2007, LB463, § 1278.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6328 Governmental body; acceptance of bid; limitation.

No state agency, county, city, village, school district, or other political subdivision shall accept a bid in connection with any abatement project from a firm which does not hold a license from the department at the time the bid is submitted.

Source: Laws 1994, LB 1210, § 176; Laws 1999, LB 863, § 49; Laws 2007, LB463, § 1279.

71-6328.01 Reciprocity.

Any individual or firm who or which has been issued a license, a certificate, or accreditation for training in another state which (1) has a licensure, certification, or accreditation program approved by the federal Environmental Protection Agency, (2) has licensure, accreditation, certification, education, and experience requirements substantially equal to or greater than those adopted by this state, and (3) grants equal licensure, certification, and accreditation privileges to individuals and firms licensed or accredited and residing in this state may be issued an equivalent license or accreditation in Nebraska upon terms and conditions determined by the department. The terms and conditions may reduce the time period the license is valid and the fee requirements.

Source: Laws 1999, LB 863, § 53; Laws 2003, LB 242, § 146; Laws 2007, LB463, § 1280.

71-6328.02 Existing rules, regulations, licenses, certificates, forms of approval, suits, other proceedings; how treated.

(1) All rules and regulations adopted prior to December 1, 2008, under the Residential Lead-Based Paint Professions Certification Act shall continue to be effective under the Residential Lead-Based Paint Professions Practice Act to the extent not in conflict with the changes made by Laws 2007, LB 463.

(2) All licenses, certificates, or other forms of approval issued prior to December 1, 2008, in accordance with the Residential Lead-Based Paint Professions Certification Act shall remain valid as issued for purposes of the changes made by Laws 2007, LB 463, in the Residential Lead-Based Paint Professions Practice Act unless revoked or otherwise terminated by law.

(3) Any suit, action, or other proceeding, judicial or administrative, which was lawfully commenced prior to December 1, 2008, under the Residential Lead-Based Paint Professions Certification Act shall be subject to the provisions of the act as they existed prior to December 1, 2008.

Source: Laws 2007, LB463, § 1285.

71-6329 Violations; penalties.

(1) A firm which engages in an abatement project without a valid license as provided in the Residential Lead-Based Paint Professions Practice Act shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(2) An individual who engages in a lead-based paint profession without a valid license shall be assessed a civil penalty of not less than five hundred dollars nor more than five thousand dollars for the first offense and not less than one thousand dollars nor more than fifteen thousand dollars for the second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(3) Any firm which knowingly engages in an abatement project but which uses employees who do not hold licenses shall be assessed a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars for the first offense and not less than twenty-five thousand dollars nor more than

one hundred thousand dollars for a second or subsequent offense. Each day a violation continues shall constitute a separate offense.

(4) Any firm conducting an accredited training program which knowingly engages in issuing fraudulent licenses or fails to conduct its training program in accordance with its accreditation shall, in addition to having its accreditation revoked, pay a civil penalty of not less than five thousand dollars nor more than twenty-five thousand dollars.

(5) The civil penalties prescribed in subsections (1), (2), (3), and (4) of this section shall be assessed in a civil action brought for such purpose by the Attorney General or the county attorney in the district court of the county in which the violation occurred.

(6) An individual or firm which has been assessed a civil penalty under this section and subsequently engages in an abatement project or a lead-based paint profession without a valid license or using employees who do not hold licenses, conducts training programs without being accredited by the department, or issues fraudulent licenses, except as otherwise provided in the act:

(a) For a first offense, shall be guilty of a Class I misdemeanor; and

(b) For a second or subsequent offense, shall be guilty of a Class IV felony.

Source: Laws 1994, LB 1210, § 177; Laws 1999, LB 863, § 50; Laws 2007, LB463, § 1281.

71-6330 Violations; action to enjoin.

Upon the request of the department, the Attorney General or appropriate county attorney shall institute without delay an action in the name of the state for proceedings appropriate against any individual or firm to restrain or prevent any violation of the Residential Lead-Based Paint Professions Practice Act or of any rules and regulations adopted and promulgated pursuant to the act.

Source: Laws 1994, LB 1210, § 178; Laws 1999, LB 863, § 51; Laws 2007, LB463, § 1282.

71-6331 Violations; disciplinary actions; civil penalty; procedure; appeal; lien; enforcement.

(1) An application or a license under the Residential Lead-Based Paint Professions Practice Act may be denied, refused renewal, suspended, or revoked if the applicant or licensee violates any of the provisions of the act, fraudulently or deceptively obtains or attempts to obtain a license, fails at any time to meet the qualifications for a license, fails to comply with rules and regulations adopted and promulgated pursuant to the act, fails to meet any applicable state standard for abatement projects, or employs or permits an unlicensed individual to work in a lead-based paint profession. An individual shall be subject to the reporting, investigatory, and disciplinary provisions of sections 38-176 to 38-185, 38-1,106, 38-1,109 to 38-1,126, and 38-1,137 to 38-1,139 for any of the grounds for disciplinary action found in the Uniform Credentialing Act and for any violation of the Residential Lead-Based Paint Professions Practice Act or the rules and regulations adopted and promulgated under the acts.

(2) In addition to the disciplinary actions provided for in subsection (1) of this section, the department may assess a civil penalty of not less than one thousand

dollars nor more than three thousand dollars for each offense committed by any firm licensed under the act for violation of the act or any rule or regulation adopted and promulgated pursuant thereto. Each day a violation continues shall constitute a separate offense.

(3) Whenever the department determines to deny, refuse to renew, suspend, or revoke a firm license or assess a civil penalty on a firm, it shall send to the applicant or licensee a notice setting forth the particular reasons for the determination. The denial, suspension, refusal to renew, revocation, or assessment of a civil penalty shall become final thirty days after the mailing of the notice unless the applicant or licensee gives written notice to the department of a desire for a hearing. If a hearing is requested, the applicant or licensee shall be given a hearing before the department and shall have the right to present such evidence as may be proper. On the basis of such evidence, the determination shall be affirmed, modified, or set aside, and a copy of such decision setting forth the findings of fact and the particular reasons upon which such decision was based shall be sent by certified mail to the applicant or licensee. The decision shall become a final decision of the department and may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(4) Hearings held pursuant to this section shall be held in accordance with the Administrative Procedure Act.

(5) Any civil penalty assessed and unpaid under the Residential Lead-Based Paint Professions Practice Act shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in any proper form of action in the name of the State of Nebraska in the district court of the county in which the violator resides or owns property. The department shall, within thirty days of receipt, remit any collected civil penalty to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 1210, § 179; Laws 1999, LB 863, § 52; Laws 2007, LB463, § 1283.

Cross References

Administrative Procedure Act, see section 84-920.
Uniform Credentialing Act, see section 38-101.

71-6331.01 Environmental audits; applicability.

Sections 25-21,254 to 25-21,264 do not apply to the Residential Lead-Based Paint Professions Practice Act.

Source: Laws 1999, LB 863, § 54; Laws 2007, LB463, § 1284.

71-6332 Repealed. Laws 1999, LB 863, § 57.

71-6333 Repealed. Laws 1999, LB 863, § 57.

ARTICLE 64
BUILDING CONSTRUCTION

Section
71-6401. Act, how cited.
71-6402. Purpose of act.
71-6403. State building code; adopted; amendments.

Section
71-6404. State building code; applicability.
71-6405. State building code; compliance required; amendment by state agency.
71-6406. Political subdivision; building code; adopt; amend; enforce.
71-6407. Construction of act.

71-6401 Act, how cited.

Sections 71-6401 to 71-6407 shall be known and may be cited as the Building Construction Act.

Source: Laws 1987, LB 227, § 1.

71-6402 Purpose of act.

It is the purpose of the Building Construction Act to:

(1) Adopt a state building code to govern the construction, reconstruction, alteration, and repair of buildings and other structures within Nebraska;

(2) Provide state standards to safeguard life, health, property, and the public welfare by regulating and controlling the design, construction, quality of materials, use and occupancy, and maintenance of buildings and structures within this state; and

(3) Provide for the use of modern and innovative methods, devices, materials, and techniques in the design and construction of buildings and other structures.

Source: Laws 1987, LB 227, § 2.

71-6403 State building code; adopted; amendments.

(1) There is hereby created the state building code. The Legislature hereby adopts by reference:

(a) The International Building Code (IBC), 2000 edition, published by the International Code Council;

(b) The International Residential Code (IRC), 2000 edition, published by the International Code Council; and

(c) The Uniform Code for Building Conservation.

(2) The codes adopted by reference in subsection (1) of this section shall constitute the state building code except as amended pursuant to the Building Construction Act or as otherwise authorized by state law.

(3) Whenever a new edition of the codes adopted in subsection (1) of this section is published, such new edition shall be considered the state building code.

Source: Laws 1987, LB 227, § 3; Laws 1993, LB 319, § 1; Laws 1996, LB 1304, § 4; Laws 2003, LB 643, § 1.

71-6404 State building code; applicability.

The state building code shall be the building and construction standard within the state and shall be applicable:

(1) To all buildings and structures owned by the state or any state agency; and

(2) In each political subdivision which elects to adopt the state building code.

Source: Laws 1987, LB 227, § 4; Laws 1993, LB 319, § 2.

71-6405 State building code; compliance required; amendment by state agency.

All state agencies, including all state constitutional offices, state administrative departments, and state boards and commissions, the University of Nebraska, and the Nebraska state colleges, shall comply with the state building code. No state agency may adopt, promulgate, or enforce any rule or regulation in conflict with the state building code unless otherwise specifically authorized by statute to adopt or enforce a building or construction code other than the state building code. Nothing in the Building Construction Act shall authorize any state agency to apply such act to manufactured homes or recreational vehicles regulated by the Uniform Standard Code for Manufactured Homes and Recreational Vehicles or to modular housing units regulated by the Nebraska Uniform Standards for Modular Housing Units Act. A state agency may, by rule or regulation, amend the state building code by adopting any supplement, new edition, or appendix of the International Building Code (IBC), 2000 edition, International Residential Code (IRC), 2000 edition, or the Uniform Code for Building Conservation referred to in section 71-6403, except that all amendments shall be approved in advance by the Director of Administrative Services. Amendments to the state building code may also include variations from the code which will reduce unnecessary costs of construction, increase safety, durability, or efficiency, or address special local conditions within the state.

Source: Laws 1987, LB 227, § 5; Laws 1993, LB 319, § 3; Laws 1996, LB 1304, § 5; Laws 2003, LB 643, § 2.

Cross References

Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.

71-6406 Political subdivision; building code; adopt; amend; enforce.

(1) Any political subdivision may enact, administer, or enforce a local building or construction code if or as long as such political subdivision adopts the state building code. The political subdivision shall regularly update its code. For purposes of this section, a code shall be deemed to be regularly updated if the most recent edition is adopted by the political subdivision within two years after the publication date of the edition. No political subdivision may adopt or enforce a local building or construction code other than as provided by this section.

(2) A political subdivision may amend its local building or construction code if the amendment:

(a) Conforms generally with the state building code;

(b) Adopts a special or differing building standard to reduce unnecessary costs of construction, increase safety, durability, or efficiency, or address special local conditions within its jurisdiction; or

(c) Adopts any supplement, new edition, or appendix.

(3) A political subdivision may adopt and promulgate amendments for the proper administration and enforcement of its local building or construction code including organization of enforcement, qualifications of staff members, examination of plans, inspections, appeals, permits, and fees. Any amendment adopted pursuant to this section shall be published separately from the local building or construction code. Fees, if any, for services which monitor a

builder's application of codes shall be negotiable between the political subdivisions involved, but such fees shall not exceed the actual expenses incurred by the political subdivision doing the monitoring.

(4) Notwithstanding the provisions of the Building Construction Act, a public building of a political subdivision shall be built in accordance with the applicable local building or construction code.

Source: Laws 1987, LB 227, § 6; Laws 1993, LB 319, § 4.

71-6407 Construction of act.

Nothing in the Building Construction Act shall be construed to authorize any state agency or political subdivision to regulate the construction of farm buildings or other buildings or structures when such regulation is otherwise prohibited by law. Nothing in the act shall be construed to authorize any state agency or political subdivision to have any authority either to establish or to continue in effect, with respect to any manufactured home built pursuant to the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, any standard regarding construction or safety which is not identical to standards promulgated by the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, and the regulations promulgated by the United States Department of Housing and Urban Development under the federal law when there is in effect a standard of the National Manufactured Housing Construction and Safety Standards Act, 42 U.S.C. 5401 to 5426, or the regulations applicable to the same aspect of performance of such manufactured home.

Source: Laws 1987, LB 227, § 7; Laws 1994, LB 511, § 7.

ARTICLE 65

IN-HOME PERSONAL SERVICES

Section
71-6501. Terms, defined.
71-6502. In-home personal services worker; qualifications.
71-6503. In-home personal services agency; duties.
71-6504. Sections; applicability.

71-6501 Terms, defined.

For purposes of sections 71-6501 to 71-6504:

(1) Activities of daily living has the definition found in section 71-6602;

(2) Attendant services means services provided to nonmedically fragile persons, including hands-on assistance with activities of daily living, transfer, grooming, medication reminders, and similar activities;

(3) Companion services means the provision of companionship and assistance with letter writing, reading, and similar activities;

(4) Homemaker services means assistance with household tasks, including, but not limited to, housekeeping, personal laundry, shopping, incidental transportation, and meals;

(5) In-home personal services means attendant services, companion services, and homemaker services that do not require the exercise of medical or nursing judgment provided to a person in his or her residence to enable the person to remain safe and comfortable in such residence;

(6) In-home personal services agency means an entity that provides or offers to provide in-home personal services for compensation by employees of the agency or by persons with whom the agency has contracted to provide such services. In-home personal services agency does not include a local public health department as defined in section 71-1626, a health care facility as defined in section 71-413, a health care service as defined in section 71-415, programs supported by the federal Corporation for National and Community Service, an unlicensed home care registry or similar entity that screens and schedules independent contractors as caregivers for persons, or an agency that provides only housecleaning services. A home health agency may be an in-home personal services agency; and

(7) In-home personal services worker means a person who meets the requirements of section 71-6502 and provides in-home personal services.

Source: Laws 2007, LB236, § 39.

71-6502 In-home personal services worker; qualifications.

An in-home personal services worker:

(1) Shall be at least eighteen years of age;

(2) Shall have good moral character;

(3) Shall not have been convicted of a crime under the laws of Nebraska or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which crime is rationally related to the person's fitness or capacity to act as an in-home personal services worker;

(4) Shall have no adverse findings on the Adult Protective Services Central Registry, the central register created in section 28-718, the Medication Aide Registry, the Nurse Aide Registry, or the central registry maintained by the sex offender registration and community notification division of the Nebraska State Patrol pursuant to section 29-4004;

(5) Shall be able to speak and understand the English language or the language of the person for whom he or she is providing in-home personal services; and

(6) Shall have training sufficient to provide the requisite level of in-home personal services offered.

Source: Laws 2007, LB236, § 40.

Cross References

Adult Protective Services Act, see section 28-348.
Medication Aide Act, see section 71-6718.

71-6503 In-home personal services agency; duties.

An in-home personal services agency shall employ or contract with only persons who meet the requirements of section 71-6502 to provide in-home personal services. The in-home personal services agency shall perform or cause to be performed a criminal history record information check on each in-home personal services worker and a check of his or her driving record as maintained by the Department of Motor Vehicles or by any other state which has issued an operator's license to the in-home personal services worker, when driving is a service provided by the in-home personal services worker, and shall

maintain documentation of such checks in its records for inspection at its place of business.

Source: Laws 2007, LB236, § 41.

71-6504 Sections; applicability.

Sections 71-6501 to 71-6503 do not apply to the performance of health maintenance activities by designated care aides pursuant to section 38-2219 or to persons who provide personal assistant services, respite care or habilitation services, or aged and disabled services.

Source: Laws 2007, LB236, § 42; Laws 2007, LB247, § 85.

ARTICLE 66

HOME HEALTH AIDE SERVICES

Cross References

Licensure requirements, Health Care Facility Licensure Act, see section 71-401.

Section
71-6601. Legislative intent.
71-6602. Terms, defined.
71-6603. Home health aide; requirements.
71-6604. Repealed. Laws 1991, LB 703, § 83.
71-6605. Home health aides; permitted acts.
71-6606. Home health agencies; employ qualified aides.
71-6607. Home health agency; provide supervision; care plan.
71-6608. Home health aide; demonstrate competency; when required.
71-6608.01. Home health aide training course; standards; supervised training; documentation required.
71-6608.02. Home health aide competency evaluation; requirements.
71-6609. Repealed. Laws 2000, LB 819, § 162.
71-6610. Repealed. Laws 1991, LB 703, § 83.
71-6611. Repealed. Laws 1991, LB 703, § 83.
71-6612. Home health agency; verify competency.
71-6613. Repealed. Laws 1991, LB 703, § 83.
71-6614. Repealed. Laws 2000, LB 819, § 162.
71-6615. Hospice program; volunteers exempt.

71-6601 Legislative intent.

It is the intent of the Legislature that quality health care be provided to all citizens of the state who receive home health aide services through a licensed home health agency. A method of accomplishing quality health care is to ensure adequate training of unlicensed personnel who provide home health aide services by establishing minimum standards for training, evaluation, and supervision. The purpose of sections 71-6601 to 71-6615 is to establish requirements for the provision of home health aide services.

Source: Laws 1988, LB 1100, § 116; Laws 1991, LB 703, § 53.

71-6602 Terms, defined.

As used in sections 71-6601 to 71-6615, unless the context otherwise requires:

(1) Activities of daily living means assistance with ambulation, toileting, feeding, and similar activities;

(2) Basic therapeutic care means basic health care procedures, including, but not limited to, measuring vital signs, applying hot and cold applications and nonsterile dressings, and assisting with, but not administering, internal and

external medications which are normally self-administered. Basic therapeutic care does not include health care procedures which require the exercise of nursing or medical judgment;

(3) Department means the Department of Health and Human Services;

(4) Home health agency means a home health agency as defined in section 71-417;

(5) Home health aide means a person who is employed by a home health agency to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the home health agency;

(6) Personal care means bathing, hair care, nail care, shaving, dressing, oral care, and similar activities;

(7) Supervised practical training means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or licensed practical nurse; and

(8) Vital signs means temperature, pulse, respiration, and blood pressure.

Source: Laws 1988, LB 1100, § 117; Laws 1991, LB 703, § 54; Laws 1996, LB 1044, § 765; Laws 1998, LB 1354, § 41; Laws 2000, LB 819, § 136; Laws 2007, LB296, § 662.

71-6603 Home health aide; requirements.

On and after September 6, 1991, no person shall act as a home health aide unless such person:

(1) Is at least eighteen years of age;

(2) Is of good moral character;

(3) Has not been convicted of a crime under the laws of this state or another jurisdiction, the penalty for which is imprisonment for a period of more than one year and which is rationally related to the person's fitness or capacity to act as a home health aide;

(4) Is able to speak and understand the English language or the language of the home health agency patient and the home health agency staff member who acts as the home health aide's supervisor;

(5) Meets one of the following qualifications:

(a) Has successfully completed a home health aide training course which meets the standards described in section 71-6608.01;

(b) Is a graduate of a school of nursing;

(c) Has been employed by a licensed home health agency as a home health aide II prior to September 6, 1991;

(d) Has successfully completed a course in a school of nursing which included practical clinical experience in fundamental nursing skills and has completed a competency evaluation as described in section 71-6608.02;

(e) Has successfully completed a basic course of training approved by the department for nursing assistants as required by section 71-6039 and has completed a competency evaluation as described in section 71-6608.02;

(f) Has been employed by a licensed home health agency as a home health aide I prior to September 6, 1991, and has completed a competency evaluation as described in section 71-6608.02; or

(g) Has met the qualifications equal to one of those contained in subdivisions (a) through (f) of this subdivision in another state or territory of the United States; and

(6) Has provided to the employing licensed home health agency proof of meeting the requirements of this section.

Source: Laws 1988, LB 1100, § 118; Laws 1991, LB 703, § 55; Laws 2002, LB 1062, § 63.

71-6604 Repealed. Laws 1991, LB 703, § 83.

71-6605 Home health aides; permitted acts.

Home health aides may perform only personal care, assistance with the activities of daily living, and basic therapeutic care. A home health aide may provide medication only in compliance with the Medication Aide Act. Home health aides may not perform acts which require the exercise of nursing or medical judgment.

Source: Laws 1988, LB 1100, § 120; Laws 1991, LB 703, § 56; Laws 1998, LB 1354, § 42.

Cross References

Medication Aide Act, see section 71-6718.

71-6606 Home health agencies; employ qualified aides.

After January 1, 1989, home health agencies shall employ only home health aides qualified to provide home health care pursuant to sections 71-6601 to 71-6615. The department shall prescribe procedures for verification by home health agencies of successful completion of the requirements of section 71-6603. Home health agencies shall provide direction and supervision of home health aides. Home health agencies shall provide or make available to their home health aides four one-hour inservice programs per year on subjects relevant to home health care and shall verify such programs in a manner and method prescribed by the department.

Source: Laws 1988, LB 1100, § 121; Laws 1991, LB 703, § 57.

71-6607 Home health agency; provide supervision; care plan.

The home health agency shall provide supervision of home health aides by a Nebraska-licensed registered nurse.

Supervision of home health aide services consisting of personal care, assistance with activities of daily living, and measuring vital signs, if such measurements are taken at the request of the patient and are not required pursuant to the nursing care plan, shall include, at a minimum, an onsite visit to each patient, with or without the home health aide being present, once every sixty-two days and an onsite visit to observe each home health aide providing care and assistance and measuring vital signs once every six months.

Except for measuring vital signs at the request of the patient when such measurements are not required pursuant to the nursing care plan, supervision of home health aide services for basic therapeutic care shall include at a minimum an onsite visit to each patient, with or without the health aide being present, once every two weeks.

A care plan for home health aide services shall be developed for each patient by a Nebraska-licensed registered nurse and reviewed by the registered nurse as required by the patient's current condition or at least every sixty-two days.

Source: Laws 1988, LB 1100, § 122; Laws 1991, LB 703, § 58.

71-6608 Home health aide; demonstrate competency; when required.

After January 1, 1989, any home health aide not acting as such for a period of three years shall demonstrate competency in the tasks and duties which are the subject of home health aide training courses. The home health agency shall determine and verify competency of the home health aide in the manner and method prescribed by the department.

Source: Laws 1988, LB 1100, § 123.

71-6608.01 Home health aide training course; standards; supervised training; documentation required.

A home health aide training course shall meet the following standards with regard to content and duration of training, qualifications for instructors, and documentation of training:

(1) Such course shall address each of the following subject areas through classroom and supervised practical training totaling at least seventy-five hours, with at least sixteen hours devoted to supervised practical training after the individual being trained has completed at least sixteen hours of classroom training:

(a) Communications skills;

(b) Observation, reporting, and documentation of patient status and the care or service furnished;

(c) Reading and recording temperature, pulse, and respiration;

(d) Basic infection control procedures;

(e) Basic elements of body functioning and changes in body functioning that must be reported to a home health aide's supervisor;

(f) Maintenance of a clean, safe, and healthy environment;

(g) Recognizing emergencies and knowledge of emergency procedures;

(h) The physical, emotional, and developmental needs of and ways to work with the populations served by the home health agency, including the need for respect for the patient, his or her privacy, and his or her property;

(i) Appropriate and safe techniques in personal hygiene and grooming that include:

(i) Bed bath;

(ii) Bath: Sponge, tub, and shower;

(iii) Shampoo: Sink, tub, and bed;

(iv) Nail and skin care;

(v) Oral hygiene; and

(vi) Toileting and elimination;

(j) Safe transfer techniques and ambulation;

(k) Normal range of motion and positioning;

(l) Adequate nutrition and fluid intake; and

(m) Any other task that the home health agency may choose to have the home health aide perform;

(2) The training and supervision of home health aides during the supervised practical portion of the training shall be performed by or under the general supervision of a registered nurse who possesses a minimum of two years of nursing experience, at least one year of which is in the provision of home health care, and who has supervised home health aide services for at least six months. Other individuals may be used to provide instruction under the supervision of a qualified registered nurse;

(3) The home health agency shall maintain sufficient documentation to demonstrate that the requirements of this section are met; and

(4) A home health aide training course may be offered by any organization, except that on or after September 6, 1991, a home health agency that has had its license denied, suspended, or revoked or has had admissions or readmissions prohibited shall not offer a home health aide training course for a period of twenty-four months after the occurrence of such action.

Source: Laws 1991, LB 703, § 59.

71-6608.02 Home health aide competency evaluation; requirements.

If a competency evaluation is required by section 71-6603, the home health agency shall be responsible for ensuring that the individuals who furnish home health aide services on its behalf meet the competency evaluation requirements of this section. A home health aide competency evaluation shall address each of the subjects listed in subdivisions (1)(b) through (1)(m) of section 71-6608.01. The competency evaluation may be offered by any organization except as specified in subdivision (4) of such section. The competency evaluation shall be performed by a registered nurse. The subject areas listed in subdivisions (1)(c) and (1)(i) through (1)(k) of such section shall be evaluated after observation of the aide's performance of the tasks with a patient or other individual. The other subject areas in subdivision (1) of such section shall be evaluated through written examination or oral examination or after observation of a home health aide with a patient or other individual. A home health aide shall not be considered competent in any task for which he or she is evaluated as unsatisfactory, and the home health aide shall not perform that task without direct supervision by a Nebraska-licensed nurse until after he or she receives training in the task for which he or she was evaluated as unsatisfactory and subsequently is evaluated as satisfactory. A home health aide shall not be considered to have successfully passed a competency evaluation if the aide has been evaluated as unsatisfactory in more than one of the required areas. The home health agency shall maintain documentation which demonstrates that the requirements of this section are met.

Source: Laws 1991, LB 703, § 60.

71-6609 Repealed. Laws 2000, LB 819, § 162.

71-6610 Repealed. Laws 1991, LB 703, § 83.

71-6611 Repealed. Laws 1991, LB 703, § 83.

71-6612 Home health agency; verify competency.

Each home health agency shall be responsible for verifying in a manner and method prescribed by the department that a home health aide is competent to provide personal care, assistance with the activities of daily living, and basic therapeutic care to patients of the agency.

Source: Laws 1988, LB 1100, § 127; Laws 1991, LB 703, § 62.

71-6613 Repealed. Laws 1991, LB 703, § 83.

71-6614 Repealed. Laws 2000, LB 819, § 162.

71-6615 Hospice program; volunteers exempt.

Sections 71-6601 to 71-6612 shall not apply to any volunteers working on behalf of a hospice licensed under the Health Care Facility Licensure Act who, as part of their volunteer duties, provide home health care.

Source: Laws 1988, LB 1100, § 130; Laws 1991, LB 703, § 64; Laws 1996, LB 1155, § 66; Laws 2000, LB 819, § 137.

Cross References

Health Care Facility Licensure Act, see section 71-401.

ARTICLE 67

MEDICATION REGULATION

(a) MEDICATION ASSISTANTS

Section
71-6701. Repealed. Laws 1998, LB 1354, § 48.
71-6702. Repealed. Laws 1998, LB 1354, § 48.
71-6703. Repealed. Laws 1998, LB 1354, § 48.
71-6704. Repealed. Laws 1998, LB 1354, § 48.
71-6705. Repealed. Laws 1998, LB 1354, § 48.
71-6706. Repealed. Laws 1998, LB 1354, § 48.
71-6707. Repealed. Laws 1998, LB 1354, § 48.
71-6708. Repealed. Laws 1998, LB 1354, § 48.
71-6709. Repealed. Laws 1998, LB 1354, § 48.
71-6710. Repealed. Laws 1998, LB 1354, § 48.
71-6711. Repealed. Laws 1998, LB 1354, § 48.
71-6712. Repealed. Laws 1998, LB 1354, § 48.
71-6713. Repealed. Laws 1998, LB 1354, § 48.
71-6714. Repealed. Laws 1998, LB 1354, § 48.
71-6715. Repealed. Laws 1998, LB 1354, § 48.
71-6716. Repealed. Laws 1998, LB 1354, § 48.
71-6717. Repealed. Laws 1998, LB 1354, § 48.

(b) MEDICATION AIDE ACT

71-6718. Act, how cited.
71-6719. Legislative findings.
71-6720. Purpose of act; applicability.
71-6721. Terms, defined.
71-6722. Administration of medication; by whom.
71-6723. Administration of medication; methods authorized; conditions; additional methods; requirements.
71-6724. Medication administration records.
71-6725. Minimum standards for competencies.
71-6726. Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect.
71-6727. Medication Aide Registry; contents.
71-6728. Registration; renewal; fee.

(a) MEDICATION ASSISTANTS

71-6701 Repealed. Laws 1998, LB 1354, § 48.

71-6702 Repealed. Laws 1998, LB 1354, § 48.

71-6703 Repealed. Laws 1998, LB 1354, § 48.

71-6704 Repealed. Laws 1998, LB 1354, § 48.

71-6705 Repealed. Laws 1998, LB 1354, § 48.

71-6706 Repealed. Laws 1998, LB 1354, § 48.

71-6707 Repealed. Laws 1998, LB 1354, § 48.

71-6708 Repealed. Laws 1998, LB 1354, § 48.

71-6709 Repealed. Laws 1998, LB 1354, § 48.

71-6710 Repealed. Laws 1998, LB 1354, § 48.

71-6711 Repealed. Laws 1998, LB 1354, § 48.

71-6712 Repealed. Laws 1998, LB 1354, § 48.

71-6713 Repealed. Laws 1998, LB 1354, § 48.

71-6714 Repealed. Laws 1998, LB 1354, § 48.

71-6715 Repealed. Laws 1998, LB 1354, § 48.

71-6716 Repealed. Laws 1998, LB 1354, § 48.

71-6717 Repealed. Laws 1998, LB 1354, § 48.

(b) MEDICATION AIDE ACT

71-6718 Act, how cited.

Sections 71-6718 to 71-6742 shall be known and may be cited as the Medication Aide Act.

Source: Laws 1998, LB 1354, § 8.

71-6719 Legislative findings.

The Legislature finds that the administration of medications by persons other than oneself or one's caretaker should be a regulated act and there is a need to define a system to safely assist individuals to take medications who do not have the ability to take medications independently. The Medication Aide Act sets forth provisions of such a system.

Source: Laws 1998, LB 1354, § 9.

71-6720 Purpose of act; applicability.

(1) The purposes of the Medication Aide Act are to ensure the health, safety, and welfare of the public by providing for the accurate, cost-effective, efficient, and safe utilization of medication aides to assist in the administration of medications by (a) competent individuals, (b) caretakers who are parents, foster parents, family, friends or legal guardians, and (c) licensed health care professionals.

(2) The act applies to all settings in which medications are administered except the home, unless the in-home administration of medication is provided through a licensed home health agency or licensed or certified home and community-based provider.

(3) The act does not apply to the provision of reminders to persons to self-administer medication or assistance to persons in the delivery of nontherapeutic topical applications by in-home personal services workers. For purposes of this subsection, in-home personal services worker has the definition found in section 71-6501.

Source: Laws 1998, LB 1354, § 10; Laws 2007, LB236, § 44.

71-6721 Terms, defined.

For purposes of the Medication Aide Act:

(1) Ability to take medications independently means the individual is physically capable of (a) the act of taking or applying a dose of a medication, (b) taking or applying the medication according to a specific prescription or recommended protocol, and (c) observing and monitoring himself or herself for desired effect, side effects, interactions, and contraindications of the medication and taking appropriate actions based upon those observations;

(2) Administration of medication includes, but is not limited to (a) providing medications for another person according to the five rights, (b) recording medication provision, and (c) observing, monitoring, reporting, and otherwise taking appropriate actions regarding desired effects, side effects, interactions, and contraindications associated with the medication;

(3) Caretaker means a parent, foster parent, family member, friend, or legal guardian who provides care for an individual;

(4) Child care facility means an entity or a person licensed under the Child Care Licensing Act;

(5) Competent individual means an adult who is the ultimate recipient of medication and who has the capability and capacity to make an informed decision about taking medications;

(6) Department means the Department of Health and Human Services;

(7) Direction and monitoring means the acceptance of responsibility for observing and taking appropriate action regarding any desired effects, side effects, interactions, and contraindications associated with the medication by a (a) competent individual for himself or herself, (b) caretaker, or (c) licensed health care professional;

(8) Facility means a health care facility or health care service as defined in section 71-413 or 71-415 or an entity or person certified by the department to provide home and community-based services;

(9) Five rights means getting the right drug to the right recipient in the right dosage by the right route at the right time;

(10) Health care professional means an individual for whom administration of medication is included in the scope of practice;

(11) Home means the residence of an individual but does not include any facility or school;

(12) Intermediate care facility for the mentally retarded has the definition found in section 71-421;

(13) Informed decision means a decision made knowingly, based upon capacity to process information about choices and consequences, and made voluntarily;

(14) Medication means any prescription or nonprescription drug intended for treatment or prevention of disease or to affect body function in humans;

(15) Medication aide means an individual who is listed on the medication aide registry operated by the department;

(16) Nonprescription drug has the definition found in section 38-2829;

(17) Nursing home means any facility or a distinct part of any facility that provides care as defined in sections 71-420, 71-422, 71-424, and 71-429;

(18) Prescription drug has the definition of prescription drug or device as found in section 38-2841;

(19) Provision of medication means the component of the administration of medication that includes giving or applying a dose of a medication to an individual and includes helping an individual in giving or applying such medication to himself or herself;

(20) PRN means an administration scheme in which a medication is not routine, is taken as needed, and requires assessment for need and effectiveness;

(21) Recipient means a person who is receiving medication;

(22) Routine, with reference to medication, means the frequency of administration, amount, strength, and method are specifically fixed; and

(23) School means an entity or person meeting the requirements for a school set by Chapter 79.

Source: Laws 1998, LB 1354, § 11; Laws 2000, LB 819, § 138; Laws 2001, LB 398, § 81; Laws 2004, LB 1005, § 132; Laws 2007, LB296, § 663; Laws 2007, LB463, § 1286.

Cross References

Child Care Licensing Act, see section 71-1908.

71-6722 Administration of medication; by whom.

Administration of medication may be done by competent individuals to themselves, by caretakers of recipients receiving medication, or by licensed health care professionals for whom administration of medication is included in their scope of practice.

A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may participate in medication administration, when directed and monitored by a competent individual, caretaker, or health care professional, by providing medications in compliance with the Medication Aide Act and rules and regulations adopted and promulgated under the act. In each case, the individual responsible for providing direction and monitoring shall be identified in writing and indication that such individual has accepted such responsibility shall also be identified in writing.

Source: Laws 1998, LB 1354, § 12.

71-6723 Administration of medication; methods authorized; conditions; additional methods; requirements.

(1) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school may provide routine medications by the following routes: (a) Oral; (b) inhalation; (c) topical; and (d) instillation into the eyes, ears, and nose.

(2) A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or staff member of a school may provide medication by additional routes not listed in subsection (1) of this section, provide PRN medication, or participate in observing and reporting for monitoring medications only under the following conditions:

(a) A determination has been made by a competent individual, a caretaker, or a licensed health care professional and placed in writing that the medication aide, person licensed to operate a child care facility or staff member of a child care facility, or staff member of a school is competent to perform these activities; and

(b) It has been determined by a licensed health care professional and placed in writing that these activities can be done safely for a specified recipient.

Direction for additional routes not listed in subsection (1) of this section must be for recipient-specific procedures and must be in writing. Direction for PRN medication must be in writing and include the parameters for provision of the PRN medication. Direction for observing and reporting for monitoring medication must be in writing and include the parameters for the observation and reporting. A medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school acting under this subsection shall comply with the written directions. Subdivision (b) of this subsection does not apply to nonprescription drugs when direction and monitoring is done by a competent individual for himself or herself or by a caretaker.

Source: Laws 1998, LB 1354, § 13.

71-6724 Medication administration records.

A medication aide, a facility using a medication aide, a child care facility using the services of a person licensed to operate a child care facility or a staff

member of a child care facility, or a school using the services of a staff member of the school shall keep and maintain accurate medication administration records. The medication administration records shall be available to the Department of Health and Human Services and the State Department of Education for inspection and copying. The medication administration records shall include information and data the departments require by rules and regulations adopted under the Medication Aide Act.

Source: Laws 1998, LB 1354, § 14; Laws 2007, LB296, § 664.

71-6725 Minimum standards for competencies.

(1) The minimum competencies for a medication aide, a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall include (a) maintaining confidentiality, (b) complying with a recipient's right to refuse to take medication, (c) maintaining hygiene and current accepted standards for infection control, (d) documenting accurately and completely, (e) providing medications according to the five rights, (f) having the ability to understand and follow instructions, (g) practicing safety in application of medication procedures, (h) complying with limitations and conditions under which a medication aide may provide medications, and (i) having an awareness of abuse and neglect reporting requirements and any other areas as shall be determined by rules or regulations.

(2) The Department of Health and Human Services shall adopt and promulgate rules and regulations setting minimum standards for competencies listed in subsection (1) of this section and methods for competency assessment of medication aides. The Department of Health and Human Services shall adopt and promulgate rules and regulations setting methods for competency assessment of the person licensed to operate a child care facility or staff of child care facilities. The State Department of Education shall adopt and promulgate rules and regulations setting methods for competency assessment of the school staff member.

(3) A medication aide (except one who is employed by a nursing home, an intermediate care facility for the mentally retarded, or an assisted-living facility), a person licensed to operate a child care facility or a staff member of a child care facility, or a staff member of a school shall not be required to take a course. The medication aide shall be assessed to determine that the medication aide has the competencies listed in subsection (1) of this section.

(4) A medication aide providing services in an assisted-living facility as defined in section 71-406, a nursing home, or an intermediate care facility for the mentally retarded shall be required to have completed a forty-hour course on the competencies listed in subsection (1) of this section and competency standards established through rules and regulations as provided for in subsection (2) of this section, except that a medication aide who has, prior to January 1, 2003, completed a twenty-hour course and passed an examination developed and administered by the Department of Health and Human Services may complete a second twenty-hour course supplemental to the first twenty-hour course in lieu of completing the forty-hour course. The department shall adopt and promulgate rules and regulations regarding the procedures and criteria for curriculum. Competency assessment shall include passing an examination developed and administered by the department. Criteria for establishing a

passing standard for the examination shall be established in rules and regulations.

(5) Medication aides providing services in nursing homes or intermediate care facilities for the mentally retarded shall also meet the requirements set forth in section 71-6039.

Source: Laws 1998, LB 1354, § 15; Laws 2000, LB 819, § 139; Laws 2002, LB 1021, § 103; Laws 2007, LB296, § 665.

71-6726 Medication aide; registration; qualifications; report of conviction required; licensure as nurse; effect.

(1) To register as a medication aide, an individual shall (a) have successfully completed the requirements in section 71-6725, (b) be at least eighteen years of age, (c) be of good moral character, (d) file an application with the department, and (e) pay the applicable fee.

(2) A registered nurse or licensed practical nurse whose license has been revoked, suspended, or voluntarily surrendered in lieu of discipline may not register as a medication aide.

(3) An applicant or medication aide shall report to the department, in writing, any conviction for a felony or misdemeanor. A conviction is not a disqualification for placement on the registry unless it relates to the standards identified in section 71-6725 or it reflects on the moral character of the applicant or medication aide.

(4) An applicant or medication aide may report any pardon or setting aside of a conviction to the department. If a pardon or setting aside has been obtained, the conviction for which it was obtained shall not be maintained on the Medication Aide Registry.

(5) If a person registered as a medication aide on the Medication Aide Registry becomes licensed as a registered nurse or licensed practical nurse, his or her registration as a medication aide becomes null and void as of the date of licensure.

Source: Laws 1998, LB 1354, § 16; Laws 2007, LB185, § 44; Laws 2007, LB463, § 1287.

71-6727 Medication Aide Registry; contents.

(1) The department shall list each medication aide registration in the Medication Aide Registry as a Medication Aide-40-Hour, Medication Aide-20-Hour, or Medication Aide. A listing in the registry shall be valid for the term of the registration and upon renewal unless such listing is refused renewal or is removed as provided in section 71-6730.

(2) The registry shall contain the following information on each individual who meets the conditions in section 71-6726: (a) The individual's full name; (b) information necessary to identify individuals, including those qualified to provide medications in nursing homes, intermediate care facilities for the mentally retarded, or assisted-living facilities; (c) any conviction of a felony or misdemeanor reported to the department; and (d) other information as the department may require by rule and regulation.

Source: Laws 1998, LB 1354, § 17; Laws 2007, LB463, § 1288.

71-6728 Registration; renewal; fee.

Registration as a medication aide shall be renewed biennially based upon competency. The department may prescribe by rule and regulation how a medication aide can show competency for purposes of renewal. Payment of the applicable fee shall be a condition of renewal. After September 1, 2007, any registration that is renewed shall expire two years after the date the registration would have expired if it had not been renewed. A medication aide who provides medication aide services prior to registration or after the date the registration expires shall be subject to the civil penalty prescribed in section 38-198.

Source: Laws 1998, LB 1354, § 18; Laws 2007, LB283, § 2; Laws 2007, LB463, § 1289.

71-6729 Screening and review.

The department may conduct periodic and random screening or review of entities conducting competency assessments or courses and of the activities of applicants and medication aides as may be necessary to ensure compliance with the Medication Aide Act and the rules and regulations.

Source: Laws 1998, LB 1354, § 19.

71-6730 Failure to meet standards; violations; department; powers.

(1) The department may deny registration or refuse renewal of or remove a registration from the Medication Aide Registry for failure to meet the standards in section 71-6725 or for violation of the Medication Aide Act or the rules and regulations.

(2) If the department proposes to deny, refuse renewal of, or remove a registration, it shall send the applicant or registrant a notice setting forth the action to be taken and the reasons for the determination. The denial, refusal to renew, or removal shall become final thirty days after mailing the notice unless the applicant or registrant gives written notice to the department of his or her desire for an informal conference or for a formal hearing.

(3) Notice may be served by any method specified in section 25-505.01, or the department may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Source: Laws 1998, LB 1354, § 20.

71-6731 Informal conference; procedure.

If an informal conference is requested, the department shall assign a representative of the department to hold an informal conference with the applicant or registrant within fifteen working days after receipt of a request. Within seven working days after the conclusion of such conference, the representative shall affirm, modify, or dismiss the action. The representative shall state in writing the specific reasons for affirming, modifying, or dismissing the action and shall immediately transmit copies of the statement to the department and to the applicant or the registrant. If the representative affirms or modifies the action, it shall become final unless the applicant or registrant, within ten working days after receipt of the written notice, requests in writing a formal hearing to contest the action.

Source: Laws 1998, LB 1354, § 21.

71-6732 Contested actions; procedure.

Except as provided by section 71-6731, an applicant or registrant who desires to contest an action or to further contest an affirmed or modified action shall do so in the manner provided in the Administrative Procedure Act for contested cases. The chief medical officer as designated in section 81-3115 shall be the decisionmaker in a contested case under this section. The hearings on a petition for judicial review of any final decision regarding an action for an alleged violation shall be set for hearing at the earliest possible date. The times for pleadings and hearings in such action shall be set by the judge of the court with the object of securing a decision at the earliest possible time.

Source: Laws 1998, LB 1354, § 22; Laws 2007, LB296, § 666.

Cross References

Administrative Procedure Act, see section 84-920.

71-6733 Reapplication authorized; lifting of sanctions.

A person whose registration has been denied, refused renewal, or removed from the Medication Aide Registry may reapply for registration or for lifting of the disciplinary sanction at any time after one year has elapsed since the date such registration was denied, refused renewal, or removed from the registry, in accordance with the rules and regulations.

Source: Laws 1998, LB 1354, § 23; Laws 2007, LB185, § 45.

71-6734 Fees.

The department shall establish and collect fees for credentialing activities under the Medication Aide Act as provided in sections 38-151 to 38-157.

Source: Laws 1998, LB 1354, § 24; Laws 2002, LB 1021, § 104; Laws 2003, LB 242, § 147; Laws 2007, LB463, § 1290.

71-6735 Facility, school, or child care facility; subject to discipline.

A facility shall be subject to discipline under the Health Care Facility Licensure Act or other relevant statutes for violation of the Medication Aide Act or the rules and regulations. A school shall be subject to discipline under Chapter 79 for violation of the Medication Aide Act or the applicable rules and regulations. A child care facility shall be subject to discipline under the Child Care Licensing Act for violation of the Medication Aide Act or the rules and regulations.

Source: Laws 1998, LB 1354, § 25; Laws 2000, LB 819, § 140; Laws 2004, LB 1005, § 133.

Cross References

Child Care Licensing Act, see section 71-1908.
Health Care Facility Licensure Act, see section 71-401.

71-6736 Alleged incompetence; reports required; confidential; immunity.

(1) Any facility or person using the services of a medication aide shall report to the department, in the manner specified by the department by rule and regulation, any facts known to him, her, or it, including, but not limited to, the identity of the medication aide and the recipient, when it takes action adversely

affecting a medication aide due to alleged incompetence. The report shall be made within thirty days after the date of the action or event.

(2) Any person may report to the department any facts known to him or her concerning any alleged incompetence of a medication aide.

(3) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in the Medication Aide Act. This subsection does not require production of records protected by section 25-12,123 or 71-2048 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such sections or such act.

Source: Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34.

Cross References

Patient Safety Improvement Act, see section 71-8701.

71-6737 Complaints, investigational records, reports, and investigational files; disclosure; restrictions.

Complaints, investigational records, reports, and investigational files of any kind of the department shall not be public record, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except an informal conference or formal hearing before the department. Such complaints, investigational records, reports, and investigational files shall be a public record if made part of the record of a formal hearing before the department. No person, including, but not limited to, department employees, having access to complaints, investigational records, reports, or investigational files, shall disclose such records or information except as required for investigation of the alleged violation or for purposes of a hearing before the department. Such information, files, and records may be disclosed to other law enforcement agencies by the department, and such disclosure shall not make the information, files, or records public records.

Source: Laws 1998, LB 1354, § 27.

71-6738 Convictions; reports required.

On and after July 1, 1999, the clerk of any county court or district court in this state shall report to the department the conviction in such court of any medication aide of any felony or any misdemeanor. The Attorney General or the city prosecutor or county attorney prosecuting any such criminal action shall provide the court with information concerning the registration of the defendant. Notice to the department shall be filed within thirty days after the conviction in a manner agreed to by the department and the State Court Administrator.

Source: Laws 1998, LB 1354, § 28.

71-6739 Prohibited act; exceptions.

On and after July 1, 1999, no person, facility, or school shall use or employ any individual to provide medications to a recipient unless the individual is a medication aide registered under the Medication Aide Act or is otherwise authorized to administer or provide medication, except that a child care facility may use or employ an individual licensed to operate a child care facility or a staff member of a child care facility or a school may use or employ a staff member of a school determined to be competent under the act. On and after July 1, 1999, no individual shall provide medication to a recipient unless the individual is a medication aide registered under the act or is otherwise authorized to administer or provide medication. Nothing in the act shall be construed to require any school to employ or use a school nurse or medication aide in order to be in compliance with the act.

Source: Laws 1998, LB 1354, § 29.

71-6740 Injunction.

The department may maintain an action for an injunction in the name of the state for violation of the Medication Aide Act or the rules and regulations.

Source: Laws 1998, LB 1354, § 30.

71-6741 Violation; penalty.

Any person who intentionally violates the Medication Aide Act is guilty of a Class III misdemeanor.

Source: Laws 1998, LB 1354, § 31.

71-6742 Eligibility for Licensee Assistance Program.

Medication aides are eligible to participate in the Licensee Assistance Program as prescribed by section 38-175.

Source: Laws 1998, LB 1354, § 32; Laws 2007, LB463, § 1291.

(c) STORAGE, HANDLING, AND DISPOSAL OF MEDICATION

71-6743 Rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations which shall ensure proper storage, handling, and disposal of medication in facilities and schools as defined in section 71-6721.

Source: Laws 1998, LB 1354, § 37; Laws 2007, LB296, § 667.

ARTICLE 68

LABORATORY ACCREDITATION

Section
71-6801. Repealed. Laws 2000, LB 1115, § 93.
71-6802. Repealed. Laws 2000, LB 1115, § 93.
71-6803. Repealed. Laws 2000, LB 1115, § 93.
71-6804. Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.
71-6805. Repealed. Laws 2000, LB 1115, § 93.
71-6806. Repealed. Laws 2000, LB 1115, § 93.
71-6807. Repealed. Laws 2000, LB 1115, § 93.
71-6808. Repealed. Laws 2000, LB 1115, § 93.
71-6809. Repealed. Laws 2000, LB 1115, § 93.
71-6810. Repealed. Laws 2000, LB 1115, § 93.

Section
71-6811. Repealed. Laws 2000, LB 1115, § 93.
71-6812. Repealed. Laws 2000, LB 1115, § 93.
71-6813. Repealed. Laws 2000, LB 1115, § 93.
71-6814. Repealed. Laws 2000, LB 1115, § 93.
71-6815. Repealed. Laws 2000, LB 1115, § 93.
71-6815.01. Repealed. Laws 2000, LB 1115, § 93.
71-6816. Repealed. Laws 2000, LB 1115, § 93.
71-6817. Repealed. Laws 2000, LB 1115, § 93.
71-6818. Repealed. Laws 2000, LB 1115, § 93.
71-6819. Repealed. Laws 2000, LB 1115, § 93.
71-6820. Repealed. Laws 2000, LB 1115, § 93.
71-6821. Repealed. Laws 2000, LB 1115, § 93.
71-6822. Repealed. Laws 2000, LB 1115, § 93.
71-6823. Repealed. Laws 2000, LB 1115, § 93.
71-6823.01. Repealed. Laws 2000, LB 1115, § 93.
71-6824. Repealed. Laws 2000, LB 1115, § 93.
71-6825. Repealed. Laws 2000, LB 1115, § 93.
71-6826. Repealed. Laws 2000, LB 1115, § 93.
71-6827. Repealed. Laws 2000, LB 1115, § 93.
71-6828. Repealed. Laws 2000, LB 1115, § 93.
71-6829. Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.
71-6830. Repealed. Laws 2000, LB 1115, § 93.
71-6831. Repealed. Laws 2000, LB 1115, § 93.
71-6832. Human genetic testing; requirements.
71-6833. Forensic DNA laboratories; requirements.

71-6801 Repealed. Laws 2000, LB 1115, § 93.

71-6802 Repealed. Laws 2000, LB 1115, § 93.

71-6803 Repealed. Laws 2000, LB 1115, § 93.

71-6804 Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.

71-6805 Repealed. Laws 2000, LB 1115, § 93.

71-6806 Repealed. Laws 2000, LB 1115, § 93.

71-6807 Repealed. Laws 2000, LB 1115, § 93.

71-6808 Repealed. Laws 2000, LB 1115, § 93.

71-6809 Repealed. Laws 2000, LB 1115, § 93.

71-6810 Repealed. Laws 2000, LB 1115, § 93.

71-6811 Repealed. Laws 2000, LB 1115, § 93.

71-6812 Repealed. Laws 2000, LB 1115, § 93.

71-6813 Repealed. Laws 2000, LB 1115, § 93.

71-6814 Repealed. Laws 2000, LB 1115, § 93.

71-6815 Repealed. Laws 2000, LB 1115, § 93.

71-6815.01 Repealed. Laws 2000, LB 1115, § 93.

71-6816 Repealed. Laws 2000, LB 1115, § 93.

71-6817 Repealed. Laws 2000, LB 1115, § 93.

71-6818 Repealed. Laws 2000, LB 1115, § 93.

71-6819 Repealed. Laws 2000, LB 1115, § 93.

71-6820 Repealed. Laws 2000, LB 1115, § 93.

71-6821 Repealed. Laws 2000, LB 1115, § 93.

71-6822 Repealed. Laws 2000, LB 1115, § 93.

71-6823 Repealed. Laws 2000, LB 1115, § 93.

71-6823.01 Repealed. Laws 2000, LB 1115, § 93.

71-6824 Repealed. Laws 2000, LB 1115, § 93.

71-6825 Repealed. Laws 2000, LB 1115, § 93.

71-6826 Repealed. Laws 2000, LB 1115, § 93.

71-6827 Repealed. Laws 2000, LB 1115, § 93.

71-6828 Repealed. Laws 2000, LB 1115, § 93.

71-6829 Repealed. Laws 2000, LB 1115, § 93; Laws 2000, LB 1135, § 34.

71-6830 Repealed. Laws 2000, LB 1115, § 93.

71-6831 Repealed. Laws 2000, LB 1115, § 93.

71-6832 Human genetic testing; requirements.

All laboratories performing human genetic testing for clinical diagnosis and treatment purposes shall be accredited by the College of American Pathologists or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the college.

Source: Laws 2001, LB 432, § 4.

71-6833 Forensic DNA laboratories; requirements.

Except as provided under section 81-2010, all forensic DNA laboratories performing work on behalf of the state or a political subdivision shall be accredited by the American Society of Crime Laboratory Directors-LAB-Laboratory Accreditation Board or the National Forensic Science Technology Center or by any other national accrediting body or public agency which has requirements that are substantially equivalent to or more comprehensive than those of the society or center.

Source: Laws 2001, LB 432, § 5.

ARTICLE 69

ABORTION

Cross References

Abortion, prohibited acts, criminal penalties, see section 28-325 et seq.

Section
71-6901. Terms, defined.
71-6902. Performance of abortion; notice required.

Section
71-6903. Abortion; authorized by court; when; procedures; confidentiality; guardian ad litem.
71-6904. Appeal; procedure; confidentiality.
71-6905. Court proceedings; no fees or costs required.
71-6906. Performance of abortion; notice not required; when.
71-6907. Violation by physician; penalty; civil action; immunity.
71-6908. Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.
71-6909. Repealed. Laws 2004, LB 172, § 1.

71-6901 Terms, defined.

For purposes of sections 71-6901 to 71-6908:

(1) Abortion shall mean an act, procedure, device, or prescription administered to a woman known by the person so administering to be pregnant and administered with the intent and result of producing the premature expulsion, removal, or termination of the human life within the womb of the pregnant woman, except that in cases in which the unborn child's viability is threatened by continuation of the pregnancy, early delivery after viability shall not be construed as an abortion;

(2) Facsimile copy shall mean a copy generated by a system that encodes a document or photograph into electrical signals, transmits those signals over telecommunications lines, and then reconstructs the signals to create an exact duplicate of the original document at the receiving end;

(3) Parent shall mean one parent or guardian of the pregnant woman selected by the pregnant woman. The attending physician shall certify in writing in the pregnant woman's medical record the parent or guardian selected by the woman;

(4) Physician or attending physician shall mean the physician intending to perform the abortion; and

(5) Pregnant woman shall mean an unemancipated woman under eighteen years of age who is pregnant or a pregnant woman for whom a guardian has been appointed pursuant to sections 30-2620 to 30-2629 because of a finding of incapacity, disability, or incompetency.

Source: Laws 1991, LB 425, § 1.

71-6902 Performance of abortion; notice required.

(1) No abortion shall be performed upon a pregnant woman until at least forty-eight hours after written notice of the pending abortion has been delivered in the manner specified in subsection (2) or (3) of this section.

(2) The notice shall be addressed to the parent at his or her usual place of residence and shall be delivered personally to the parent by the physician or an agent.

(3) In lieu of the delivery required by subsection (2) of this section, notice shall be made by registered or certified mail addressed to the parent at his or her usual place of residence with return receipt requested and restricted delivery to the addressee, which means the postal employee can only deliver mail to the authorized addressee. Time of delivery shall be deemed to occur at

twelve o'clock noon on the next day on which regular mail delivery takes place subsequent to the mailing.

Source: Laws 1991, LB 425, § 2.

71-6903 Abortion; authorized by court; when; procedures; confidentiality; guardian ad litem.

(1) If a pregnant woman elects not to notify her parent, a judge of a district court, separate juvenile court, or county court sitting as a juvenile court shall, upon petition or motion and after an appropriate hearing, authorize a physician to perform the abortion if the court determines that the pregnant woman is mature and capable of giving informed consent to the proposed abortion. If the court determines that the pregnant woman is not mature or if the pregnant woman does not claim to be mature, the court shall determine whether the performance of an abortion upon her without notification of her parent would be in her best interests and shall authorize a physician to perform the abortion without such notification if the court concludes that the best interests of the pregnant woman would be served thereby.

(2) A facsimile copy of the petition or motion may be transmitted directly to the court for filing. If a facsimile copy is filed in lieu of the original document, the party filing the facsimile copy shall retain the original document for production to the court if requested to do so.

(3) A court shall not be required to have a facsimile machine nor shall the court be required to transmit orders or other material to attorneys or parties via facsimile transmission.

(4) An action for waiver of notification shall be commenced by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator. The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a waiver of notification, including the name, address, telephone number, and facsimile number of each court in the state. A sufficient number of petition forms and instructions shall be made available in each courthouse in such place that members of the general public may obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel. The clerk of the court shall, upon request, assist in completing and filing the petition for waiver of notification.

(5) Proceedings in court pursuant to this section shall be confidential. Proceedings shall be held in camera. Only the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and a person whose presence is specifically requested by the pregnant woman, the pregnant woman's guardian ad litem, or the pregnant woman's attorney may attend the hearing on the petition. All testimony, all documents, all other evidence presented to the court, the petition and any order entered, and all records of any nature and kind relating to the matter shall be sealed by the clerk of the court and shall not be open to any person except upon order of the court for good cause shown. A separate docket for the purposes of this section shall be maintained by the clerk of the court and shall likewise be sealed and not opened to inspection by any person except upon order of the court for good cause shown.

(6) A pregnant woman who is subject to this section may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad

litem for her. The court shall advise the pregnant woman that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Such counsel shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held.

(7) Proceedings in court pursuant to this section shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay to serve the best interests of the pregnant woman. In no case shall the court fail to rule within seven calendar days from the time the petition is filed. If the court fails to rule within the required time period, the pregnant woman may file an application for a writ of mandamus with the Supreme Court. If cause for a writ of mandamus exists, the writ shall issue within three days. If the judge issues a ruling adverse to the pregnant woman, the judge shall issue written findings of fact and conclusions of law.

(8) The court shall issue a written order which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

Source: Laws 1991, LB 425, § 3.

In a proceeding brought under section 71-6901 et seq., the burden of proof on all issues rests with the pregnant woman, and such burden must be established by clear and convincing evidence. As related to a pregnant woman's abortion decision, maturity is not solely a matter of social skills, level of intelligence, or verbal skills, but, more importantly, a matter of experience, perspective, and judgment. In re Petition of Anonymous I, 251 Neb. 424, 558 N.W.2d 784 (1997).

71-6904 Appeal; procedure; confidentiality.

(1) An appeal to the Supreme Court shall be available to any pregnant woman for whom a court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification shall not be subject to appeal.

(2) An adverse ruling by the court may be appealed to the Supreme Court.

(3) A pregnant woman may file a notice of appeal of any final order to the Supreme Court. The State Court Administrator shall develop the form for notice of appeal and accompanying instructions on the procedure for an appeal. A sufficient number of forms for notice of appeal and instructions shall be made available in each courthouse in such place that members of the general public can obtain a form and instructions without requesting such form and instructions from the clerk of the court or other court personnel.

(4) The clerk of the court shall cause the court transcript and bill of exceptions to be filed with the Supreme Court within four business days, but in no event later than seven calendar days, from the date of the filing of the notice of appeal.

(5) In all appeals under this section the pregnant woman shall have the right of a confidential and expedited appeal and the right to counsel at the appellate level if not already represented. Such counsel shall be appointed by the court and shall receive a fee to be fixed by the court and to be paid out of the treasury of the county in which the proceeding was held. The pregnant woman shall not be required to appear.

(6) The Supreme Court shall hear the appeal de novo on the record and issue a written decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, or any other person designated by the pregnant woman to receive the order.

(7) The Supreme Court shall rule within seven calendar days from the time of the docketing of the appeal in the Supreme Court.

(8) The Supreme Court shall adopt and promulgate rules to ensure that proceedings under this section are handled in a confidential and expeditious manner.

Source: Laws 1991, LB 425, § 4.

In an appeal brought under the provisions of section 71-6901 et seq., this section provides that the Nebraska Supreme Court reappraises the evidence as presented by the record and reaches its own independent conclusions with respect to the matters at issue; however, it considers, and may give weight to, the fact that the judge below heard and observed the witnesses. In re Petition of Anonymous I, 251 Neb. 424, 558 N.W.2d 784 (1997).

71-6905 Court proceedings; no fees or costs required.

No filing fees or costs shall be required of any pregnant woman at either the trial or appellate level for any proceedings pursuant to sections 71-6901 to 71-6908.

Source: Laws 1991, LB 425, § 5.

71-6906 Performance of abortion; notice not required; when.

Notification shall not be required pursuant to sections 71-6901 to 71-6908 if any of the following conditions exist:

(1) The attending physician certifies in writing in the pregnant woman's medical record that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and there is insufficient time to provide the required notification;

(2) The abortion is authorized in writing by the person who is entitled to notification; or

(3) The pregnant woman declares that she is a victim of abuse as defined in section 28-351, sexual abuse as defined in section 28-367, or child abuse or neglect as defined in section 28-710. Notice of such a declaration shall be made to the proper authorities as provided in sections 28-372 and 28-711. If such a declaration is made, the attending physician or his or her agent shall inform the pregnant woman of his or her duty to notify the proper authorities as provided in sections 28-372 and 28-711.

Source: Laws 1991, LB 425, § 6; Laws 2005, LB 116, § 23.

71-6907 Violation by physician; penalty; civil action; immunity.

(1) Any physician or attending physician who knowingly and intentionally performs an abortion in violation of sections 71-6901 to 71-6906 shall be guilty of a Class III misdemeanor.

(2) Performance of an abortion in violation of such sections shall be grounds for a civil action by a person wrongfully denied notification.

(3) A person shall be immune from liability under such sections (a) if he or she establishes by written evidence that he or she relied upon evidence sufficient to convince a careful and prudent person that the representations of the pregnant woman regarding information necessary to comply with such sections are bona fide and true, (b) if the person has attempted with reasonable diligence to deliver notification as required by section 71-6902 but has been

unable to do so, or (c) if the person has performed an abortion authorized by a court order issued pursuant to section 71-6903 or 71-6904.

Source: Laws 1991, LB 425, § 7.

71-6908 Family or foster family abuse, neglect, or sexual assault; legislative findings and declarations; prosecution encouraged.

The Legislature recognizes and hereby declares that some teenage pregnancies are a direct or indirect result of family or foster family abuse, neglect, or sexual assault. The Legislature further recognizes that the actions of abuse, neglect, or sexual assault are crimes regardless of whether they are committed by strangers, acquaintances, or family members. The Legislature further recognizes the need for a parent or guardian notification bypass system as set out in section 71-6903 due to the number of unhealthy family environments in which some pregnant women reside. The Legislature encourages county attorneys to prosecute persons accused of committing acts of abuse, incest, neglect, or sexual assault pursuant to sections 28-319, 28-319.01, 28-320, 28-320.01, 28-703, and 28-707 even if the alleged crime is committed by a biological or adoptive parent, foster parent, or other biological, adoptive, or foster family member.

Source: Laws 1991, LB 425, § 8; Laws 2006, LB 1199, § 56.

71-6909 Repealed. Laws 2004, LB 172, § 1.

ARTICLE 70

BREAST AND CERVICAL CANCER

Section
71-7001. Repealed. Laws 2008, LB 797, § 35.
71-7001.01. Legislative findings.
71-7002. Repealed. Laws 2008, LB 797, § 35.
71-7003. Repealed. Laws 2008, LB 797, § 35.
71-7003.01. Department; funding; powers.
71-7004. Repealed. Laws 2008, LB 797, § 35.
71-7005. Repealed. Laws 2008, LB 797, § 35.
71-7006. Repealed. Laws 2008, LB 797, § 35.
71-7007. Repealed. Laws 2008, LB 797, § 35.
71-7008. Repealed. Laws 2008, LB 797, § 35.
71-7009. Repealed. Laws 2008, LB 797, § 35.
71-7010. Breast and Cervical Cancer Cash Fund; created; use; investment.
71-7011. Repealed. Laws 2008, LB 797, § 35.
71-7012. Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.
71-7013. Immunity from liability; when.

71-7001 Repealed. Laws 2008, LB 797, § 35.

71-7001.01 Legislative findings.

The Legislature finds that private citizens and charitable organizations have donated and granted funds to the department to pay for definitive diagnostic procedures for women whose abnormal test results have been discovered through the department's program for early detection of breast and cervical cancer. The Legislature recognizes the generosity of its citizens and charitable organizations who donate their time and money to provide funds to their fellow citizens.

It is the intent of the Legislature to permit the department to obtain and expend such funds to pay for definitive diagnostic procedures for women enrolled in the program.

Source: Laws 1995, LB 68, § 4.

71-7002 Repealed. Laws 2008, LB 797, § 35.

71-7003 Repealed. Laws 2008, LB 797, § 35.

71-7003.01 Department; funding; powers.

The department may apply for, receive, and administer funds received from private sources to pay for definitive diagnostic procedures for women enrolled in the breast and cervical cancer program authorized under sections 71-7001.01 to 71-7013 and funded through a grant from the United States Department of Health and Human Services.

This section does not create an entitlement for enrollees in the programs. Payments may be made to the extent funds are available in the order requests are received by the department.

The funds obtained for definitive diagnostic procedures shall be remitted to the State Treasurer for credit to the Breast and Cervical Cancer Cash Fund. Money credited to the fund for purposes of this section shall be used to reimburse the costs of definitive diagnostic procedures as provided in this section.

Source: Laws 1995, LB 68, § 6; Laws 2008, LB797, § 23.

71-7004 Repealed. Laws 2008, LB 797, § 35.

71-7005 Repealed. Laws 2008, LB 797, § 35.

71-7006 Repealed. Laws 2008, LB 797, § 35.

71-7007 Repealed. Laws 2008, LB 797, § 35.

71-7008 Repealed. Laws 2008, LB 797, § 35.

71-7009 Repealed. Laws 2008, LB 797, § 35.

71-7010 Breast and Cervical Cancer Cash Fund; created; use; investment.

The Breast and Cervical Cancer Cash Fund is created. The fund shall consist of any money appropriated to it by the Legislature, any money received by the department for the program, including federal and other public and private funds, and funds credited under section 71-7003.01. Money in the fund may be used to reimburse expenses of members of the Breast and Cervical Cancer Advisory Committee, expenses of the program for early detection of breast and cervical cancer funded through a grant from the United States Department of Health and Human Services, and funds received under section 71-7003.01. 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.

Source: Laws 1991, LB 256, § 10; Laws 1994, LB 1066, § 71; Laws 1995, LB 68, § 9; Laws 2008, LB797, § 24.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7011 Repealed. Laws 2008, LB 797, § 35.

71-7012 Breast and Cervical Cancer Advisory Committee; established; members; appointment; terms; duties; expenses.

The Breast and Cervical Cancer Advisory Committee is established. The committee consists of the members of the Mammography Screening Committee serving immediately prior to September 9, 1995, and eight additional members appointed by the chief executive officer of the department or his or her designee who have expertise or a personal interest in cervical cancer. The committee shall consist of not more than twenty-four volunteer members, at least eight of whom are women, appointed by the chief executive officer or his or her designee. Members of the committee shall be persons interested in health care, the promotion of breast cancer screening, and cervical cancer and shall be drawn from both the private sector and the public sector. At least one member shall be a person who has or who has had breast cancer.

Of the initial members of the committee, four shall be appointed for terms of one year and four shall be appointed for terms of two years. Thereafter all appointments shall be for terms of two years. All members shall serve until their successors are appointed. No member shall serve more than two successive two-year terms. Vacancies in the membership of the committee for any cause shall be filled by appointment by the chief executive officer or his or her designee for the unexpired term.

Duties of the committee shall include, but not be limited to, encouraging payment of public and private funds to the Breast and Cervical Cancer Cash Fund, researching and recommending to the department reimbursement limits, planning and implementing outreach and educational programs to Nebraska women, advising the department on its operation of the early detection of breast and cervical cancer grant from the United States Department of Health and Human Services, and encouraging payment of public and private funds to the fund. Members of the committee shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

Source: Laws 1991, LB 256, § 12; Laws 1995, LB 68, § 10; Laws 1995, LB 406, § 84; Laws 1996, LB 1044, § 772; Laws 2007, LB296, § 668; Laws 2008, LB797, § 25.

71-7013 Immunity from liability; when.

The State of Nebraska, the department and its employees, and members of the Breast and Cervical Cancer Advisory Committee shall not be liable for any damage or injury resulting from (1) a false negative result or a false positive result interpretation or any other act or omission of an interpreting physician with respect to any screening performed pursuant to sections 71-7001.01 to 71-7012 or (2) any act or omission of a screening supplier or person acting on behalf of such supplier with respect to the provisions of such sections.

Source: Laws 1991, LB 256, § 13; Laws 1995, LB 68, § 11; Laws 2008, LB797, § 26.

ARTICLE 71
CRITICAL INCIDENT STRESS MANAGEMENT

Section

71-7101 Act, how cited.

Sections 71-7101 to 71-7113 shall be known and may be cited as the Critical Incident Stress Management Act.

Source: Laws 1991, LB 703, § 1; Laws 1993, LB 536, § 107; Laws 1997, LB 184, § 1.

71-7102 Terms, defined.

For purposes of the Critical Incident Stress Management Act:

(1) Committee means the Interagency Management Committee;

(2) Council means the Critical Incident Stress Management Council;

(3) Critical incident means a traumatic or crisis situation;

(4) Critical incident stress means a strong emotional, cognitive, or physical reaction which has the potential to interfere with normal functioning, including physical and emotional illness, loss of interest in the job, personality changes, marital discord, and loss of ability to function;

(5) Emergency service agency means any law enforcement agency, fire department, emergency medical service, dispatcher, rescue service, hospital as defined in section 71-419, or other entity which provides emergency response services;

(6) Emergency service personnel includes law enforcement personnel, firefighters, emergency medical services personnel, and hospital personnel; and

(7) Program means the Critical Incident Stress Management Program.

Source: Laws 1991, LB 703, § 2; Laws 1997, LB 138, § 53; Laws 1997, LB 184, § 2; Laws 2000, LB 819, § 142.

71-7103 Legislative findings.

The Legislature finds that emergency service personnel are potentially placed in a high-risk situation every time they are called upon to respond to an emergency since the extent of the emergency cannot be anticipated and the eventual outcome cannot be predicted. Since the services of emergency service personnel affect the public health, safety, and welfare, the Legislature declares

that a critical incident stress management program designed to reduce critical incident stress experienced by such personnel would be in the public interest and would assist such personnel with the demands which occur in their work.

Source: Laws 1991, LB 703, § 3; Laws 1997, LB 184, § 3.

71-7104 Critical Incident Stress Management Program; created; duties.

There is hereby created the Critical Incident Stress Management Program. The focus of the program shall be to minimize the harmful effects of critical incident stress for emergency service personnel, with a high priority on confidentiality and respect for the individuals involved. The program shall:

(1) Provide a stress management session to emergency service personnel who appropriately request such assistance in an effort to address critical incident stress;

(2) Assist in providing the emotional and educational support necessary to ensure optimal functioning of emergency service personnel;

(3) Conduct preincident educational programs to acquaint emergency service personnel with stress management techniques;

(4) Promote interagency cooperation; and

(5) Provide an organized statewide response to the emotional needs of emergency service personnel impacted by critical incidents.

Source: Laws 1991, LB 703, § 4; Laws 1997, LB 184, § 4.

71-7105 Critical Incident Stress Management Council; created; members; duties.

There is hereby created the Critical Incident Stress Management Council. The council shall be composed of two representatives of the Department of Health and Human Services, the State Fire Marshal, the Superintendent of Law Enforcement and Public Safety, and the Adjutant General as director of the Nebraska Emergency Management Agency. The council shall specify the organizational and operational goals for the program and shall provide overall policy direction for the program.

Source: Laws 1991, LB 703, § 5; Laws 1996, LB 1044, § 773; Laws 1997, LB 184, § 5; Laws 2007, LB296, § 669.

71-7106 Interagency Management Committee; created; members; duties.

There is hereby created the Interagency Management Committee. Each member of the council shall designate a representative of his or her agency to be a member of the committee. The committee shall be responsible for:

(1) Planning and budget development;

(2) Program development and evaluation;

(3) Coordination of program activities and emergency response;

(4) Providing a mechanism for quality assurance which may include certification of critical incident stress management team members;

(5) Identifying critical incident stress management regions;

(6) Developing regulations and standards;

(7) Arranging for and supporting training of critical incident stress management teams; and

(8) Providing backup to regional critical incident stress management teams.

Source: Laws 1991, LB 703, § 6; Laws 1997, LB 184, § 6.

71-7107 Department of Health and Human Services; duties.

The Department of Health and Human Services shall be the lead agency for the program. The department shall:

(1) Provide office support to program activities;

(2) Provide necessary equipment for the program and participants;

(3) Provide staff support to the council;

(4) Adopt and promulgate rules and regulations to implement the program;

(5) Recruit hospital personnel and emergency medical workers to be trained as critical incident stress management peers;

(6) Participate in the training and continuing education of such peers and mental health professionals; and

(7) Appoint a director for the program who shall be an employee of the department and shall be the chairperson of the committee.

Source: Laws 1991, LB 703, § 7; Laws 1996, LB 1044, § 774; Laws 1997, LB 184, § 7; Laws 2007, LB296, § 670.

71-7108 Department of Health and Human Services; Nebraska State Patrol; State Fire Marshal; Nebraska Emergency Management Agency; duties.

(1) The Department of Health and Human Services shall participate in the council and committee, recruit mental health workers for each critical incident stress management region, and participate in the training and continuing education activities of critical incident stress management peers and mental health professionals.

(2) The Nebraska State Patrol shall participate in the council and committee, receive all initial requests for stress management sessions, coordinate transportation requirements for critical incident stress management team members, recruit members of the law enforcement profession in each region to be trained as critical incident stress management peers, participate in the training and continuing education activities of critical incident stress management peers and mental health professionals, and appoint a member of the patrol to each regional management committee.

(3) The State Fire Marshal shall participate in the council and committee, cooperate in providing transportation for critical incident stress management teams, recruit firefighters to be trained as critical incident stress management peers in each critical incident stress management region, participate in the training and continuing education activities of critical incident stress management peers and mental health professionals, and appoint an individual who is employed by the State Fire Marshal to be on each regional management committee.

(4) The Nebraska Emergency Management Agency shall participate in the council and committee, promote stress management planning as part of emergency management preparedness, promote preincident education programs to acquaint emergency service personnel with stress management techniques, and

participate in the training and continuing education activities of critical incident stress management peers and mental health professionals.

Source: Laws 1991, LB 703, § 8; Laws 1996, LB 1044, § 775; Laws 1997, LB 184, § 8.

71-7109 Statewide clinical director; appointment; duties.

The council shall appoint a statewide clinical director. The statewide clinical director shall be a member of the committee and, working with the committee, shall supervise and evaluate the professional and peer support team members, including the regional clinical directors. The statewide clinical director may conduct critical incident stress management training and continuing education activities.

Source: Laws 1991, LB 703, § 9; Laws 1997, LB 184, § 9.

71-7110 Critical incident stress management region; regional management committee; membership; regional clinical director; duties.

Each critical incident stress management region shall have a regional management committee composed of representatives of the Department of Health and Human Services, the State Fire Marshal, and the Nebraska State Patrol and a regional clinical director. The regional clinical director shall have a graduate degree in a mental health discipline. The regional management committee shall be responsible for the implementation and coordination of the program in the region according to the specifications developed by the council and Interagency Management Committee. The regional management committee shall develop critical incident stress management teams to facilitate the stress management process.

Source: Laws 1991, LB 703, § 10; Laws 1996, LB 1044, § 776; Laws 1997, LB 184, § 10; Laws 2007, LB296, § 671.

71-7111 Statewide critical incident stress management team; members; immunity.

No individual who provides gratuitous assistance to emergency service personnel as a member of the statewide critical incident stress management team in accordance with the Critical Incident Stress Management Act and the rules and regulations shall be held liable for any civil damages as a result of any act of commission or omission arising out of and in the course of rendering such assistance in good faith or any act or failure to act to provide or arrange for mental health treatment or care for emergency service personnel.

Source: Laws 1991, LB 703, § 11; Laws 1997, LB 184, § 11.

71-7112 Confidentiality of information.

Any information acquired during a stress management session shall be confidential and shall not be disclosed except to the extent necessary to provide assistance pursuant to the stress management session. Information otherwise available from the original source shall not be immune from discovery or use in any civil or criminal action merely because the information was presented during a stress management session if the testimony sought is otherwise permissible and discoverable.

Source: Laws 1993, LB 536, § 108; Laws 1997, LB 184, § 12.

71-7113 State correctional employees; services provided.

All services available and provided to emergency service personnel under the Critical Incident Stress Management Act shall also be available and provided to state correctional employees for incidents which occur in the course of their duties or at their worksite.

Source: Laws 1997, LB 184, § 13.

ARTICLE 72

UNIFORM DETERMINATION OF DEATH ACT

Section
71-7201. Act, how cited.
71-7202. Determination of death.
71-7203. Act, how construed.

71-7201 Act, how cited.

Sections 71-7201 to 71-7203 shall be known and may be cited as the Uniform Determination of Death Act.

Source: Laws 1992, LB 906, § 1.

71-7202 Determination of death.

Only an individual who has sustained either (1) irreversible cessation of circulatory and respiratory functions, or (2) irreversible cessation of all functions of the entire brain, including the brain stem, is dead. A determination of death must be made in accordance with accepted medical standards.

Source: Laws 1992, LB 906, § 2.

The presence of an independent heartbeat and the existence of some brain stem activity means that an infant is alive for purposes of this section. In re Interest of Tabatha R., 252 Neb. 687, 564 N.W.2d 598 (1997).

71-7203 Act, how construed.

The Uniform Determination of Death Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Source: Laws 1992, LB 906, § 3.

ARTICLE 73

FIRST RESPONDERS EMERGENCY RESCUE ACT

Section
71-7301. Repealed. Laws 1997, LB 138, § 57.
71-7302. Repealed. Laws 1997, LB 138, § 57.
71-7303. Repealed. Laws 1997, LB 138, § 57.
71-7304. Repealed. Laws 1997, LB 138, § 57.
71-7305. Repealed. Laws 1997, LB 138, § 57.
71-7306. Repealed. Laws 1997, LB 138, § 57.
71-7307. Repealed. Laws 1997, LB 138, § 57.
71-7308. Repealed. Laws 1997, LB 138, § 57.
71-7309. Repealed. Laws 1997, LB 138, § 57.
71-7310. Repealed. Laws 1997, LB 138, § 57.
71-7310.01. Repealed. Laws 1997, LB 138, § 57.
71-7311. Repealed. Laws 1997, LB 138, § 57.
71-7312. Repealed. Laws 1997, LB 138, § 57.
71-7313. Repealed. Laws 1997, LB 138, § 57.

Section
71-7314. Repealed. Laws 1997, LB 138, § 57.
71-7315. Repealed. Laws 1997, LB 138, § 57.
71-7316. Repealed. Laws 1997, LB 138, § 57.
71-7317. Repealed. Laws 1997, LB 138, § 57.
71-7318. Repealed. Laws 1997, LB 138, § 57.

71-7301 Repealed. Laws 1997, LB 138, § 57.

71-7302 Repealed. Laws 1997, LB 138, § 57.

71-7303 Repealed. Laws 1997, LB 138, § 57.

71-7304 Repealed. Laws 1997, LB 138, § 57.

71-7305 Repealed. Laws 1997, LB 138, § 57.

71-7306 Repealed. Laws 1997, LB 138, § 57.

71-7307 Repealed. Laws 1997, LB 138, § 57.

71-7308 Repealed. Laws 1997, LB 138, § 57.

71-7309 Repealed. Laws 1997, LB 138, § 57.

71-7310 Repealed. Laws 1997, LB 138, § 57.

71-7310.01 Repealed. Laws 1997, LB 138, § 57.

71-7311 Repealed. Laws 1997, LB 138, § 57.

71-7312 Repealed. Laws 1997, LB 138, § 57.

71-7313 Repealed. Laws 1997, LB 138, § 57.

71-7314 Repealed. Laws 1997, LB 138, § 57.

71-7315 Repealed. Laws 1997, LB 138, § 57.

71-7316 Repealed. Laws 1997, LB 138, § 57.

71-7317 Repealed. Laws 1997, LB 138, § 57.

71-7318 Repealed. Laws 1997, LB 138, § 57.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

Cross References

Pharmacy Practice Act, see section 38-2801.
Uniform Controlled Substances Act, see section 28-401.01.
Uniform Credentialing Act, see section 38-101.
Veterinary Drug Distribution Licensing Act, see section 71-8901.

Section
71-7401. Transferred to section 71-7427.
71-7402. Transferred to section 71-7428.
71-7403. Transferred to section 71-7429.
71-7404. Transferred to section 71-7430.
71-7405. Transferred to section 71-7431.
71-7406. Transferred to section 71-7433.

Section
71-7407. Transferred to section 71-7434.
71-7408. Transferred to section 71-7435.
71-7409. Transferred to section 71-7436.
71-7410. Transferred to section 71-7438.
71-7411. Transferred to section 71-7441.
71-7412. Transferred to section 71-7444.
71-7413. Transferred to section 71-7445.
71-7414. Repealed. Laws 2006, LB 994, § 161.
71-7415. Repealed. Laws 2006, LB 994, § 161.
71-7416. Transferred to section 71-7454.
71-7417. Transferred to section 71-7447.
71-7418. Repealed. Laws 2006, LB 994, § 161.
71-7419. Repealed. Laws 2006, LB 994, § 161.
71-7420. Transferred to section 71-7451.
71-7421. Repealed. Laws 2006, LB 994, § 161.
71-7422. Transferred to section 71-7463.
71-7423. Transferred to section 71-7457.
71-7424. Transferred to section 71-7453.
71-7425. Transferred to section 71-7458.
71-7426. Transferred to section 71-7459.
71-7427. Act, how cited.
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71-7429. Blood, defined.
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71-7434. Department, defined.
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71-7436. Emergency medical reasons, defined.
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71-7439. Normal distribution chain, defined.
71-7440. Pedigree, defined.
71-7441. Prescription drug, defined.
71-7442. Repackage, defined.
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71-7444. Wholesale drug distribution, defined.
71-7445. Wholesale drug distributor, defined.
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71-7448. License; application; contents; examination; criminal history record information check; waiver.
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71-7456. Pedigree; contents.
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71-7459. Department; fines; when.
71-7460. Order to cease distribution.
71-7460.01. Reporting and investigation duties.
71-7460.02. Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.
71-7460.03. Insurer; duty to report; contents.
71-7460.04. Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information.

Section
71-7461. Unlawful acts.
71-7462. Violations; penalty.
71-7463. Rules and regulations.

71-7401 Transferred to section 71-7427.

71-7402 Transferred to section 71-7428.

71-7403 Transferred to section 71-7429.

71-7404 Transferred to section 71-7430.

71-7405 Transferred to section 71-7431.

71-7406 Transferred to section 71-7433.

71-7407 Transferred to section 71-7434.

71-7408 Transferred to section 71-7435.

71-7409 Transferred to section 71-7436.

71-7410 Transferred to section 71-7438.

71-7411 Transferred to section 71-7441.

71-7412 Transferred to section 71-7444.

71-7413 Transferred to section 71-7445.

71-7414 Repealed. Laws 2006, LB 994, § 161.

71-7415 Repealed. Laws 2006, LB 994, § 161.

71-7416 Transferred to section 71-7454.

71-7417 Transferred to section 71-7447.

71-7418 Repealed. Laws 2006, LB 994, § 161.

71-7419 Repealed. Laws 2006, LB 994, § 161.

71-7420 Transferred to section 71-7451.

71-7421 Repealed. Laws 2006, LB 994, § 161.

71-7422 Transferred to section 71-7463.

71-7423 Transferred to section 71-7457.

71-7424 Transferred to section 71-7453.

71-7425 Transferred to section 71-7458.

71-7426 Transferred to section 71-7459.

71-7427 Act, how cited.

Sections 71-7427 to 71-7463 shall be known and may be cited as the Wholesale Drug Distributor Licensing Act.

Source: Laws 1992, LB 1019, § 1; R.S.1943, (2003), § 71-7401; Laws 2006, LB 994, § 1; Laws 2007, LB463, § 1293.

71-7428 Definitions, where found.

For purposes of the Wholesale Drug Distributor Licensing Act, the definitions found in sections 71-7429 to 71-7446 apply.

Source: Laws 1992, LB 1019, § 2; R.S.1943, (2003), § 71-7402; Laws 2006, LB 994, § 2.

71-7429 Blood, defined.

Blood means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

Source: Laws 1992, LB 1019, § 3; R.S.1943, (2003), § 71-7403; Laws 2006, LB 994, § 3.

71-7430 Blood component, defined.

Blood component means that part of blood separated by physical or mechanical means.

Source: Laws 1992, LB 1019, § 4; R.S.1943, (2003), § 71-7404; Laws 2006, LB 994, § 4.

71-7431 Board, defined.

Board means the Board of Pharmacy.

Source: Laws 1992, LB 1019, § 5; Laws 1999, LB 828, § 176; R.S.1943, (2003), § 71-7405; Laws 2006, LB 994, § 5.

71-7432 Chain pharmacy warehouse, defined.

Chain pharmacy warehouse means a facility utilized as a central warehouse for intracompany sales or transfers of prescription drugs or devices by two or more pharmacies operating under common ownership or common control.

Source: Laws 2006, LB 994, § 6.

71-7433 Common control, defined.

Common control means that the power to direct or cause the direction of the management and policies of a person or an organization by ownership of stock or voting rights, by contract, or otherwise is held by the same person or persons.

Source: Laws 1992, LB 1019, § 6; R.S.1943, (2003), § 71-7406; Laws 2006, LB 994, § 7.

71-7434 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 1992, LB 1019, § 7; Laws 1996, LB 1044, § 778; R.S.1943, (2003), § 71-7407; Laws 2006, LB 994, § 8; Laws 2007, LB296, § 672.

71-7435 Drug sample, defined.

Drug sample means a unit of a prescription drug intended to promote the sale of the drug and not intended to be sold.

Source: Laws 1992, LB 1019, § 8; R.S.1943, (2003), § 71-7408; Laws 2006, LB 994, § 9.

71-7436 Emergency medical reasons, defined.

Emergency medical reasons means the alleviation of a temporary shortage by transfers of prescription drugs between any of the following: (1) Holders of pharmacy licenses, (2) health care practitioner facilities as defined in section 71-414, (3) hospitals as defined in section 71-419, and (4) practitioners as defined in section 38-2838.

Source: Laws 1992, LB 1019, § 9; Laws 1998, LB 1073, § 157; Laws 2001, LB 398, § 82; R.S.1943, (2003), § 71-7409; Laws 2006, LB 994, § 10; Laws 2007, LB463, § 1294.

71-7437 Facility, defined.

Facility means a physical structure utilized by a wholesale drug distributor for the storage, handling, or repackaging of prescription drugs or the offering of prescription drugs for sale.

Source: Laws 2006, LB 994, § 11.

71-7438 Manufacturer, defined.

Manufacturer means any entity engaged in manufacturing, preparing, propagating, processing, packaging, repackaging, or labeling a prescription drug.

Source: Laws 1992, LB 1019, § 10; R.S.1943, (2003), § 71-7410; Laws 2006, LB 994, § 12; Laws 2007, LB247, § 55.

71-7439 Normal distribution chain, defined.

(1) Normal distribution chain means the transfer of a prescription drug or the co-licensed product of the original manufacturer of the finished form of a prescription drug along a chain of custody directly from the manufacturer or co-licensee of such drug to a patient or ultimate consumer of such drug.

(2) Normal distribution chain includes transfers of a prescription drug or co-licensed product:

(a) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, and then to a patient or a patient's agent;

(b) From a manufacturer or co-licensee to a wholesale drug distributor, to a pharmacy, to a health care practitioner, health care practitioner facility, or hospital, and then to a patient or a patient's agent;

(c) From a manufacturer or co-licensee to a wholesale drug distributor, to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent;

(d) From a manufacturer or co-licensee to a chain pharmacy warehouse, to a pharmacy affiliated with the chain pharmacy warehouse, and then to a patient or a patient's agent; or

(e) Recognized in rules and regulations adopted and promulgated by the department.

(3) For purposes of this section, co-licensed products means prescription drugs that have been approved by the federal Food and Drug Administration and are the subject of an arrangement by which two or more parties have the right to engage in a business activity or occupation concerning such drugs.

Source: Laws 2006, LB 994, § 13.

71-7440 Pedigree, defined.

Pedigree means a written or electronic documentation of every transfer of a prescription drug as provided in sections 71-7455 and 71-7456.

Source: Laws 2006, LB 994, § 14.

71-7441 Prescription drug, defined.

Prescription drug means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act, as such section existed on August 1, 2006.

Source: Laws 1992, LB 1019, § 11; R.S.1943, (2003), § 71-7411; Laws 2006, LB 994, § 15.

71-7442 Repackage, defined.

Repackage means repackaging or otherwise changing the container, wrapper, or labeling of a prescription drug to facilitate the wholesale distribution of such drug.

Source: Laws 2006, LB 994, § 16.

71-7443 Repackager, defined.

Repackager means a person who repackages.

Source: Laws 2006, LB 994, § 17.

71-7444 Wholesale drug distribution, defined.

(1) Wholesale drug distribution means the distribution of prescription drugs to a person other than a consumer or patient.

(2) Wholesale drug distribution does not include:

(a) Intracompany sales of prescription drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control;

(b) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code, a state, a political subdivision, or any other governmental agency to a nonprofit affiliate of the organization, to the extent otherwise permitted by law;

(c) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities operating under common ownership or common control;

(d) The sale, purchase, or trade of or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons;

(e) The sale, purchase, or trade of, an offer to sell, purchase, or trade, or the dispensing of a prescription drug pursuant to a prescription;

(f) The distribution of drug samples by representatives of a manufacturer or of a wholesale drug distributor;

(g) The sale, purchase, or trade of blood and blood components intended for transfusion; or

(h) The delivery of or the offer to deliver a prescription drug by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

Source: Laws 1992, LB 1019, § 12; Laws 1995, LB 574, § 60; R.S.1943, (2003), § 71-7412; Laws 2006, LB 994, § 18.

71-7445 Wholesale drug distributor, defined.

(1) Wholesale drug distributor means any person or entity engaged in wholesale drug distribution in this state, including manufacturers, repackagers, own-label distributors, jobbers, private-label distributors, brokers, warehouses including manufacturer and distributor warehouses, chain pharmacy warehouses, and wholesale drug warehouses, wholesale medical gas distributors, independent wholesale drug traders, and retail pharmacies that engage in wholesale drug distribution in this state.

(2) Wholesale drug distributor does not include a common carrier or other person or entity hired solely to transport prescription drugs if the common carrier, person, or entity does not store, warehouse, or take legal ownership of such drugs.

Source: Laws 1992, LB 1019, § 13; R.S.1943, (2003), § 71-7413; Laws 2006, LB 994, § 19.

71-7446 Wholesale medical gas distributor, defined.

Wholesale medical gas distributor means any person engaged in the wholesale drug distribution of medical gases provided to suppliers or other entities licensed or otherwise authorized to use, administer, or distribute such gases.

Source: Laws 2006, LB 994, § 20.

71-7447 Wholesale drug distributor; licenses; requirements; exemptions.

(1) No person or entity may act as a wholesale drug distributor in this state without first obtaining a wholesale drug distributor license from the department. The department shall issue a license to any applicant that satisfies the requirements for licensure under the Wholesale Drug Distributor Licensing Act. Manufacturers are exempt from any licensing and other requirements of the act to the extent not required by federal law or regulation except for those requirements deemed necessary and appropriate under rules and regulations adopted and promulgated by the department.

(2) Wholesale medical gas distributors shall be exempt from any licensing and other requirements of the Wholesale Drug Distributor Licensing Act to the extent not required under federal law but shall be licensed as wholesale drug

distributors by the department for the limited purpose of engaging in the wholesale distribution of medical gases upon application to the department, payment of a licensure fee, and inspection of the applicant's facility by the department, except that the applicant may submit and the department may accept an inspection accepted in another state or an inspection conducted by a nationally recognized accreditation program approved by the board. For purposes of such licensure, wholesale medical gas distributors shall only be required to provide information required under subdivisions (1)(a) through (1)(c) of section 71-7448.

(3) The Wholesale Drug Distributor Licensing Act does not apply to:

(a) An agent or employee of a licensed wholesale drug distributor who possesses drug samples when such agent or employee is acting in the usual course of his or her business or employment; or

(b) Any person who (i) engages in a wholesale transaction relating to the manufacture, distribution, sale, transfer, or delivery of medical gases the gross dollar value of which does not exceed five percent of the total retail sales of medical gases by such person during the immediately preceding calendar year and (ii) has either a pharmacy permit or license or a drug dispensing permit or delegated dispensing permit.

Source: Laws 1992, LB 1019, § 17; Laws 1997, LB 752, § 198; Laws 2001, LB 398, § 84; Laws 2003, LB 242, § 148; R.S.1943, (2003), § 71-7417; Laws 2006, LB 994, § 21.

71-7448 License; application; contents; examination; criminal history record information check; waiver.

(1) Every applicant for an initial or renewal license as a wholesale drug distributor shall file a written application with the department. The application shall be accompanied by the fee established by the department under section 71-7450 and proof of bond or other security required under section 71-7452 and shall include the following information:

(a) The applicant's name, business address, type of business entity, and telephone number. If the applicant is a partnership, the application shall include the name of each partner and the name of the partnership. If the applicant is a corporation, the application shall include the name and title of each corporate officer and director, all corporate names of the applicant, and the applicant's state of incorporation. If the applicant is a sole proprietorship, the application shall include the name of the sole proprietor and name of the proprietorship;

(b) All trade or business names used by the applicant;

(c) The addresses and telephone numbers of all facilities used by the applicant for the storage, handling, and wholesale distribution of prescription drugs and the names of persons in charge of such facilities. A separate license shall be obtained for each such facility;

(d) A listing of all licenses, permits, or other similar documentation issued to the applicant in any other state authorizing the applicant to purchase or possess prescription drugs;

(e) The names and addresses of the owner and manager of the applicant's wholesale drug distribution facilities, a designated representative at each such facility, and all managerial employees at each such facility; and

(f) Other information as required by the department, including affirmative evidence of the applicant's ability to comply with the Wholesale Drug Distributor Licensing Act and rules and regulations adopted and promulgated under the act.

(2) The department may require persons listed on the application to pass an examination approved by the department on laws pertaining to the wholesale distribution of prescription drugs.

(3) The application shall include the applicant's social security number if the applicant is an individual. The social security number shall not be a public record and may only be used by the department for administrative purposes.

(4) The application shall be signed by (a) the owner, if the applicant is an individual or partnership, (b) the member, if the applicant is a limited liability company with only one member, or two of its members, if the applicant is a limited liability company with two or more members, or (c) two of its officers, if the applicant is a corporation.

(5) The designated representative and the supervisor of the designated representative of a wholesale drug distributor and each owner with greater than a ten percent interest in the wholesale drug distributor, if the wholesale drug distributor is a nonpublicly held company, shall be subject to a criminal history record information check and shall provide the department or the designated agent of the department with a complete set of fingerprints for such purpose if his or her fingerprints are not already on file for such purpose. The department or the designated agent of the department shall forward such fingerprints to the Nebraska State Patrol to be submitted to the Federal Bureau of Investigation for a national criminal history record information check. Such persons shall authorize the release of the results of such criminal history record information check to the department, and the applicant shall pay the actual cost of such fingerprinting and such criminal history record information check.

(6) The department may waive certain requirements under this section upon proof satisfactory to the department that such requirements are duplicative of other requirements of law or regulation and that the granting of such exemption will not endanger the public safety.

Source: Laws 2006, LB 994, § 22.

71-7449 Designated representative; information required.

Each designated representative named under subdivision (1)(e) of section 71-7448 shall provide the following information prior to the issuance of an initial or renewal license under such section:

(1) The designated representative's places of residence for the immediately preceding seven years;

(2) The designated representative's date and place of birth;

(3) All occupations, positions of employment, and offices held by the designated representative during the immediately preceding seven years and the principal businesses and the addresses of any business, corporation, or other organization in which such occupations, positions, or offices were held;

(4) Whether the designated representative has been, at any time during the immediately preceding seven years, the subject of any proceeding for the revocation of any license and, if so, the nature of the proceeding and its disposition;

(5) Whether the designated representative has been, at any time during the immediately preceding seven years, either temporarily or permanently enjoined by a court of competent jurisdiction from violations of any federal or state law regulating the possession, control, or distribution of prescription drugs, and, if so, the details of such order;

(6) A description of any involvement by the designated representative during the immediately preceding seven years, other than the ownership of stock in a publicly traded company or mutual fund, with any business which manufactured, administered, distributed, or stored prescription drugs and any lawsuits in which such businesses were named as a party;

(7) Whether the designated representative has ever been convicted of any felony and details relating to such conviction; and

(8) A photograph of the designated representative taken within the immediately preceding thirty days.

Source: Laws 2006, LB 994, § 23.

71-7450 Fees.

(1) Licensure activities under the Wholesale Drug Distributor Licensing Act shall be funded by license fees. An applicant for an initial or renewal license under the act shall pay a license fee as provided in this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints, other similar direct and indirect costs, and other relevant factors as determined by the department.

(3) If the licensure application is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(4) The department shall also collect a fee for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(5) The department shall remit all license fees collected under this section to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of wholesale drug distributors.

Source: Laws 2006, LB 994, § 24; Laws 2007, LB296, § 673.

71-7451 License; term; renewal.

A wholesale drug distributor license shall expire on July 1 of each year and may be renewed. The license shall not be transferable. The department shall mail an application for renewal to each licensee not later than June 1 of each year. If an application for renewal is received from the licensee after July 1, the department may impose a late fee and shall refuse to issue the license until such late fee and renewal fee are paid. Failure to receive an application for renewal shall not relieve the licensee from the late fee imposed by this section.

Source: Laws 1992, LB 1019, § 20; Laws 2001, LB 398, § 85; Laws 2003, LB 242, § 150; R.S.1943, (2003), § 71-7420; Laws 2006, LB 994, § 25.

71-7452 Bond or other security.

An applicant for an initial or renewal license as a wholesale drug distributor shall submit to the department proof of a bond of not less than one hundred thousand dollars or other equivalent means of security acceptable to the department. The bond or other security shall be given for the purpose of securing payment of any fines or other penalties imposed by the department and any fees or costs incurred by the department relating to such applicant as authorized under the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act which remain unpaid by the applicant within thirty days after such fines, penalties, and costs become final. The department may make a claim against such bond or security until one year after the expiration of the license issued to the applicant under the act.

Source: Laws 2006, LB 994, § 26.

71-7453 Department; inspections; procedures; fees.

(1) Each wholesale drug distributor doing business in this state shall be inspected by the department or a nationally recognized accreditation program that is approved by the board and that is acting on behalf of the department prior to the issuance of an initial or renewal license by the department under section 71-7448.

(2) The department or such nationally recognized accreditation program may provide for the inspection of any wholesale drug distributor licensed to engage in wholesale drug distribution in this state in such manner and at such times as provided in rules and regulations adopted and promulgated by the department. As part of any such inspection, the department may require an analysis of suspected prescription drugs to determine authenticity.

(3) The department may accept an inspection accepted in another state in lieu of an inspection by the department or a nationally recognized accreditation program under this section.

(4) The department or such nationally recognized accreditation program may charge and collect fees for inspection activities conducted under this section.

(5) In addition to or in lieu of the authority to inspect for purposes of licensure and renewal, the department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing the compliance by a wholesale drug distributor with the Wholesale Drug Distributor Licensing Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 1992, LB 1019, § 24; R.S.1943, (2003), § 71-7424; Laws 2006, LB 994, § 27.

71-7454 Prescription drugs; restrictions on transfer; exceptions.

(1) No wholesale drug distributor, manufacturer, or pharmacy shall knowingly purchase or receive any prescription drug from any source other than a person or entity licensed under the Wholesale Drug Distributor Licensing Act except transfers for emergency medical reasons and except as provided in subsection (3) of section 71-2449, the gross dollar value of which shall not exceed five percent of the total prescription drug sales revenue of the transferor or transferee holder of a pharmacy license or practitioner as defined in section

38-2838 during the immediately preceding calendar year, and except as otherwise provided in the act.

(2) A wholesale drug distributor may receive returns or exchanges of prescription drugs from a pharmacy, chain pharmacy warehouse, health care practitioner facility as defined in section 71-414, or hospital as defined in section 71-419 pursuant to the terms and conditions agreed upon between such wholesale drug distributor and such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital. Such returns and exchanges shall not be subject to sections 71-7455 to 71-7457. A wholesale drug distributor shall not receive from a pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital an amount or quantity of a prescription drug greater than the amount or quantity that was originally sold by the wholesale drug distributor to such pharmacy, chain pharmacy warehouse, health care practitioner facility, or hospital.

(3) A manufacturer or wholesale drug distributor shall furnish prescription drugs only to persons licensed by the department and shall verify such licensure before furnishing prescription drugs to a person not known to the manufacturer or wholesale drug distributor.

(4) Prescription drugs furnished by a manufacturer or wholesale drug distributor shall be delivered only to the premises listed on the license, except that a manufacturer or wholesale drug distributor may furnish prescription drugs to a person licensed by the department or his or her agent at the premises of the manufacturer or wholesale drug distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the prescription drug needs of a particular patient of the person licensed by the department.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area. Receipt of such drugs shall be acknowledged by written receipt signed by a pharmacist or other authorized personnel. The receipt shall contain the time of delivery and the type and quantity of the prescription drug received. Any discrepancy between the signed receipt and the type and quantity of prescription drug actually received shall be reported by the receiving authorized pharmacy personnel to the delivering manufacturer or wholesale drug distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale drug distributor shall only accept payment or allow the use of credit to establish an account for the purchase of prescription drugs from the owner or owners of record, the chief executive officer, or the chief financial officer listed on the license of a person or entity legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs shall bear the name of such licensee.

Source: Laws 1992, LB 1019, § 16; Laws 1998, LB 1073, § 158; Laws 2001, LB 398, § 83; R.S.1943, (2003), § 71-7416; Laws 2006, LB 994, § 28; Laws 2007, LB463, § 1295; Laws 2008, LB308, § 13.

71-7455 Records; pedigree; requirements.

(1) A wholesale drug distributor engaged in the wholesale distribution of prescription drugs in this state shall establish and maintain accurate records of all transactions regarding the receipt and distribution or other disposition of prescription drugs as provided in this section.

(2) The department shall adopt and promulgate rules and regulations to require that all prescription drugs that leave the normal distribution chain be accompanied by a paper or electronic pedigree as provided in section 71-7456. Such rules and regulations shall be adopted and promulgated no later than July 1, 2007.

(3) The department shall develop standards and requirements for electronic pedigrees in order to effectively authenticate, track, and trace prescription drugs. Prior to the development of such standards and requirements, the department shall consult with the federal Food and Drug Administration, manufacturers, wholesale drug distributors, pharmacies, and other interested parties regarding the feasibility and the ways, means, and practicality of requiring that all prescription drugs that leave the normal distribution chain be accompanied by an electronic pedigree. The standards and requirements may prescribe the information required to be included as part of the electronic pedigree. Such standards and requirements shall be developed no later than July 1, 2008. All prescription drugs that leave the normal distribution chain shall not be required to be accompanied solely by an electronic pedigree prior to such date.

(4) A retail pharmacy or chain pharmacy warehouse shall comply with the requirements of this section only if the pharmacy or chain pharmacy warehouse engages in the wholesale distribution of prescription drugs in this state.

(5) A wholesale drug distributor, other than the original manufacturer of the finished form of the prescription drug, shall verify all transactions listed on the pedigree before attempting to further distribute such drug.

Source: Laws 2006, LB 994, § 29.

71-7456 Pedigree; contents.

(1) The pedigree required under section 71-7455 shall include all necessary identifying information concerning each sale or other transfer in the chain of distribution of the prescription drug from the manufacturer, through acquisition and sale by any wholesale drug distributor or repackager, until final sale to a pharmacy or other person dispensing or administering such drug, including, but not limited to:

(a) Name of the prescription drug;

(b) Dosage form and strength of the prescription drug;

(c) Size of the container;

(d) Number of containers;

(e) Lot number of the prescription drug;

(f) Name of the original manufacturer of the finished dosage form of the prescription drug;

(g) Name, address, telephone number, and if available, the email address of each owner of the prescription drug and each wholesale drug distributor who does not take title to the prescription drug;

(h) Name and address of each location from which the prescription drug was shipped if different from the owner's;

(i) Transaction dates;

(j) Certification that each recipient has authenticated the pedigree;

(k) Name of any repackager, if applicable; and

(l) Name and address of person certifying the delivery.

(2) Each paper or electronic pedigree shall be maintained by the purchaser and the wholesale drug distributor for three years from the date of sale or transfer and available for inspection or use upon request of law enforcement or an authorized agent of the department.

Source: Laws 2006, LB 994, § 30.

71-7457 License; denied, refused renewal, suspended, limited, or revoked; grounds.

(1) A wholesale drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the department when the department finds that the applicant or licensee has violated any provisions of the Wholesale Drug Distributor Licensing Act or of the rules and regulations adopted and promulgated under the act or has committed any acts or offenses set forth in section 38-178, 38-179, or 71-7459. All actions and proceedings shall be carried out as specified in sections 38-177 to 38-1,115.

(2) For purposes of this section, applicant or licensee includes, but is not limited to, the board of directors, chief executive officer, and other officers of the applicant or the entity to which the license is issued and the manager of each site if more than one site is located in this state.

Source: Laws 1992, LB 1019, § 23; Laws 1994, LB 1223, § 79; Laws 1996, LB 1044, § 779; R.S.1943, (2003), § 71-7423; Laws 2006, LB 994, § 31; Laws 2007, LB296, § 674; Laws 2007, LB463, § 1296.

71-7458 Enforcement of act.

The department, the Attorney General, or any county attorney may institute an action in the name of the state for an injunction or other process against any person to restrain or prevent any violation of the Wholesale Drug Distributor Licensing Act or any rules and regulations adopted and promulgated under the act.

Source: Laws 1992, LB 1019, § 25; R.S.1943, (2003), § 71-7425; Laws 2006, LB 994, § 32.

71-7459 Department; fines; when.

(1) The department, upon issuance of a final disciplinary action against a person who violates any provision of section 71-7454, shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person, not to exceed ten thousand dollars.

(2) The department, upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-7453, shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand dollars times the number of such disciplinary actions, not to exceed ten thousand

dollars. All fines collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1992, LB 1019, § 26; R.S.1943, (2003), § 71-7426; Laws 2006, LB 994, § 33.

71-7460 Order to cease distribution.

(1) If the department finds there is a reasonable probability that (a) a wholesale drug distributor has falsified a pedigree or has sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit prescription drug intended for human use and (b) such drug could cause serious, adverse health consequences or death, the department shall issue an order to immediately cease distribution of such drug.

(2) Persons subjected to any order issued by the department under this section shall be provided with notice and an opportunity for an informal hearing to be held not later than ten days after the date the order was issued. If the department determines, after such hearing, that inadequate grounds exist to support the actions required by the order, the department shall vacate the order.

Source: Laws 2006, LB 994, § 34.

71-7460.01 Reporting and investigation duties.

Every wholesale drug distributor licensed under the Wholesale Drug Distributor Licensing Act shall be subject to and comply with sections 38-1,124 to 38-1,126 relating to reporting and investigations.

Source: Laws 2007, LB463, § 1297.

71-7460.02 Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.

(1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association relating to a profession regulated under the Wholesale Drug Distributor Licensing Act shall report to the department, on a form and in the manner specified by the department, any facts known to the facility, organization, or association, including, but not limited to, the identity of the credential holder and consumer, when the facility, organization, or association:

(a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, including settlements made prior to suit, arising out of the acts or omissions of the licensee; or

(b) Takes action adversely affecting the privileges or membership of a licensee in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct

or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) Any health care facility, peer review organization, or professional association that fails or neglects to make a report or provide information as required under this section is subject to a civil penalty of five hundred dollars for the first offense and a civil penalty of up to one thousand dollars for a subsequent offense. Any civil penalty collected under this subsection shall be remitted to the State Treasurer to be disposed of in accordance with Article VII, section 5, of the Constitution of Nebraska.

(4) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as the act existed on January 1, 2007, and may require a supplemental report to the extent such reports do not contain the information required by the department.

Source: Laws 2007, LB463, § 1298.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

71-7460.03 Insurer; duty to report; contents.

(1) Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations, as such act and rules and regulations existed on January 1, 2007:

(a) Any insurer having knowledge of any violation of any provision of the Wholesale Drug Distributor Licensing Act governing the profession of the person being reported whether or not such person is licensed shall report the facts of such violation as known to such insurer to the department; and

(b) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any person required to be licensed whether or not such person is licensed.

(2) Such reporting shall be done on a form and in the manner specified pursuant to sections 38-1,130 and 38-1,131. Such reports shall be subject to sections 38-1,132 to 38-1,136.

Source: Laws 2007, LB463, § 1299.

71-7460.04 Clerk of county or district court; duty to report conviction or judgment; Attorney General or city or county prosecutor; provide information.

The clerk of any county or district court in this state shall report to the department the conviction of any person licensed by the department under the Wholesale Drug Distributor Licensing Act of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and

shall also report a judgment against any such licensee arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the license of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Public Health of the Division of Public Health and the State Court Administrator.

Source: Laws 2007, LB463, § 1300.

71-7461 Unlawful acts.

It is unlawful for any person to commit or to permit, cause, aid, or abet the commission of any of the following acts in this state:

(1) Any violation of the Wholesale Drug Distributor Licensing Act or rules and regulations adopted and promulgated under the act;

(2) Providing the department, any of its representatives, or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter under the act;

(3) Obtaining or attempting to obtain a prescription drug by fraud, deceit, or misrepresentation or engaging in misrepresentation or fraud in the distribution of a prescription drug;

(4) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the manufacture, repackaging, sale, transfer, delivery, holding, or offering for sale of any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or otherwise rendered unfit for distribution;

(5) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the adulteration, misbranding, or counterfeiting of any prescription drug;

(6) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such drug for pay or otherwise; and

(7) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

Source: Laws 2006, LB 994, § 35.

71-7462 Violations; penalty.

Any person who knowingly and intentionally engages in wholesale drug distribution in this state in violation of the Wholesale Drug Distributor Licensing Act is guilty of a Class III felony.

Source: Laws 2006, LB 994, § 36.

71-7463 Rules and regulations.

The department, upon the recommendation of the board, shall adopt and promulgate rules and regulations to carry out the Wholesale Drug Distributor Licensing Act.

Source: Laws 1992, LB 1019, § 22; R.S.1943, (2003), § 71-7422; Laws 2006, LB 994, § 37.

ARTICLE 75

COMMUNITY HEALTH CARE

Section
71-7501. Repealed. Laws 2001, LB 209, § 36.
71-7502. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7502.01. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7503. Repealed. Laws 2001, LB 209, § 36.
71-7504. Repealed. Laws 2001, LB 209, § 36.
71-7505. Repealed. Laws 2001, LB 209, § 36.
71-7506. Repealed. Laws 2001, LB 209, § 36.
71-7507. Repealed. Laws 2001, LB 209, § 36.
71-7508. Repealed. Laws 2001, LB 209, § 36.
71-7509. Repealed. Laws 2001, LB 209, § 36.
71-7510. Repealed. Laws 2001, LB 209, § 36.
71-7511. Repealed. Laws 2001, LB 209, § 36.
71-7512. Repealed. Laws 2001, LB 209, § 36.
71-7513. Repealed. Laws 2001, LB 209, § 36.
71-7514. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7515. Repealed. Laws 2001, LB 209, § 36.
71-7516. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7517. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518. Repealed. Laws 1994, LB 1223, § 135.
71-7518.01. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.02. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.03. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.04. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.05. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.06. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.07. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.08. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7518.09. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7519. Repealed. Laws 1994, LB 1223, § 135.
71-7520. Repealed. Laws 2001, LB 209, § 36.
71-7521. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.
71-7522. Repealed. Laws 2001, LB 209, § 36.
71-7523. Repealed. Laws 2001, LB 209, § 36.
71-7524. Repealed. Laws 2001, LB 209, § 36.
71-7525. Repealed. Laws 2001, LB 209, § 36.
71-7526. Repealed. Laws 2001, LB 209, § 36.
71-7527. Repealed. Laws 2001, LB 209, § 36.
71-7528. Repealed. Laws 2001, LB 209, § 36.
71-7529. Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7501 Repealed. Laws 2001, LB 209, § 36.

71-7502 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7502.01 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7503 Repealed. Laws 2001, LB 209, § 36.

71-7504 Repealed. Laws 2001, LB 209, § 36.

71-7505 Repealed. Laws 2001, LB 209, § 36.

71-7506 Repealed. Laws 2001, LB 209, § 36.

71-7507 Repealed. Laws 2001, LB 209, § 36.

71-7508 Repealed. Laws 2001, LB 209, § 36.

71-7509 Repealed. Laws 2001, LB 209, § 36.

71-7510 Repealed. Laws 2001, LB 209, § 36.

71-7511 Repealed. Laws 2001, LB 209, § 36.

71-7512 Repealed. Laws 2001, LB 209, § 36.

71-7513 Repealed. Laws 2001, LB 209, § 36.

71-7514 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7515 Repealed. Laws 2001, LB 209, § 36.

71-7516 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7517 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518 Repealed. Laws 1994, LB 1223, § 135.

71-7518.01 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.02 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.03 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.04 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.05 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.06 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.07 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.08 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7518.09 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7519 Repealed. Laws 1994, LB 1223, § 135.

71-7520 Repealed. Laws 2001, LB 209, § 36.

71-7521 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

71-7522 Repealed. Laws 2001, LB 209, § 36.

71-7523 Repealed. Laws 2001, LB 209, § 36.

71-7524 Repealed. Laws 2001, LB 209, § 36.

71-7525 Repealed. Laws 2001, LB 209, § 36.

71-7526 Repealed. Laws 2001, LB 209, § 36.

71-7527 Repealed. Laws 2001, LB 209, § 36.

71-7528 Repealed. Laws 2001, LB 209, § 36.

71-7529 Repealed. Laws 2001, LB 1, § 3; Laws 2001, LB 209, § 36.

ARTICLE 76
HEALTH CARE

(a) HEALTH CARE ACCESS AND REFORM

Section
71-7601. Repealed. Laws 2008, LB 480, § 5.
71-7602. Repealed. Laws 2008, LB 480, § 5.
71-7603. Repealed. Laws 2008, LB 480, § 5.
71-7604. Repealed. Laws 2008, LB 480, § 5.

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7605. Act, how cited.
71-7606. Purpose of act; restrictions on use of funds; report.
71-7606.01. Repealed. Laws 2001, LB 692, § 29.
71-7607. Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment.
71-7608. Nebraska Tobacco Settlement Trust Fund; created; use; investment.
71-7609. Repealed. Laws 2008, LB 480, § 5.
71-7610. Repealed. Laws 2008, LB 480, § 5.
71-7611. Nebraska Health Care Cash Fund; created; use; investment.
71-7611.01. Repealed. Laws 2003, LB 412, § 12.
71-7611.02. Repealed. Laws 2003, LB 412, § 12.
71-7611.03. Repealed. Laws 2003, LB 412, § 12.
71-7611.04. Repealed. Laws 2003, LB 412, § 12.
71-7611.05. Repealed. Laws 2003, LB 412, § 12.
71-7611.06. Repealed. Laws 2003, LB 412, § 12.
71-7611.07. Repealed. Laws 2003, LB 412, § 12.
71-7611.08. Repealed. Laws 2003, LB 412, § 12.
71-7612. Repealed. Laws 2000, LB 1427, § 12.
71-7613. Repealed. Laws 2001, LB 692, § 29.
71-7614. Repealed. Laws 2008, LB 480, § 5.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

71-7615. Act, how cited.
71-7616. Legislative findings.
71-7617. Contracts to provide educational and public health services; Department of Health and Human Services; duties.
71-7618. Funding of contracts; priority.
71-7619. Aid to tribal councils.
71-7620. Recipients; reports.
71-7621. Recapture of funds.
71-7622. Rules and regulations.

(a) HEALTH CARE ACCESS AND REFORM

71-7601 Repealed. Laws 2008, LB 480, § 5.

71-7602 Repealed. Laws 2008, LB 480, § 5.

71-7603 Repealed. Laws 2008, LB 480, § 5.

71-7604 Repealed. Laws 2008, LB 480, § 5.

(b) NEBRASKA HEALTH CARE FUNDING ACT

71-7605 Act, how cited.

Sections 71-7605 to 71-7611 shall be known and may be cited as the Nebraska Health Care Funding Act.

Source: Laws 1998, LB 1070, § 1; Laws 1999, LB 324, § 1; Laws 2000, LB 1427, § 2; Laws 2001, LB 692, § 13; Laws 2002, LB 1148, § 2; Laws 2008, LB480, § 1.

71-7606 Purpose of act; restrictions on use of funds; report.

(1) The purpose of the Nebraska Health Care Funding Act is to provide for the use of dedicated revenue for health-care-related expenditures.

(2) Any funds appropriated or distributed under the act shall not be considered ongoing entitlements or obligations on the part of the State of Nebraska and shall not be used to replace existing funding for existing programs.

(3) No funds appropriated or distributed under the act shall be used for abortion, abortion counseling, referral for abortion, or research or activity of any kind involving the use of human fetal tissue obtained in connection with the performance of an induced abortion or involving the use of human embryonic stem cells or for the purpose of obtaining other funding for such use.

(4) The Department of Health and Human Services shall report annually to the Legislature and the Governor regarding the use of funds appropriated under the act and the outcomes achieved from such use.

Source: Laws 1998, LB 1070, § 2; Laws 2000, LB 1427, § 3; Laws 2001, LB 692, § 14; Laws 2003, LB 412, § 4; Laws 2007, LB296, § 676; Laws 2008, LB469, § 1.

71-7606.01 Repealed. Laws 2001, LB 692, § 29.

71-7607 Nebraska Medicaid Intergovernmental Trust Fund; created; use; investment.

(1) The Nebraska Medicaid Intergovernmental Trust Fund is created. The fund shall include revenue received from governmental nursing facilities receiving payments for nursing facility services under the medical assistance program established pursuant to the Medical Assistance Act. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. The department shall adopt and promulgate rules and regulations to establish procedures for participation by governmental nursing facilities and for the receipt of such revenue under this section. Money from the Nebraska Medicaid Intergovernmental Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611.

(2) The department may use revenue in the Nebraska Medicaid Intergovernmental Trust Fund to offset any unanticipated reductions in medicaid funds received under this section.

(3) Any money in the Nebraska Medicaid Intergovernmental Trust 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.

Source: Laws 1998, LB 1070, § 3; Laws 2000, LB 1427, § 5; Laws 2001, LB 541, § 4; Laws 2001, LB 692, § 15; Laws 2001, Spec. Sess., LB 3, § 3; Laws 2003, LB 412, § 5; Laws 2004, LB 1091, § 5; Laws 2006, LB 1061, § 10; Laws 2006, LB 1248, § 79; Laws 2007, LB296, § 677.

Cross References

Medical Assistance Act, see section 68-901.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7608 Nebraska Tobacco Settlement Trust Fund; created; use; investment.

The Nebraska Tobacco Settlement Trust Fund is created. The fund shall include any settlement payments or other revenue received by the State of Nebraska in connection with any tobacco-related litigation to which the State of Nebraska is a party. The Department of Health and Human Services shall remit such revenue to the State Treasurer for credit to the fund. Subject to the terms and conditions of such litigation, money from the Nebraska Tobacco Settlement Trust Fund shall be transferred to the Nebraska Health Care Cash Fund as provided in section 71-7611. Any money in the Nebraska Tobacco Settlement Trust 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.

Source: Laws 1998, LB 1070, § 4; Laws 1999, LB 324, § 3; Laws 2000, LB 1427, § 6; Laws 2000, LB 1436, § 1; Laws 2001, LB 692, § 16; Laws 2003, LB 412, § 6; Laws 2004, LB 1091, § 6; Laws 2007, LB296, § 678; Laws 2008, LB606, § 7; Laws 2008, LB928, § 32; Laws 2008, LB961, § 4; Laws 2009, LB316, § 18.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7609 Repealed. Laws 2008, LB 480, § 5.

71-7610 Repealed. Laws 2008, LB 480, § 5.

71-7611 Nebraska Health Care Cash Fund; created; use; investment.

(1) The Nebraska Health Care Cash Fund is created. The State Treasurer shall transfer (a) fifty-six million one hundred thousand dollars no later than July 15, 2009, and (b) fifty-nine million one hundred thousand dollars beginning July 15, 2010, and annually thereafter no later than July 15 from the Nebraska Medicaid Intergovernmental Trust Fund and the Nebraska Tobacco Settlement Trust Fund to the Nebraska Health Care Cash Fund, except that such amount shall be reduced by the amount of the unobligated balance in the Nebraska Health Care Cash Fund at the time the transfer is made. The state investment officer upon consultation with the Nebraska Investment Council shall advise the State Treasurer on the amounts to be transferred from the Nebraska Medicaid Intergovernmental Trust Fund and from the Nebraska Tobacco Settlement Trust Fund under this section in order to sustain such transfers in perpetuity. The state investment officer shall report to the Legislature on or before October 1 of every even-numbered year on the sustainability

of such transfers. Except as otherwise provided by law, no more than the amount specified in this subsection may be appropriated or transferred from the Nebraska Health Care Cash Fund in any fiscal year.

(2) Any money in the Nebraska Health Care Cash 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.

(3) One million dollars in the Nebraska Health Care Cash Fund shall be transferred each year to the Autism Treatment Program Cash Fund for five fiscal years beginning on a date determined by the Department of Health and Human Services but no later than ninety days after a waiver under section 68-966 has been approved and shall be distributed with matching private funds from the Autism Treatment Program Cash Fund and matching funds from Title XIX of the federal Social Security Act in each fiscal year as follows: (a) First, to the Department of Health and Human Services for costs related to application, implementation, and administration of a waiver pursuant to section 68-966; (b) second, to the department for other medical costs for children who would not otherwise qualify for medicaid except for the waiver; and (c) third, the balance to fund services pursuant to the waiver.

(4) The University of Nebraska and postsecondary educational institutions having colleges of medicine in Nebraska and their affiliated research hospitals in Nebraska, as a condition of receiving any funds appropriated or transferred from the Nebraska Health Care Cash Fund, shall not discriminate against any person on the basis of sexual orientation.

(5) The State Treasurer shall transfer two hundred thousand dollars from the Nebraska Health Care Cash Fund to the University of Nebraska Medical Center Cash Fund for the Nebraska Regional Poison Center within fifteen days after each July 1.

(6) Beginning on July 1, 2010, the State Treasurer shall transfer three million dollars annually no later than July 15 of each year from the Nebraska Health Care Cash Fund to the Tobacco Prevention and Control Cash Fund.

(7) The State Treasurer shall transfer five hundred thousand dollars annually no later than July 15 of each year from the Nebraska Health Care Cash Fund to the Stem Cell Research Cash Fund.

Source: Laws 1998, LB 1070, § 7; Laws 2000, LB 1427, § 9; Laws 2001, LB 692, § 18; Laws 2003, LB 412, § 8; Laws 2004, LB 1091, § 7; Laws 2005, LB 426, § 12; Laws 2007, LB322, § 19; Laws 2007, LB482, § 6; Laws 2008, LB480, § 2; Laws 2008, LB830, § 9; Laws 2008, LB961, § 5; Laws 2009, LB27, § 7; Laws 2009, LB316, § 19.

Cross References

Autism Treatment Program Act, see section 68-962.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-7611.01 Repealed. Laws 2003, LB 412, § 12.

71-7611.02 Repealed. Laws 2003, LB 412, § 12.

71-7611.03 Repealed. Laws 2003, LB 412, § 12.

71-7611.04 Repealed. Laws 2003, LB 412, § 12.

71-7611.05 Repealed. Laws 2003, LB 412, § 12.

71-7611.06 Repealed. Laws 2003, LB 412, § 12.

71-7611.07 Repealed. Laws 2003, LB 412, § 12.

71-7611.08 Repealed. Laws 2003, LB 412, § 12.

71-7612 Repealed. Laws 2000, LB 1427, § 12.

71-7613 Repealed. Laws 2001, LB 692, § 29.

71-7614 Repealed. Laws 2008, LB 480, § 5.

(c) NATIVE AMERICAN PUBLIC HEALTH ACT

71-7615 Act, how cited.

Sections 71-7615 to 71-7622 shall be known and may be cited as the Native American Public Health Act.

Source: Laws 1998, LB 1070, § 11.

71-7616 Legislative findings.

The Legislature finds that members of Nebraska's federally recognized Native American tribes are not receiving adequate basic public health services, especially in the areas of education and prevention. The leading causes of death among Native American people are largely preventable. Many Native American people suffer from preventable diseases such as diabetes, cardiovascular disease, and alcohol-related fatalities. An alarming number of tribal members engage in health-threatening activities such as smoking, substance abuse, and poor diet. Births to teenaged Native Americans are higher than any other racial group. Unintentional injuries are costing Native American people years of productivity and potential. As a result, the life expectancy among Native Americans is low while the infant mortality rate is high when compared to Nebraska's general population. The problems and future costs associated with a lack of adequate public health services will continue to escalate as seventy percent of tribal members on reservations and in service areas are children.

To protect a generation of Native American children and to provide for a safe, healthy future for future generations of Native American people, the Legislature declares that public health infrastructure focusing on health education and preventative health measures for Native Americans must be addressed.

Source: Laws 1998, LB 1070, § 12.

71-7617 Contracts to provide educational and public health services; Department of Health and Human Services; duties.

The Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services targeted to Native American populations. The following educational and public health services may be considered by the department for such contracts:

(1) Identification and enrollment of children in state and federal programs providing access to health insurance or health care;

(2) Efforts to educate children and adults about the health risks associated with smoking and tobacco use, alcohol abuse, and other substances that threaten health and well-being and other activities designed to reduce the rate of substance abuse;

(3) Prenatal care education for women and notification of programs that improve prenatal care;

(4) Education focusing on proper diet and the importance of physical activity to good health;

(5) Blood pressure and cholesterol screenings;

(6) Support of efforts to identify children and adults at risk for depression and other mental health conditions and provide mental health counseling to prevent suicide;

(7) Parenting classes and the promotion of such programs;

(8) Efforts to discourage drinking and driving and to encourage the use of seat belts;

(9) Tests and education for acquired immunodeficiency syndrome and other sexually transmitted diseases;

(10) Tests for pregnancy and referrals to prenatal care when directed;

(11) Educational efforts aimed at reducing teen pregnancies and other unintended pregnancies;

(12) Case management for pregnant women, children, or adults with special health care needs;

(13) Efforts to make health care prevention services more affordable or accessible;

(14) Matching funds for state and federal programs designed to address public health needs;

(15) Staffing needs for public health services or education including the recruitment and training of Native American providers;

(16) Cervical and breast cancer detection services and other prevention components of comprehensive women's health services;

(17) Education to prevent and reduce the occurrence of diabetes; and

(18) Other prevention or educational activities or programs that address the health, safety, or self-sufficiency of Native American persons.

Source: Laws 1998, LB 1070, § 13; Laws 2005, LB 301, § 57; Laws 2007, LB296, § 680.

71-7618 Funding of contracts; priority.

During each fiscal year, the Department of Health and Human Services shall contract with the health clinics of Nebraska's federally recognized Native American tribes as approved by the tribal councils, Indian health organizations, or other public health organizations that have a substantial Native American clientele to provide educational and public health services pursuant to section 71-7617. The department shall fund all eligible contracts until the appropriation to this program is depleted, but shall give priority to contracts which meet the following criteria:

(1) Programs or activities that directly impact the health and well-being of children;

(2) Programs or activities which serve the greater number of people over the longest period of time;

(3) Programs or activities that are part of a larger plan for strategic public health planning and implementation;

(4) Current programs or activities that have demonstrated success in improving public health or new programs or activities modeled on successful programs and activities; and

(5) Programs or activities that focus on primary prevention and show promise in reducing future health care expenditures.

Source: Laws 1998, LB 1070, § 14; Laws 2005, LB 301, § 58; Laws 2007, LB296, § 681.

71-7619 Aid to tribal councils.

The Department of Health and Human Services shall provide technical assistance and assessment of needs evaluations upon request to aid tribal councils in the development of contract proposals.

Source: Laws 1998, LB 1070, § 15; Laws 2005, LB 301, § 59; Laws 2007, LB296, § 682.

71-7620 Recipients; reports.

The recipients of funds under the Native American Public Health Act shall submit a report on the activities funded each fiscal year. The report shall provide information as required by the Department of Health and Human Services to determine the effectiveness of the contract in meeting the goals of the Native American Public Health Act.

Source: Laws 1998, LB 1070, § 16; Laws 2005, LB 301, § 60; Laws 2007, LB296, § 683.

71-7621 Recapture of funds.

If the Department of Health and Human Services determines that services are not being delivered in accordance with the contract, the department may seek to recapture all or a portion of funds expended.

Source: Laws 1998, LB 1070, § 17; Laws 2005, LB 301, § 61; Laws 2007, LB296, § 684.

71-7622 Rules and regulations.

The Department of Health and Human Services shall adopt and promulgate rules and regulations to carry out the Native American Public Health Act and shall adhere to already established or adopted and promulgated rules and regulations for contracted services under the act.

Source: Laws 1998, LB 1070, § 18; Laws 2005, LB 301, § 62; Laws 2007, LB296, § 685.

ARTICLE 77

HEALTH CARE FACILITY-PROVIDER COOPERATION

Cross References

Health Care Facility Licensure Act, see section 71-401.
Nebraska Health Care Certificate of Need Act, see section 71-5801.
Uniform Credentialing Act, see section 38-101.

Section

71-7701 Act, how cited.

Sections 71-7701 to 71-7711 shall be known and may be cited as the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, § 111.

71-7702 Terms, defined.

For purposes of the Health Care Facility-Provider Cooperation Act:

(1) Community planning means a plan which identifies (a) health-care-related resources, facilities, and services within the community, (b) the health care needs of the community, (c) gaps in services, (d) duplication of services, and (e) ways to meet health care needs;

(2) Cooperative agreement means an agreement among two or more health care facilities or other providers for the sharing, allocation, or referral of patients, personnel, instructional programs, equipment, support services and facilities, or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered or purchased by health care facilities or other providers;

(3) Department means the Department of Health and Human Services;

(4) Health care facility means:

(a) Any facility required to be licensed under the Health Care Facility Licensure Act or, if in another state, licensed in such state; and

(b) Any parent of a health care facility, health care facility subsidiary, or health care facility affiliate that provides medical or medically related diagnostic and laboratory services or engages in ancillary activities supporting those services; and

(5) Provider means any person licensed to provide health care services under the Uniform Credentialing Act and engaged in the practice of medicine and

surgery, osteopathic medicine, pharmacy, optometry, podiatry, physical therapy, or nursing.

Source: Laws 1994, LB 1223, § 112; Laws 1996, LB 1044, § 786; Laws 2000, LB 819, § 144; Laws 2007, LB296, § 686; Laws 2007, LB463, § 1301.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-7703 Certificate of public advantage; governing cooperative agreement; application.

Parties to a cooperative agreement may apply to the department for a certificate of public advantage governing the cooperative agreement. The application shall include an executed letter of intent signed by the parties indicating the parties' intent to proceed with a cooperative agreement if the department issues a certificate of public advantage and shall also include a narrative description of the proposed agreement, the nature and scope of the cooperation in the proposed agreement, and any consideration passing to any party under the proposed agreement. A copy of the application and copies of all additional related materials shall be submitted to the Attorney General and to the department at the same time.

Source: Laws 1994, LB 1223, § 113.

71-7704 Certificate of public advantage; notice; review; hearing; rules and regulations.

(1) Within five working days after receipt of an application for a certificate of public advantage, the department shall publish notice of the application through public channels and shall notify health care facilities providing similar services in the area affected by the proposal and any person who has requested such notice. The notice shall state that an application has been received, describe the proposal, and state the date by which a person may submit written comments about the application to the department.

(2) The department shall, within fifteen days after the date an application is received, determine if the application is complete for the purposes of review. The department may find that an application is incomplete when a question on the application form has not been answered in whole or in part or has been answered in a manner that does not fairly meet the question addressed or when the application does not include attachments of supporting documents necessary to complete the answer. If the department determines that an application is incomplete, it shall notify the applicant within fifteen days after the date the application was received, stating the reasons for its determination of incompleteness with reference to the particular questions for which a deficiency is noted.

(3) The department may, during the course of its review, hold a public meeting at which any person may introduce testimony and exhibits in connection with an application. The department decision to hold a public meeting shall be made within fifteen days after the department's dissemination of notice pursuant to subsection (1) of this section. The meeting shall be held no later than thirty days after the department's decision to hold a public meeting and

upon five days' notice, not including days the application is deemed to be incomplete.

(4) The department shall review the application in accordance with the standards set forth in section 71-7706 and may hold a public hearing in accordance with rules and regulations of the department. Persons may intervene if any legal rights, duties, privileges, or other legal interests may be substantially affected by the application. The department may adopt and promulgate rules and regulations for such intervention. The department shall consult with the Attorney General regarding his or her evaluation of any potential reduction in competition resulting from a cooperative agreement.

Source: Laws 1994, LB 1223, § 114.

71-7705 Certificate of public advantage; decision; execute cooperative agreement; when; contest of decision; appeal.

(1) The department shall grant or deny an application for a certificate of public advantage within ninety days after the date of filing of the application, not including days the application is deemed to be incomplete. The decision shall be in writing and set forth the basis for the decision. The department shall furnish a copy of the decision to the applicants, the Attorney General, and any intervenor.

(2) If the department grants the application, the parties shall have forty-five days after the date of receipt of the department's decision to submit an executed written copy of the cooperative agreement which shall be in accordance with the terms and conditions set out in the letter of intent and the application. The department shall review the executed written copy of the cooperative agreement and, if it is in accordance with the terms and conditions set out in the letter of intent and the application, the department shall issue a certificate of public advantage for the cooperative agreement.

(3) If the applicants desire to contest the denial or the intervenors desire to contest the granting of an application, they shall, within ten days after receipt of the notice of denial or within ten days after the granting of an application, send a written request to the department for a hearing under sections 84-913 and 84-915.

(4) A denial or granting by the department of an application or a termination of a certificate of public advantage under section 71-7707 may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 1210, § 181; Laws 1994, LB 1223, § 115.

Cross References

Administrative Procedure Act, see section 84-920.

71-7706 Certificate of public advantage; issuance; considerations.

(1) The department shall issue a certificate of public advantage for a cooperative agreement if it determines that the applicants have demonstrated by clear and convincing evidence that the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreement.

(2) In evaluating the potential benefits of a cooperative agreement, the department shall consider whether one or more of the following benefits may result from the cooperative agreement:

(a) Enhancement of the quality of health care facility care and provider care provided to Nebraska citizens;

(b) Preservation of health care facilities, including those in other states, in geographical proximity to the communities traditionally served by such facilities;

(c) Gains in the cost efficiency of services provided by the health care facilities or providers involved or by other health care facilities or providers in this state;

(d) Improvements in the utilization of health care facility resources and equipment;

(e) Avoidance of duplication of health care facility resources;

(f) Enhancement, maintenance, or preservation of competition for the services or goods involved; and

(g) Mitigation of adverse environmental impact or enhancement of positive environmental impact.

(3) The department's evaluation of any disadvantages attributable to any reduction in competition likely to result from the agreement may include, but need not be limited to, the following factors:

(a) The extent of any likely adverse impact on the ability of health maintenance organizations, preferred provider organizations, managed health care service agents, or other health care payors to negotiate advantageous payment and service arrangements with health care facilities or providers;

(b) The extent of any reduction in competition among health care facilities or providers or other persons furnishing goods or services to or in competition with health care facilities that is likely to result directly or indirectly from the cooperative agreement;

(c) The extent of any likely adverse impact on patients in the quality, availability, and price of health care services; and

(d) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the agreement.

Source: Laws 1994, LB 1223, § 116.

71-7707 Certificate of public advantage; termination.

If the department determines at any time that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement, the department shall initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

Source: Laws 1994, LB 1223, § 117.

Cross References

Administrative Procedure Act, see section 84-920.

71-7708 Parties to agreement; report; petition to terminate certificate; adverse job actions prohibited.

(1) The department shall require the parties to a cooperative agreement for which a certificate of public advantage has been issued to report annually on the functioning of the cooperative agreement for the preceding year. The report shall be in such form and contain such information as the department in its discretion deems necessary to make the determination required by section 71-7707.

(2) Any interested person may petition the department to determine that the likely benefits resulting from a certified cooperative agreement no longer outweigh any disadvantages attributable to any potential reduction in competition resulting from the agreement. In such case, the department may initiate proceedings to terminate the certificate of public advantage in accordance with the Administrative Procedure Act.

(3) It shall be unlawful for an employer to take any adverse job action against any employee because such employee has petitioned, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, § 118.

Cross References

Administrative Procedure Act, see section 84-920.

71-7709 Parties and participants; immunity; notice; act, how construed.

(1) Any party to a cooperative agreement which has been approved in whole or in part by the department pursuant to the Health Care Facility-Provider Cooperation Act shall be immune from any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement such agreement or any decision or order issued by the department.

(2) Any part to a cooperative agreement that has been filed with the department pursuant to the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from the negotiation of or entering into the cooperative agreement.

(3) All persons who participate in community planning, discussions, or negotiations intended in good faith to culminate in a cooperative agreement to be filed with the department pursuant to the provisions of the act shall be immune from any civil or criminal antitrust action if such action is based upon or arises from such conduct.

(4)(a) The immunity provided in this section shall apply only to community planning, discussions, and negotiations that occur after notice of such activities has been sent to the department in accordance with the requirements of subdivision (b) of this subsection.

(b) The notice to the department required by subdivision (a) of this subsection shall include a description of the proposed purpose of the agreement, the potential parties, and the potential nature and scope of the cooperation and joint activities contemplated. The persons filing such notice shall also notify the department if negotiations have terminated, or if negotiations are continuing they shall notify the department of progress of negotiation at least once every six months. The department may request additional information from the potential parties and may communicate with and monitor the parties in any

manner the department deems necessary but shall not hinder or interfere with negotiations.

(5) The submission of a cooperative agreement for department approval pursuant to the act shall be voluntary, and the failure of the parties to any such agreement to seek approval shall not be admissible in any civil or criminal antitrust action if such action is based upon the cooperative agreement or arises from conduct or activity reasonably necessary and reasonably foreseeable to implement the cooperative agreement.

(6) Nothing in the act shall be construed to limit the application of any other statute concerning the licensure of facilities, services, or professions, and any activities undertaken pursuant to a cooperative agreement shall comply with applicable law.

Source: Laws 1994, LB 1223, § 119.

71-7710 Act; how construed.

Nothing in the Health Care Facility-Provider Cooperation Act shall be construed to prohibit:

(1) The formation of a cooperative agreement that has been approved in whole or in part in accordance with the act;

(2) Community planning, discussions, or negotiations intended in good faith to cumulate in a cooperative agreement to be filed with the department;

(3) Any conduct or activity reasonably necessary and reasonably foreseeable to implement an approved cooperative agreement or a decision or order issued by the department; or

(4) The negotiation of or entering into a cooperative agreement which is filed with the department. Such agreements, conduct, or activities shall not be held or construed to be illegal combinations or conspiracies in restraint of trade under the act. Directors, trustees, or their representatives of a health care facility or provider who participate in the discussion or negotiation shall be immune from civil actions or criminal prosecutions for a violation of state or federal antitrust laws unless the discussion or negotiation exceeds the scope authorized by the Health Care Facility-Provider Cooperation Act.

Source: Laws 1994, LB 1223, § 120.

71-7711 Department; maintain copies of agreements; notice of termination, filing required.

The department shall maintain on file a copy of all cooperative agreements for which certificates of public advantage remain in effect. Any party to a cooperative agreement who terminates the agreement shall file a notice of termination with the department within thirty days after termination.

Source: Laws 1994, LB 1223, § 121.

ARTICLE 78

HOSPICE LICENSURE ACT

Cross References

Health Care Facility Licensure Act, see section 71-401.

Section
71-7801. Repealed. Laws 2000, LB 819, § 162.

Section
71-7802. Repealed. Laws 2000, LB 819, § 162.
71-7803. Repealed. Laws 2000, LB 819, § 162.
71-7804. Repealed. Laws 2000, LB 819, § 162.
71-7805. Repealed. Laws 2000, LB 819, § 162.
71-7806. Repealed. Laws 2000, LB 819, § 162.

71-7801 Repealed. Laws 2000, LB 819, § 162.

71-7802 Repealed. Laws 2000, LB 819, § 162.

71-7803 Repealed. Laws 2000, LB 819, § 162.

71-7804 Repealed. Laws 2000, LB 819, § 162.

71-7805 Repealed. Laws 2000, LB 819, § 162.

71-7806 Repealed. Laws 2000, LB 819, § 162.

ARTICLE 79

PEER REVIEW COMMITTEES

Section
71-7901. Health clinic; medical care organization or association; peer review committee authorized.
71-7902. Peer review committee; report or information; privilege.
71-7903. Peer review committee; privileged communications; exceptions.

71-7901 Health clinic; medical care organization or association; peer review committee authorized.

Any health clinic as defined in section 71-416 and any other organization or association of health practitioners or providers licensed pursuant to the Uniform Credentialing Act may cause a peer review committee to be formed and operated or may contract with an outside peer review committee for the purpose of reviewing, from time to time, the medical care provided by such health clinic, organization, or association and for assisting individual practitioners or providers practicing in such clinics, organizations, or associations in maintaining and providing a high standard of medical care.

Source: Laws 1997, LB 222, § 1; Laws 2000, LB 819, § 145; Laws 2007, LB463, § 1302.

Cross References

Uniform Credentialing Act, see section 38-101.

71-7902 Peer review committee; report or information; privilege.

Any person or entity making a report or providing information to a peer review committee of a clinic, organization, or association at the request of such committee has the privilege to refuse to disclose such report or information and to prevent any other person or entity from disclosing the report or information, except as provided in section 71-7903. Such disclosure shall not constitute a waiver of any privilege by the person or entity.

Source: Laws 1997, LB 222, § 2.

71-7903 Peer review committee; privileged communications; exceptions.

The proceedings, minutes, records, and reports of any peer review committee as described in section 71-7901, together with all communications originating in such committees, are privileged communications which may not be disclosed or obtained by legal discovery proceedings unless (1) the privilege is waived by the patient and (2) a court of record, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports, or communications. Nothing in sections 71-7901 to 71-7903 shall be construed to provide any privilege regarding medical records kept with respect to any patient in the ordinary course of business of operating a clinic, organization, or association of practitioners or providers, nor to any facts or information contained in such records, nor shall sections 71-7901 to 71-7903 preclude or affect discovery of or production of evidence relating to the treatment of any patient in the ordinary course of treatment of such patient.

Source: Laws 1997, LB 222, § 3.

ARTICLE 80

CERTIFIED INDUSTRIAL HYGIENIST TITLE PROTECTION ACT

Section
71-8001. Act, how cited.
71-8002. Legislative intent.
71-8003. Industrial hygiene, defined.
71-8004. Individual; use of title; requirements.
71-8005. Business enterprise; use of certified industrial hygienist required; when.
71-8006. Violations; unfair trade practice; civil penalty.
71-8007. Act; applicability.
71-8008. Department of Health and Human Services; rules and regulations.

71-8001 Act, how cited.

Sections 71-8001 to 71-8008 shall be known and may be cited as the Certified Industrial Hygienist Title Protection Act.

Source: Laws 1997, LB 558, § 1.

71-8002 Legislative intent.

It is the intent of the Legislature to provide legal recognition to the professional practice of industrial hygiene so as to provide assurance to government, business, private entities, and the public that a person who represents himself or herself as a certified industrial hygienist or a person who or an entity which represents that he, she, or it provides industrial hygiene services by or under the direction and supervision of a certified industrial hygienist is actually such individual or directly employs such individuals having the qualifications stated in the Certified Industrial Hygienist Title Protection Act.

Source: Laws 1997, LB 558, § 2.

71-8003 Industrial hygiene, defined.

For purposes of the Certified Industrial Hygienist Title Protection Act, industrial hygiene means the science and practice devoted to the anticipation, recognition, evaluation, and specification of controls of environmental factors, stressors, physical hazards, and chemical exposures associated with work and

work operations that may cause sickness, impaired health and well-being, or significant discomfort among workers and the general community.

Source: Laws 1997, LB 558, § 3.

71-8004 Individual; use of title; requirements.

(1) An individual shall not use the title of or represent or advertise himself or herself as a certified industrial hygienist, CIH, or C.I.H. unless such individual has received the designation Certified Industrial Hygienist from the American Board of Industrial Hygiene and the designation as such has not lapsed or been revoked.

(2) An individual shall not use for title or professional identification or as a personal credential any variation on the terms described in subsection (1) of this section using the words ''Certified Industrial Hygienist'' and shall not use initials that indicate such a title unless the individual meets the requirements of this section.

Source: Laws 1997, LB 558, § 4.

71-8005 Business enterprise; use of certified industrial hygienist required; when.

A business enterprise shall not identify, represent, or advertise itself as a provider of industrial hygiene services provided by or under the direction and supervision of a certified industrial hygienist or a variation of such words unless the individuals directly employed by such enterprise to actually engage in any business practice which could be classified as industrial hygiene using the services of a certified industrial hygienist satisfy the requirements of the Certified Industrial Hygienist Title Protection Act. The action or intent of any business enterprise to provide for compensation the services of a certified industrial hygienist through subcontracting, subconsulting, or any means other than direct employment of a certified industrial hygienist shall be clearly conveyed in writing by the soliciting business enterprise to the prospective target audience of interest or buyer of such industrial hygiene services.

Source: Laws 1997, LB 558, § 5.

71-8006 Violations; unfair trade practice; civil penalty.

An individual or business enterprise who violates section 71-8004 or 71-8005 commits an unfair trade practice. Any person or entity injured by such a violation shall have a right of action against the violator for damages for each occurrence when any person or entity suffered or suffers loss.

An individual or business enterprise that violates the Certified Industrial Hygienist Title Protection Act shall be subject to a civil penalty of not more than two thousand dollars. The Attorney General or the county attorney of the county in which such violation occurs shall, when he or she has knowledge of such violation, institute an action in such county to collect the penalty imposed by this section. Money collected pursuant to such action shall be remitted to the State Treasurer for credit to the permanent school fund.

Source: Laws 1997, LB 558, § 6.

71-8007 Act; applicability.

The Certified Industrial Hygienist Title Protection Act does not regulate or otherwise limit the activity of any individual or entity that does not represent or advertise himself, herself, or itself as a certified industrial hygienist, CIH, or C.I.H. or as a provider of services to be performed by a certified industrial hygienist.

Source: Laws 1997, LB 558, § 7.

71-8008 Department of Health and Human Services; rules and regulations.

The Department of Health and Human Services may adopt and promulgate rules and regulations to implement the Certified Industrial Hygienist Title Protection Act and to further regulate the use of the term certified industrial hygienist.

Source: Laws 1997, LB 558, § 8; Laws 2007, LB296, § 687.

ARTICLE 81

GENETIC TECHNOLOGIES

Section
71-8101. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8102. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8103. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8104. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8105. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8106. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.
71-8107. Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8101 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8102 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8103 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8104 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8105 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8106 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

71-8107 Repealed. Laws 2001, LB 2, § 1; Laws 2001, LB 209, § 36.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Cross References

Emergency Medical Services Practice Act, see section 38-1201.
Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

Section
71-8201. Act, how cited.
71-8202. Legislative findings.
71-8203. Definitions, where found.
71-8204. Advanced level rehabilitation center, defined.
71-8205. Advanced level trauma center, defined.
71-8206. Basic level rehabilitation center, defined.
71-8207. Basic level trauma center, defined.
71-8208. Communications system, defined.

Section

71-8201 Act, how cited.

Sections 71-8201 to 71-8253 shall be known and may be cited as the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 1.

71-8202 Legislative findings.

The Legislature finds and declares that:

(1) Trauma is a severe health problem in the State of Nebraska and a major cause of death and long-term disability;

(2) Trauma care is very limited in many parts of Nebraska, particularly in rural areas where there is a growing danger that some communities may be left without adequate emergency medical care;

(3) It is in the best interests of the citizens of Nebraska to establish an efficient and well-coordinated statewide trauma system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service; and

(4) The goals and objectives of a statewide trauma system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for trauma victims; (c) prevent unnecessary death and disability from trauma and emergency illness without regard to insurance or ability to pay and utilize the protocols established in the rules and regulations adopted under the Statewide Trauma System Act; and (d) contain costs of trauma care and trauma system implementation.

Source: Laws 1997, LB 626, § 2.

71-8203 Definitions, where found.

For purposes of the Statewide Trauma System Act, the definitions found in sections 71-8204 to 71-8235 apply.

Source: Laws 1997, LB 626, § 3.

71-8204 Advanced level rehabilitation center, defined.

Advanced level rehabilitation center means a rehabilitation center which, in addition to the services provided at basic level and general level rehabilitation centers, provides services to patients with traumatic brain or spinal injuries, complicated amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity, and serves as a referral facility for basic level and general level rehabilitative services.

Source: Laws 1997, LB 626, § 4.

71-8205 Advanced level trauma center, defined.

Advanced level trauma center means a trauma center which, in addition to providing all of the services provided by basic level and general level trauma centers, also provides definitive care for complex and severe trauma, an emergency trauma team available within fifteen minutes, twenty-four hours per day, inhouse operating room personnel who initiate surgery, a neurosurgeon available who provides neurological assessment and stabilization, a broad range of specialists available for consultation or care, comprehensive diagnostic capabilities and support equipment, and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

Source: Laws 1997, LB 626, § 5; Laws 2009, LB195, § 88.

71-8206 Basic level rehabilitation center, defined.

Basic level rehabilitation center means a rehabilitation center which provides services to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas with minimum to

moderate impairment or complexity and provides physical therapy, occupational therapy, and speech-language pathology services.

Source: Laws 1997, LB 626, § 6.

71-8207 Basic level trauma center, defined.

Basic level trauma center means a trauma center which has a trauma-trained physician, advanced practice registered nurse, or physician assistant available within thirty minutes to provide stabilization and transfer to a higher level trauma center when appropriate, which has basic equipment for resuscitation and stabilization, which maintains appropriate equipment for pediatric trauma patients for resuscitation and stabilization, and which may provide limited surgical intervention based upon the expertise of available onsite staff.

Source: Laws 1997, LB 626, § 7; Laws 2000, LB 1115, § 86; Laws 2009, LB195, § 89.

71-8208 Communications system, defined.

Communications system means any network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in the trauma system.

Source: Laws 1997, LB 626, § 8; Laws 2009, LB195, § 90.

71-8209 Complete data set, defined.

Complete data set means a predetermined set of demographic and medical definitions that includes the minimum data set with additional data points as set forth in the rules and regulations adopted under the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 9.

71-8210 Comprehensive level trauma center, defined.

Comprehensive level trauma center means a trauma center which (1) provides the highest level of definitive, comprehensive care for patients with complex traumatic injury, (2) provides an emergency trauma team available within fifteen minutes, twenty-four hours per day, including inhouse, immediately available personnel who can initiate surgery and appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room, and (3) is responsible for research, education, and outreach programs for trauma.

Source: Laws 1997, LB 626, § 10; Laws 2009, LB195, § 91.

71-8211 Department, defined.

Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1997, LB 626, § 11; Laws 2007, LB296, § 688.

71-8212 Designated rehabilitation centers, defined.

Designated rehabilitation centers means advanced, basic, or general level rehabilitation centers.

Source: Laws 1997, LB 626, § 12.

71-8213 Designated trauma centers, defined.

Designated trauma centers means advanced, basic, comprehensive, general, and specialty level trauma centers.

Source: Laws 1997, LB 626, § 13.

71-8214 Designation, defined.

Designation means a formal determination by the department that a hospital or health care facility is capable of providing designated trauma care or rehabilitative services as authorized in the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 14.

71-8215 Emergency medical service, defined.

Emergency medical service means the organization responding to a perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 1997, LB 626, § 15.

71-8216 Emergency medical services and trauma plan, defined.

Emergency medical services and trauma plan means the statewide plan that identifies statewide emergency medical service and trauma care objectives and priorities and identifies equipment, facilities, personnel, training, and other needs required to create and maintain the statewide trauma system established in section 71-8239. Emergency medical services and trauma plan also includes a plan of implementation that identifies the state and regional activities that will create, operate, maintain, and enhance the system. The plan shall be formulated by incorporating the regional trauma plans required under the Statewide Trauma System Act. The plan shall be updated every five years.

Source: Laws 1997, LB 626, § 16; Laws 2009, LB195, § 92.

71-8217 General level rehabilitation center, defined.

General level rehabilitation center means a rehabilitation center that provides (1) rehabilitative services to individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in one or more functional areas, with moderate to severe impairment or complexity, and (2) a twenty-four-hour program of coordinated, integrated medical and rehabilitative services by an interdisciplinary team comprised of practitioners of rehabilitation medicine, psychology, rehabilitation nursing, social work, therapeutic recreation, and the therapy services offered by basic level rehabilitative centers.

Source: Laws 1997, LB 626, § 17.

71-8218 General level trauma center, defined.

General level trauma center means a trauma center that (1) provides initial evaluation and stabilization, including surgical stabilization if appropriate, and general medical and surgical inpatient services to patients who can be maintained in a stable or improving condition without specialized care, (2) prepares for transfer and transfers patients meeting predetermined criteria pursuant to the rules and regulations adopted under the Statewide Trauma System Act to

higher level trauma centers, (3) is physician directed within a formally organized trauma team, (4) provides trauma-trained physicians and nurses to the emergency department within thirty minutes of notification, (5) has personnel available who can initiate surgery, (6) has appropriate diagnostic capabilities and equipment, and (7) maintains appropriate equipment for pediatric trauma patients in the emergency department, intensive care unit, and operating room.

Source: Laws 1997, LB 626, § 18; Laws 2009, LB195, § 93.

71-8219 Hospital, defined.

Hospital means a health care facility licensed under the Health Care Facility Licensure Act or a comparable health care facility operated by the federal government or located and licensed in another state.

Source: Laws 1997, LB 626, § 19; Laws 2000, LB 819, § 146.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-8220 Interfacility or intrafacility transfer and bypass, defined.

Interfacility or intrafacility transfer and bypass means the transfer of every trauma patient to the highest appropriate level center that is deemed medically appropriate for his or her injury.

Source: Laws 1997, LB 626, § 20.

71-8221 Minimum data set, defined.

Minimum data set means a predetermined set of demographic and medical definitions set forth in the rules and regulations adopted under the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 21.

71-8222 On-line physician or qualified physician surrogate, defined.

On-line physician or qualified physician surrogate means a physician or a qualified physician surrogate, preferably within the region, who is providing medical direction to the emergency medical service providing life support and stabilization and includes interfacility or intrafacility transfer and bypass to a higher level trauma center.

Source: Laws 1997, LB 626, § 22; Laws 2009, LB195, § 94.

71-8223 Repealed. Laws 2009, LB 195, § 111.

71-8224 Patient care protocols, defined.

Patient care protocols means the written procedures adopted by the medical staff of a trauma center, specialty level burn or pediatric trauma center, or rehabilitation center that direct the care of the patient, based upon the assessment of the patient's medical needs. Patient care protocols shall follow minimum statewide standards for trauma care services.

Source: Laws 1997, LB 626, § 24.

71-8225 Pediatric trauma patient, defined.

Pediatric trauma patient means a trauma patient known or estimated to be less than sixteen years of age.

Source: Laws 1997, LB 626, § 25.

71-8226 Physician medical director, defined.

Physician medical director means a qualified physician who is responsible for the medical supervision of out-of-hospital emergency care providers and verification of skill proficiency of out-of-hospital emergency care providers.

Source: Laws 1997, LB 626, § 26.

71-8227 Qualified physician surrogate, defined.

Qualified physician surrogate means a qualified, trained medical person, designated by a qualified physician in writing to act as an agent for the physician in directing the actions of out-of-hospital emergency care providers.

Source: Laws 1997, LB 626, § 27.

71-8228 Regional medical director, defined.

Regional medical director means a physician licensed under the Uniform Credentialing Act who shall report to the Director of Public Health and carry out the regional plan for his or her region.

Source: Laws 1997, LB 626, § 28; Laws 1999, LB 594, § 62; Laws 2007, LB296, § 689; Laws 2007, LB463, § 1303.

Cross References

Uniform Credentialing Act, see section 38-101.

71-8229 Rehabilitative services, defined.

Rehabilitative services means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help trauma patients who have sustained neurologic or musculoskeletal injury and who need physical or cognitive intervention to return to home, work, or society and to achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms.

Source: Laws 1997, LB 626, § 29.

71-8230 Specialty level burn or pediatric trauma center, defined.

Specialty level burn or pediatric trauma center means a trauma center that (1) provides specialized care in the areas of burns or pediatrics, (2) is designated or verified by its professional association governing body, (3) provides continuous accessibility regardless of day, season, or patient's ability to pay, and (4) has entry access from each of the designation levels as its on-line physician or qualified physician surrogate deems appropriate.

Source: Laws 1997, LB 626, § 30; Laws 2009, LB195, § 95.

71-8231 State trauma medical director, defined.

State trauma medical director means a physician licensed under the Uniform Credentialing Act who reports to the Director of Public Health and carries out duties under the Statewide Trauma System Act.

Source: Laws 1997, LB 626, § 31; Laws 1999, LB 594, § 63; Laws 2007, LB296, § 690; Laws 2007, LB463, § 1304.

Cross References

Uniform Credentialing Act, see section 38-101.

71-8232 Trauma, defined.

Trauma means a single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

Source: Laws 1997, LB 626, § 32; Laws 2009, LB195, § 96.

71-8233 Trauma care regions, defined.

Trauma care regions means geographic areas established by the department under section 71-8250.

Source: Laws 1997, LB 626, § 33.

71-8234 Trauma team, defined.

Trauma team means a team of physicians, nurses, medical technicians, and other personnel compiled to create a seamless response to an acutely injured patient in a hospital emergency department.

Source: Laws 1997, LB 626, § 34; Laws 2009, LB195, § 97.

71-8235 Trauma system, defined.

Trauma system means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma system shall identify facilities with specific capabilities to provide care and provide that trauma patients be treated at a designated trauma center appropriate to the patient's level of injury. Trauma system includes prevention, prehospital or out-of-hospital care, hospital care, and rehabilitative services regardless of insurance carrier or ability to pay.

Source: Laws 1997, LB 626, § 35; Laws 2009, LB195, § 98.

71-8236 State Trauma Advisory Board; created; members; terms; expenses.

The State Trauma Advisory Board is created. The board shall be composed of representatives knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, prehospital or out-of-hospital providers, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The Director of Public Health or his or her designee shall appoint the members of the board for staggered terms of three years each. The department shall provide administrative support to the board. All members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as such members as provided in sections

81-1174 to 81-1177. The terms of members representing the same field shall not expire at the same time.

The board shall elect a chairperson and a vice-chairperson whose terms of office shall be for two years. The board shall meet at least twice per year by written request of the director or the chairperson.

Source: Laws 1997, LB 626, § 36; Laws 1998, LB 898, § 1; Laws 1999, LB 594, § 64; Laws 2007, LB296, § 691.

71-8237 State Trauma Advisory Board; duties.

The State Trauma Advisory Board shall:

(1) Advise the department regarding trauma care needs throughout the state;

(2) Advise the Board of Emergency Medical Services regarding trauma care to be provided throughout the state by out-of-hospital and emergency medical services;

(3) Review the regional trauma plans and recommend changes to the department before the department adopts the plans;

(4) Review proposed departmental rules and regulations for trauma care;

(5) Recommend modifications in rules regarding trauma care; and

(6) Draft a five-year statewide prevention plan that each trauma care region shall implement.

Source: Laws 1997, LB 626, § 37; Laws 2009, LB195, § 99.

71-8238 State Trauma System Cash Fund; created; use; investment.

The State Trauma System Cash Fund is created. The department may apply for, receive, and accept gifts and other payments, including property and services, for the fund from any governmental or other public or private entity or person and may utilize the fund for activities related to the design, maintenance, or enhancements of the statewide trauma system. Disbursements from the fund shall be made by the department. 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.

Source: Laws 1997, LB 626, § 38.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-8239 Statewide trauma system; established; rules and regulations; state trauma medical director and regional medical directors; appointment.

(1) The department, in consultation with and having solicited the advice of the State Trauma Advisory Board, shall establish and maintain the statewide trauma system.

(2) The department, with the advice of the board, shall adopt and promulgate rules and regulations to carry out the Statewide Trauma System Act.

(3) The Director of Public Health or his or her designee shall appoint the state trauma medical director and the regional medical directors.

Source: Laws 1997, LB 626, § 39; Laws 2007, LB296, § 692; Laws 2009, LB195, § 100.

71-8240 Department; statewide duties.

The department shall establish and maintain the following on a statewide basis:

(1) Trauma system objectives and priorities;

(2) Minimum trauma standards for facilities, equipment, and personnel for advanced, basic, comprehensive, and general level trauma centers and specialty level burn or pediatric trauma centers;

(3) Minimum standards for facilities, equipment, and personnel for advanced, basic, and general level rehabilitation centers;

(4) Minimum trauma standards for the development of facility patient care protocols;

(5) Trauma care regions as provided for in section 71-8250;

(6) Recommendations for an effective trauma transportation system;

(7) The minimum number of hospitals and health care facilities in the state and within each trauma care region that may provide designated trauma care services based upon approved regional trauma plans;

(8) The minimum number of prehospital or out-of-hospital care providers in the state and within each trauma care region that may provide trauma care services based upon approved regional trauma plans;

(9) A format for submission of the regional trauma plans to the department;

(10) A program for emergency medical services and trauma care research and development;

(11) Review and approve regional trauma plans;

(12) The initial designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the approved regional trauma plan; and

(13) The trauma implementation plan incorporating the regional trauma plans.

Source: Laws 1997, LB 626, § 40; Laws 2009, LB195, § 101.

71-8241 Department; coordination.

The department shall coordinate the statewide trauma system to assure integration and smooth operation among the trauma care regions and facilitate coordination of the State Trauma Advisory Board and the Board of Emergency Medical Services to monitor the system.

Source: Laws 1997, LB 626, § 41.

71-8242 Department; startup activities; duties.

The department shall:

(1) Purchase and maintain the statewide trauma registry pursuant to section 71-8248 to assess the effectiveness of trauma delivery and modify standards and other requirements of the statewide trauma system, to improve the provision of emergency medical services and trauma care;

(2) Develop patient outcome measures to assess the effectiveness of trauma care in the system;

(3) Develop standards for regional trauma care quality assurance programs; and

(4) Coordinate and develop trauma prevention and education programs.

The department shall administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide trauma system.

Source: Laws 1997, LB 626, § 42; Laws 2009, LB195, § 102.

71-8243 Centers; categorized; requirements.

Designated trauma centers and rehabilitation centers that receive trauma patients shall be categorized according to designation under the Statewide Trauma System Act. All levels of centers shall follow federal regulation guidelines and established referral patterns, as appropriate, to facilitate a seamless patient-flow system.

Source: Laws 1997, LB 626, § 43; Laws 1999, LB 594, § 65; Laws 2009, LB195, § 103.

71-8244 Designated center; requirements; request; appeal; revocation or suspension; notice; hearing.

Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center that desires to be a designated center shall request designation from the department whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide trauma system. The department shall determine by rule and regulation the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether there is compliance with standards for the trauma care level for which designation is desired or whether the appropriate governing body verification documentation has been submitted. Any hospital, facility, rehabilitation center, or specialty level burn or pediatric trauma center which submits such verification documentation shall be designated by the department and shall be included in the trauma system or plan established under the Statewide Trauma System Act. Any medical facility applying for designation may appeal its designation. The appeal shall be in accordance with the Administrative Procedure Act.

Designation is valid for a period of four years and is renewable upon receipt of a request from the medical facility for renewal prior to expiration. Any medical facility that is currently verified by its governing body shall be designated at the corresponding level of designation for the same time period in Nebraska without the necessity of an onsite review by the department. Regional trauma advisory boards shall be notified promptly of designated medical facilities in their region so they may incorporate them into the regional plan. The department may revoke or suspend a designation if it determines that the medical facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional trauma advisory board of designation suspensions and revocations. Any rehabilitation or trauma center the designation of which has been revoked or suspended may request a hearing to review the action of the department.

Source: Laws 1997, LB 626, § 44; Laws 2009, LB195, § 104.

Cross References

Administrative Procedure Act, see section 84-920.

71-8245 Onsite reviews; applicant; duties; confidentiality; fees.

As part of the process to designate and renew the designation of hospitals and health care facilities as advanced, basic, comprehensive, or general level trauma centers, the department may contract for onsite reviews of such hospitals and health care facilities to determine compliance with required standards. As part of the process to designate a health care facility as a basic or general rehabilitation center or specialty level burn or pediatric trauma center, the applicant shall submit to the department documentation of current verification from its governing body in its specialty area. Members of onsite review teams and staff included in onsite visits shall not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department: (1) In actions arising out of the designation of a hospital or health care facility pursuant to section 71-8244; (2) in actions arising out of the revocation or suspension of a designation under such section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider, subject to any further restrictions on disclosure that may apply. Information that identifies an individual patient shall not be publicly disclosed without the patient's consent. When a medical facility requests designation for more than one service, the department may coordinate the joint consideration of such requests. Composition and qualification of the designation team shall be set forth in rules and regulations adopted under the Statewide Trauma System Act. Reports prepared pursuant to this section shall not be considered public records.

The department may establish fees to defray the costs of carrying out onsite reviews required by this section, but such fees shall not be assessed to health care facilities designated as basic or general level trauma centers or basic level rehabilitation centers.

This section does not restrict the authority of a hospital or a health care provider to provide services which it has been authorized to provide by state law.

Source: Laws 1997, LB 626, § 45; Laws 2009, LB195, § 105.

71-8246 Regional trauma system; department; duties.

The department shall develop the regional trauma system. The department shall:

(1) Assess and analyze regional trauma care needs;

(2) Identify personnel, agencies, facilities, equipment, training, and education needed to meet regional needs;

(3) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(4) Promote agreements with providers outside the region to facilitate patient transfer;

(5) Establish a regional budget;

(6) Establish the minimum number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region; and

(7) Include other specific elements defined by the department.

Source: Laws 1997, LB 626, § 46; Laws 2009, LB195, § 106.

71-8247 Regional trauma system quality assurance program; established.

In each trauma region, a regional trauma system quality assurance program shall be established by the health care facilities designated as advanced, basic, comprehensive, and general level trauma centers. The quality assurance program shall evaluate trauma data quality, trauma care delivery, patient care outcomes, and compliance with the Statewide Trauma System Act. The regional medical director and all health care providers and facilities which provide trauma care services within the region shall be invited to participate in the quality assurance program.

Source: Laws 1997, LB 626, § 47; Laws 2009, LB195, § 107.

71-8248 Statewide trauma registry.

The department shall establish and maintain a statewide trauma registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The registry shall be used to improve the availability and delivery of prehospital or out-of-hospital care and hospital trauma care services. Specific data elements of the registry shall be defined by rule and regulation of the department. Every health care facility designated as an advanced, a basic, a comprehensive, or a general level trauma center, a specialty level burn or pediatric trauma center, an advanced, a basic, or a general level rehabilitation center, or a prehospital or out-of-hospital provider shall furnish data to the registry. All other hospitals may furnish trauma data as required by the department by rule and regulation. All hospitals involved in the care of a trauma patient shall have unrestricted access to all prehospital reports for the trauma registry for that specific trauma occurrence.

Source: Laws 1997, LB 626, § 48; Laws 2009, LB195, § 108.

71-8249 Statewide trauma registry; data; confidentiality.

(1) All data collected under section 71-8248 shall be held confidential pursuant to sections 81-663 to 81-675. Confidential patient medical record data shall only be released as (a) Class I, II, or IV medical records under sections 81-663 to 81-675, (b) aggregate or case-specific data to the regional trauma system quality assurance program and the regional trauma advisory boards, (c) protected health information to a public health authority, as such terms are defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, and (d) protected health information, as defined under the federal Health Insurance Portability and Accountability Act of 1996, as such act existed on January 1, 2008, to an emergency medical service, to an out-of-hospital emergency care provider, to a licensed health care facility, or to a center that will treat or has treated a specific patient.

A record may be shared with the emergency medical service, the out-of-hospital emergency provider, the licensed health care facility, or center that reported that specific record.

(2) Patient care quality assurance proceedings, records, and reports developed pursuant to this section and section 71-8248 are confidential and are not subject to discovery by subpoena or admissible as evidence in any civil action, except pursuant to a court order which provides for the protection of sensitive information of interested parties, including the department, pursuant to section 25-12,123.

Source: Laws 1997, LB 626, § 49; Laws 2007, LB185, § 46; Laws 2008, LB797, § 27.

71-8250 Trauma care regions; designated.

The department shall designate trauma care regions so that all parts of the state are within such a region.

Source: Laws 1997, LB 626, § 50; Laws 2003, LB 467, § 2.

71-8251 Regional trauma advisory boards; established; members; expenses.

The department shall establish a regional trauma advisory board within each trauma care region. The department shall appoint members, to be comprised of a balance of hospital representatives and out-of-hospital emergency services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of emergency medical services and trauma care recommended by the local emergency medical services providers and medical facilities located within the region. All members of the board may be reimbursed for their actual and necessary expenses incurred in the performance of their duties as such members pursuant to sections 81-1174 to 81-1177.

Source: Laws 1997, LB 626, § 51.

71-8252 Regional trauma advisory boards; powers and duties.

The regional trauma advisory boards:

(1) Shall advise the department on matters relating to the delivery of trauma care services within the trauma care region;

(2) Shall evaluate data and provide analysis required by the department to assess the effectiveness of the statewide trauma system; and

(3) May apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the statewide trauma system in the trauma care region. Regional trauma advisory boards shall report in the regional budget the amount, source, and purpose of all gifts and payments.

Source: Laws 1997, LB 626, § 52; Laws 2007, LB185, § 47.

71-8253 Act; how construed.

(1) If there are conflicts between the Statewide Trauma System Act and the Emergency Medical Services Practice Act pertaining to out-of-hospital emergency medical services, the Emergency Medical Services Practice Act shall control.

(2) Nothing in the Statewide Trauma System Act shall limit a patient's right to choose the physician, hospital, facility, rehabilitation center, specialty level burn or pediatric trauma center, or other provider of health care services.

Source: Laws 1997, LB 626, § 53; Laws 2007, LB463, § 1305.

Cross References

Emergency Medical Services Practice Act, see section 38-1201.

ARTICLE 83
CREDENTIALING OF HEALTH CARE FACILITIES

Cross References

Health Care Facility Licensure Act, see section 71-401.

Section

71-8301 Legislative intent.

It is the intent of the Legislature that quality health care services and human services be provided to all citizens of the state, that basic standards be developed to promote safe and adequate care of individuals in health care services facilities and human services facilities, that categories of facilities be regulated by the state solely for the purpose of protecting the public from unreasonable harm or danger, and that categories of facilities be regulated by the state only when it is demonstrated that regulation is in the best interest of the public.

The purposes of sections 71-8301 to 71-8314 are to establish criteria that provide for the determination of what categories of facilities should be regulated, to develop a quality improvement mechanism which would periodically examine and reexamine the laws, regulations, processes, and results of the facility regulation system, to establish a facility regulation system based on meaningful results, including quality indicators, and to assure that the development, application, and implementation of the facility regulation system is consistent and uniform.

Source: Laws 1998, LB 1073, § 107.

71-8302 Definitions, where found.

For purposes of sections 71-8301 to 71-8314, the definitions found in sections 71-8303 to 71-8307 are used.

Source: Laws 1998, LB 1073, § 108.

71-8303 Credentialing, defined.

Credentialing means the totality of the licensure processes associated with obtaining a license or changing aspects of an existing license.

Source: Laws 1998, LB 1073, § 109.

71-8304 Facility, defined.

Facility means any organization which provides health care services or human services to members of the general public.

Source: Laws 1998, LB 1073, § 110.

71-8305 Health care services, defined.

Health care services means services associated with the diagnosis and treatment of physical, mental, or emotional injury or illness or the prevention, rehabilitation, or continuing care related to health problems.

Source: Laws 1998, LB 1073, § 111.

71-8306 Human services, defined.

Human services means services that assist individuals in the conduct of daily living and includes the provision of food and shelter, a minimum amount of such assistance and personal care, and health-related services for individuals who are in need of a protected environment but who are otherwise able to manage normal activities of daily living.

Source: Laws 1998, LB 1073, § 112.

71-8307 Licensure, defined.

Licensure means the permission granted by the state to provide health care services or human services to the public which would otherwise be unlawful without such permission and which is granted to facilities which meet prerequisite qualifications pertinent to public health, safety, and welfare.

Source: Laws 1998, LB 1073, § 113.

71-8308 Facilities not previously licensed; credentialing; when.

Credentialing of categories of facilities not previously licensed should occur only when:

(1) Credentialing is necessary to prevent harm or endangerment to the public health, safety, or welfare and the potential for the harm or endangerment is easily recognizable and not remote or dependent upon tenuous argument;

(2) Credentialing would not significantly diminish the supply of qualified providers or would not otherwise diminish the public's access to needed services; and

(3) There is no more cost-effective means of protecting the public from harm than credentialing.

Source: Laws 1998, LB 1073, § 114.

71-8309 Facilities not previously licensed; legislative intent.

If the Legislature finds that it is necessary for the protection of the public to regulate categories of facilities not previously regulated by state law after

reviewing the criteria in section 71-8308 and considering governmental and societal costs and benefits, it is the intent of the Legislature that the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare be implemented.

Source: Laws 1998, LB 1073, § 115.

71-8310 Currently licensed facilities; changes in credentialing; when.

Changes in the credentialing of categories of currently licensed facilities should occur only when:

(1) Credentialing is not needed to ensure the protection of the public health, safety, or welfare or the then current rules and regulations or statutory provisions are not providing adequate protection of the public health, safety, or welfare;

(2) Credentialing has been more detrimental than beneficial to the public health, safety, or welfare by diminishing the supply of qualified providers or the public's access to needed services; or

(3) There are more cost-effective means of protecting the public from harm than credentialing.

Source: Laws 1998, LB 1073, § 116.

71-8311 Currently licensed facilities; legislative intent.

If the Legislature finds that it is necessary for the protection of the public to make changes in the statutes regulating categories of facilities after reviewing the criteria in section 71-8310 and considering governmental and societal costs and benefits, it is the intent of the Legislature that changes be implemented which are the least restrictive regulatory provisions consistent with protecting the public health, safety, and welfare.

Source: Laws 1998, LB 1073, § 117.

71-8312 Facility regulation system; periodic review.

The Department of Health and Human Services shall periodically examine and reexamine the regulations, processes, and results of the facility regulation system. Changes in the facility regulation system should occur whenever the department finds that:

(1) A program or procedure is not needed to ensure the protection of the public health, safety, or welfare or a program or procedure is not providing adequate protection of the public health, safety, or welfare;

(2) A program or procedure has been more detrimental than beneficial to the fulfillment of the department's regulatory responsibilities as defined by law or has diminished the supply of qualified providers or the public's access to needed services; or

(3) There are alternatives to a program or procedure that would more cost effectively fulfill the department's duties and responsibilities.

Source: Laws 1998, LB 1073, § 118; Laws 2007, LB296, § 693.

71-8313 Department; credentialing recommendations.

The Department of Health and Human Services shall review the regulation or proposed regulation of categories of facilities based on the criteria in sections

71-8301 to 71-8314. On or before November 1 of each year, the department shall provide the Legislature with recommendations for credentialing of categories of facilities not previously regulated and changes in the statutes governing the credentialing of categories of facilities.

Source: Laws 1998, LB 1073, § 119; Laws 2007, LB296, § 694.

71-8314 Sections; how construed.

Nothing in sections 71-8301 to 71-8314 is intended to authorize any certificate of need activities for facilities or to authorize the licensure of private practice health care services offices.

Source: Laws 1998, LB 1073, § 120.

ARTICLE 84
MEDICAL RECORDS

Section
71-8401. Legislative findings.
71-8402. Terms, defined.
71-8403. Access to medical records.
71-8404. Access; charges.
71-8405. Charges; exemptions.
71-8406. Provider; immunity.
71-8407. Sections; applicability.

71-8401 Legislative findings.

The Legislature finds that medical records contain personal and sensitive information that if improperly used or released may do significant harm to a patient's interests. Patients need access to their own medical records as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

Source: Laws 1999, LB 17, § 1.

71-8402 Terms, defined.

For purposes of sections 71-8401 to 71-8407:

(1) Medical records means a provider's record of a patient's health history and treatment rendered;

(2) Mental health medical records means medical records or parts thereof created by or under the direction or supervision of a licensed psychiatrist, a licensed psychologist, or a mental health practitioner licensed or certified pursuant to the Mental Health Practice Act;

(3) Patient includes a patient or former patient;

(4) Patient request or request of a patient includes the request of a patient's guardian or other authorized representative; and

(5) Provider means a physician, psychologist, chiropractor, dentist, hospital, clinic, and any other licensed or certified health care practitioner or entity.

Source: Laws 1999, LB 17, § 2; Laws 2007, LB247, § 56; Laws 2007, LB463, § 1306.

Cross References

Mental Health Practice Act, see section 38-2101.

71-8403 Access to medical records.

(1) A patient may request a copy of the patient's medical records or may request to examine such records. Access to such records shall be provided upon request pursuant to sections 71-8401 to 71-8407, except that mental health medical records may be withheld if any treating physician, psychologist, or mental health practitioner determines in his or her professional opinion that release of the records would not be in the best interest of the patient unless the release is required by court order. The request and any authorization shall be in writing and shall be valid for one hundred eighty days after the date of execution by the patient.

(2) Upon receiving a written request for a copy of the patient's medical records under subsection (1) of this section, the provider shall furnish the person making the request a copy of such records not later than thirty days after the written request is received.

(3) Upon receiving a written request to examine the patient's medical records under subsection (1) of this section, the provider shall, as promptly as required under the circumstances but no later than ten days after receiving the request: (a) Make the medical records available for examination during regular business hours; (b) inform the patient if the records do not exist or cannot be found; (c) if the provider does not maintain the records, inform the patient of the name and address of the provider who maintains such records, if known; or (d) if unusual circumstances have delayed handling the request, inform the patient in writing of the reasons for the delay and the earliest date, not later than twenty-one days after receiving the request, when the records will be available for examination. The provider shall furnish a copy of medical records to the patient as provided in subsection (2) of this section if requested.

(4) This section does not require the retention of records or impose liability for the destruction of records in the ordinary course of business prior to receipt of a request made under subsection (1) of this section. A provider shall not be required to disclose confidential information in any medical record concerning another patient or family member who has not consented to the release of the record.

Source: Laws 1999, LB 17, § 3.

71-8404 Access; charges.

Except as provided in sections 71-8405 and 71-8407, for medical records provided under section 71-8403 or under subpoena by a patient or his or her authorized representative a provider may charge no more than twenty dollars as a handling fee and may charge no more than fifty cents per page as a copying fee. A provider may charge for the reasonable cost of all duplications of medical records which cannot routinely be copied or duplicated on a standard photocopy machine. A provider may charge an amount necessary to cover the cost of labor and materials for furnishing a copy of an X-ray or similar special medical record. If the provider does not have the ability to reproduce X-rays or other records requested, the person making the request may arrange, at his or her expense, for the reproduction of such records.

Source: Laws 1999, LB 17, § 4.

71-8405 Charges; exemptions.

(1) A provider shall not charge a fee for medical records requested by a patient for use in supporting an application for disability or other benefits or assistance or an appeal relating to the denial of such benefits or assistance under:

(a) Sections 43-501 to 43-536 regarding assistance for certain children;

(b) The Medical Assistance Act relating to the medical assistance program;

(c) Title II of the federal Social Security Act, as amended, 42 U.S.C. 401 et seq.;

(d) Title XVI of the federal Social Security Act, as amended, 42 U.S.C. 1382 et seq.; or

(e) Title XVIII of the federal Social Security Act, as amended, 42 U.S.C. 1395 et seq.

(2) Unless otherwise provided by law, a provider may charge a fee as provided in section 71-8404 for the medical records of a patient requested by a state or federal agency in relation to the patient's application for benefits or assistance or an appeal relating to denial of such benefits or assistance under subsection (1) of this section.

(3) A request for medical records under this section shall include a statement or document from the department or agency that administers the issuance of the assistance or benefits which confirms the application or appeal.

Source: Laws 1999, LB 17, § 5; Laws 2006, LB 1248, § 81.

Cross References

Medical Assistance Act, see section 68-901.

71-8406 Provider; immunity.

A provider who transfers or submits information in good faith to a patient's medical record shall not be liable in damages to the patient or any other person for the disclosure of such medical records as provided in sections 71-8401 to 71-8407.

Source: Laws 1999, LB 17, § 6.

71-8407 Sections; applicability.

Sections 71-8401 to 71-8407 do not apply to the release of medical records under the Nebraska Workers' Compensation Act.

Source: Laws 1999, LB 17, § 7.

Cross References

Nebraska Workers' Compensation Act, see section 48-1,110.

ARTICLE 85

NEBRASKA TELEHEALTH ACT

Section
71-8501. Act, how cited.
71-8502. Legislative findings.
71-8503. Terms, defined.
71-8504. Act; how construed.
71-8505. Written statement; requirements.
71-8506. Medical assistance program; reimbursement; requirements.

Section
71-8507. Health care facility; duties.
71-8508. Rules and regulations.

71-8501 Act, how cited.

Sections 71-8501 to 71-8508 shall be known and may be cited as the Nebraska Telehealth Act.

Source: Laws 1999, LB 559, § 1.

71-8502 Legislative findings.

The Legislature finds that:

(1) Access to health care facilities and health care practitioners is critically important to the citizens of Nebraska;

(2) Access to a continuum of health care services is restricted in some medically underserved areas of Nebraska, and many health care practitioners in such areas are isolated from mentors, colleagues, and information resources necessary to support them personally and professionally;

(3) The use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska; and

(4) The full potential of delivering health care services through telehealth cannot be realized without the assurance of payment for such services and the resolution of existing legal and policy barriers to such payment.

Source: Laws 1999, LB 559, § 2.

71-8503 Terms, defined.

For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where the patient is located; and

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth but does not include a telephone conversation, electronic mail message, or facsimile transmission between a health care practitioner and a patient or a consultation between two health care practitioners.

Source: Laws 1999, LB 559, § 3; Laws 2007, LB296, § 695.

71-8504 Act; how construed.

The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right

to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.

Source: Laws 1999, LB 559, § 4.

71-8505 Written statement; requirements.

(1) Prior to an initial telehealth consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through telehealth shall ensure that the following written information is provided to the patient:

(a) A statement that the patient retains the option to refuse the telehealth consultation at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) A statement that all existing confidentiality protections shall apply to the telehealth consultation;

(c) A statement that the patient shall have access to all medical information resulting from the telehealth consultation as provided by law for patient access to his or her medical records; and

(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.

(2) The patient shall sign a written statement prior to an initial telehealth consultation, indicating that the patient understands the written information provided pursuant to subsection (1) of this section and that this information has been discussed with the health care practitioner or his or her designee. Such signed statement shall become a part of the patient's medical record.

(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the written statement required by subsection (2) of this section, such statement shall be signed by the patient's legally authorized representative.

(4) This section shall not apply in an emergency situation in which the patient is unable to sign the written statement required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

Source: Laws 1999, LB 559, § 5.

71-8506 Medical assistance program; reimbursement; requirements.

(1) On or after July 1, 2000, in-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation.

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant.

Source: Laws 1999, LB 559, § 6; Laws 2006, LB 1248, § 82.

Cross References

Medical Assistance Act, see section 68-901.

71-8507 Health care facility; duties.

A health care facility licensed under the Health Care Facility Licensure Act that receives reimbursement under the Nebraska Telehealth Act for telehealth consultations shall establish quality of care protocols and patient confidentiality guidelines to ensure that such consultations meet the requirements of the act and acceptable patient care standards.

Source: Laws 1999, LB 559, § 7; Laws 2000, LB 819, § 147.

Cross References

Health Care Facility Licensure Act, see section 71-401.

71-8508 Rules and regulations.

By July 1, 2000, the department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish methods and procedures necessary to safeguard against unnecessary utilization of telehealth consultations.

Source: Laws 1999, LB 559, § 8.

ARTICLE 86

BLIND AND VISUALLY IMPAIRED

Section

71-8601 Act, how cited.

Sections 71-8601 to 71-8616 shall be known and may be cited as the Commission for the Blind and Visually Impaired Act.

Source: Laws 2000, LB 352, § 1; Laws 2007, LB445, § 1.

71-8602 Purposes of act.

The purposes of the Commission for the Blind and Visually Impaired Act are to assist blind persons in gaining remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

Source: Laws 2000, LB 352, § 2.

71-8603 Terms, defined.

For purposes of the Commission for the Blind and Visually Impaired Act:

(1) Blind person means:

(a) A person having sight which is so defective as to seriously limit his or her ability to engage in the ordinary vocations and activities of life; or

(b) A person, to be eligible and licensed as a blind vending facility operator under section 71-8611:

(i) Having no greater than 20/200 central visual acuity in the better eye after correction; or

(ii) Having an equally disabling loss of the visual field in which the widest diameter of the visual field subtends an angle no greater than twenty degrees;

(2) Board means the governing board of the commission;

(3) Certified vocational rehabilitation counselor for the blind means a person who is certified to practice vocational rehabilitation counseling for blind persons and holds a certificate issued by the commission;

(4) Commission means the Commission for the Blind and Visually Impaired;

(5) Committee of Blind Vendors means the committee created pursuant to 20 U.S.C. 107b-1;

(6) State workforce investment board means the board authorized by the federal Workforce Investment Act of 1998 and established in Nebraska;

(7) Vending facility means:

(a) Cafeterias, snackbars, cart services, shelters, counters, shelving, display and wall cases, refrigerating apparatus, and other appropriate auxiliary equipment necessary for the vending of articles approved by the office, agency, or person having control of the property on which the vending facility is located; and

(b) Manual or coin-operated vending machines or similar devices for vending articles approved by the office, agency, or person having control of the property on which the vending facility is located;

(8) Vending facility program means the program established and maintained pursuant to section 71-8611; and

(9) Vocational rehabilitation counseling for the blind means the process implemented by a person who operates a comprehensive and coordinated program designed to assist blind persons to gain remunerative employment, to enlarge economic opportunities for blind persons, to increase the available occupational range and diversity for blind persons, and to stimulate other efforts that aid blind persons in becoming self-supporting.

Source: Laws 2000, LB 352, § 3; Laws 2005, LB 55, § 1; Laws 2007, LB445, § 2.

71-8604 Commission for the Blind and Visually Impaired; created; per diem; expenses.

(1) The Commission for the Blind and Visually Impaired is created. The governing board of the commission shall consist of five members appointed by the Governor with the approval of a majority of the members of the Legislature. All board members shall have reasonable knowledge or experience in issues related to blindness which may include, but is not limited to, reasonable knowledge or experience acquired through membership in consumer organizations of the blind. No board member or his or her immediate family shall be a current employee of the commission. At least three board members shall be blind persons: One member shall be a member or designee of the National Federation of the Blind of Nebraska; one member shall be a member or designee of the American Council of the Blind of Nebraska; and one member may be a member of another consumer organization of the blind.

(2) Board members shall be appointed for staggered terms with the initial members appointed for terms as follows: Two members for terms ending on December 31, 2001, and three members for terms ending December 31, 2003. Subsequent appointments shall be for terms of four years with no board member appointed to more than two consecutive terms. Board members whose terms have expired shall continue to serve until their successors have been appointed. In the case of a vacancy, the Governor shall appoint a successor for the unexpired term. Board members may be removed for cause.

(3) A majority of the board members constitutes a quorum for the transaction of business. The board shall annually elect a chairperson from its membership.

(4) Board members shall receive a per diem of seventy dollars for each day spent in the performance of their official duties and shall be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as provided in sections 81-1174 to 81-1177. Aside from the provisions of this subsection, a board member shall not receive other compensation, perquisites, or allowances for the performance of official duties.

Source: Laws 2000, LB 352, § 4.

71-8605 Commission; director; employees.

(1) The commission shall employ a director who is the administrative officer of the commission. The director shall hire employees as necessary for the

efficient operation of the commission. The director shall serve at the pleasure of the commission.

(2) The commission shall have power in each instance (a) to establish standards of qualification for personnel employed pursuant to the Commission for the Blind and Visually Impaired Act and (b) to employ necessary field agents, teachers, and other personnel in accordance with such standards and fix their compensation. All employees of the commission, except the director, shall be included within the State Personnel System.

Source: Laws 1917, c. 233, § 3, p. 571; C.S.1922, § 6876; C.S.1929, § 83-313; R.S.1943, § 83-211; Laws 1947, c. 332, § 3, p. 1050; Laws 1976, LB 674, § 6; Laws 1988, LB 810, § 1; Laws 1996, LB 1044, § 934; R.S.1943, (1999), § 83-211; Laws 2000, LB 352, § 5.

71-8606 Repealed. Laws 2002, LB 93, § 27.

71-8607 Commission; powers and duties.

(1) The commission shall:

(a) Apply for, receive, and administer money from any state or federal agency to be used for purposes relating to blindness, including federal funds relating to vocational rehabilitation of blind persons as provided in subsection (1) of section 71-8610;

(b) Receive on behalf of the state any gifts, donations, or bequests from any source to be used in carrying out the purposes of the Commission for the Blind and Visually Impaired Act;

(c) Promote self-support of blind persons as provided in sections 71-8608, 71-8609, and 71-8611;

(d) Provide itinerant training of alternative skills of blindness, including, but not limited to, braille, the long white cane for independent travel, adaptive technology, and lifestyle maintenance;

(e) Establish, equip, and maintain a residential training center with qualified instructors for comprehensive prevocational training of eligible blind persons. The center shall also provide comprehensive independent living training as well as orientation and adjustment counseling for blind persons;

(f) Administer and operate a vending facility program in the state, in its capacity as the designated licensing agency pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq., for the benefit of blind persons;

(g) Contract for the purchase of information services for blind persons; and

(h) Perform other duties necessary to fulfill the purposes of the Commission for the Blind and Visually Impaired Act.

(2) The commission may perform educational services relating to blindness and may cooperate and consult with other public and private agencies relating to educational issues.

Source: Laws 2000, LB 352, § 7.

71-8608 Promotion of self-support; powers and duties.

To promote self-support of blind persons:

(1) The commission shall:

(a) Provide placement and career development services;

(b) Provide prevocational training;

(c) Support integration with and access to community-based educational and vocational training opportunities;

(d) Implement employer outreach and cultivation; and

(e) Develop inservice community-based recruitment and networking resources; and

(2) The commission may:

(a) Maintain employment data bases;

(b) Facilitate small business incubation; and

(c) Develop recommendations for state contract preferences.

Source: Laws 2000, LB 352, § 8.

71-8609 Blindness-related services; qualifications; commission; duties.

(1) For a person to qualify for blindness-related services from the commission, the commission shall find such person to be (a) a blind person as defined in subdivision (1)(a) of section 71-8603 or (b) a person who is experiencing a deteriorating condition which is expected to result in blindness. A person seeking to qualify for blindness-related services may obtain an eye examination from a licensed ophthalmologist or optometrist of his or her choice or provide other certifying evidence of existing or potential visual impairment as required by the rules and regulations of the commission.

(2) The commission shall maintain a list of all ophthalmologists and optometrists currently licensed in Nebraska and establish procedures for a person to obtain evidence to verify that he or she qualifies for blindness-related services.

(3) When an eye examination is required for a person seeking to qualify for blindness-related services, the commission shall pay the cost pursuant to its rules and regulations. The commission may assist any person seeking to qualify for blindness-related services under the Commission for the Blind and Visually Impaired Act in arranging an eye examination or obtaining other evidence pursuant to this section.

Source: Laws 2000, LB 352, § 9.

71-8610 Vocational rehabilitation services.

(1) The commission is authorized to accept the provisions of the federal Rehabilitation Act of 1973, as amended, 29 U.S.C. 701 et seq., and to cooperate with the United States Government in any way necessary to enable the commission to receive federal funds for the vocational rehabilitation of blind persons as provided in such act and the provisions of Titles II and XVI of the federal Social Security Act, as amended, 42 U.S.C. 301 et seq.

(2) The commission shall provide vocational rehabilitation services for blind persons, including, but not limited to, prevocational training, maintenance during training, transportation, occupational tools and equipment, vocational

training, medical and surgical care and hospitalization, and prosthetic appliances.

Source: Laws 1947, c. 332, § 2, p. 1050; Laws 1976, LB 674, § 2; Laws 1979, LB 124, § 1; Laws 1981, LB 336, § 1; Laws 1996, LB 1044, § 928; R.S.1943, (1999), § 83-210.02; Laws 2000, LB 352, § 10.

71-8610.01 Certified vocational rehabilitation counselor for the blind; duties.

A certified vocational rehabilitation counselor for the blind's duties shall include, but not be limited to, the following:

(1) Assist blind persons, their families, groups of blind persons, or employers of blind persons through the counseling relationship to develop understanding, define blindness issues, define goals, plan action, and elevate expectations toward the capability of blind persons with the goal of full-time or part-time employment when appropriate, consistent with each individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(2) Be responsible for all decisions concerning eligibility for services, the nature and scope of available services, the provision of services, and the determination that a recipient of such services has achieved an employment outcome commensurate with his or her strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

(3) Administer the individualized plan for employment and write the document prepared on forms provided by the commission containing descriptions of a specific employment outcome, the nature and scope of needed services and the entities to provide them, the criteria to evaluate progress toward achievement of employment outcome, and the responsibilities of the program and the recipient of such services;

(4) Plan allocation and expenditure of program funds; and

(5) Complete referral activities which evaluate data to identify which blind persons or groups of blind persons may be served in conjunction with or by other counselors.

Source: Laws 2007, LB445, § 3.

71-8610.02 Vocational rehabilitation counseling for the blind; certified vocational rehabilitation counselor for the blind; certification required; qualifications; continuing competency requirements.

(1) No person shall engage in vocational rehabilitation counseling for the blind or hold himself or herself out as a certified vocational rehabilitation counselor for the blind in the state unless he or she is certified for such purpose by the commission.

(2) A certified vocational rehabilitation counselor for the blind is not a mental health practitioner.

(3) Except as otherwise provided in subsection (5) of this section, a certified vocational rehabilitation counselor for the blind shall have the following qualifications:

(a) A bachelor's degree from an appropriate educational program approved by the executive director of the commission;

(b) Six hundred hours of intensive training under sleep shades at the commission's orientation training center; and

(c) Completion of appropriate training as approved by the executive director.

(4) Each certified vocational rehabilitation counselor for the blind shall, in the period since his or her certificate was issued or last renewed, complete continuing competency requirements as set forth by the commission under the executive director's approval.

(5) The commission may waive some or all of the requirements of subsection (3) of this section for any person engaged in rehabilitation counseling for the blind on or before September 1, 2007.

Source: Laws 2007, LB445, § 4.

71-8611 Vending facilities; license; priority status.

For the purpose of providing blind persons with remunerative employment, enlarging the economic opportunities of blind persons, and stimulating blind persons to greater efforts in striving to make themselves self-supporting, the commission shall administer and operate vending facilities programs pursuant to the federal Randolph-Sheppard Act, as amended, 20 U.S.C. 107 et seq. Blind persons licensed by the commission pursuant to its rules and regulations are authorized to operate vending facilities in any federally owned building or on any federally owned or controlled property, in any state-owned building or on any property owned or controlled by the state, or on any property owned or controlled by any county, city, or municipality with the approval of the local governing body, when, in the judgment of the director of the commission, such vending facilities may be properly and satisfactorily operated by blind persons. With respect to vending facilities in any state-owned building or on any property owned or controlled by the state, priority shall be given to blind persons, except that this shall not apply to the Game and Parks Commission or the University of Nebraska. This priority shall only be given if the bid submitted is comparable in price to the other bids submitted and the qualifications and capabilities of the vendors bidding for a contract are found to be similar to the other bidders.

Source: Laws 1961, c. 443, § 1, p. 1363; Laws 1973, LB 32, § 1; Laws 1976, LB 674, § 3; Laws 1996, LB 1044, § 929; R.S.1943, (1999), § 83-210.03; Laws 2000, LB 352, § 11; Laws 2004, LB 1005, § 134.

71-8612 Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.

The Commission for the Blind and Visually Impaired Cash Fund is created. The fund shall contain money received pursuant to the Commission for the Blind and Visually Impaired Act and shall include a percentage of the net proceeds derived from the operation of vending facilities. The net proceeds from the operation of vending facilities shall accrue to the blind vending facility operator, except for the percentage of the net proceeds that shall revert to the cash fund. Such fund shall be used for supervision and other administrative purposes as necessary. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that reverts to the fund after an investigation to reveal the gross proceeds, cost of operation, amount necessary to replenish the stock of merchandise, and the business

needs of the blind vending facility operator. All equipment purchased from the fund is the property of the state and shall be disposed of only by sale at a fair market price. 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.

Source: Laws 1947, c. 343, § 1, p. 1085; Laws 1949, c. 292, § 1, p. 996; Laws 1957, c. 386, § 1, p. 1343; Laws 1961, c. 442, § 1, p. 1362; Laws 1965, c. 561, § 1, p. 1845; Laws 1969, c. 584, § 113, p. 2418; Laws 1971, LB 334, § 6; Laws 1976, LB 674, § 1; Laws 1995, LB 7, § 142; R.S.1943, (1999), § 83-210.01; Laws 2000, LB 352, § 12; Laws 2005, LB 55, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-8613 Annual report.

The commission shall file an annual report with the Governor and the Clerk of the Legislature, prior to each regular session of the Legislature, which details the activities and expenditures of the commission and shall include separately information related to the activities and expenditures of the vending facility program as well as estimates of anticipated expenditures and anticipated revenue available to the vending facility program from all sources.

Source: Laws 2000, LB 352, § 13.

71-8614 Hearing authorized.

The commission shall provide an opportunity for a fair hearing to any person applying for or receiving services who is dissatisfied with any action or failure to act arising from the operation or administration of any service or program authorized under the Commission for the Blind and Visually Impaired Act.

Source: Laws 2000, LB 352, § 14.

71-8615 Rules and regulations.

The commission shall adopt and promulgate rules and regulations as necessary to implement the purposes of the Commission for the Blind and Visually Impaired Act.

Source: Laws 2000, LB 352, § 15.

71-8616 Transfer of property to commission; contracts and agreements; effect.

(1) All property, equipment, supplies, and personnel which belonged to, were allocated to, or were used to support the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services prior to July 1, 2000, are transferred to the Commission for the Blind and Visually Impaired.

(2) All existing contracts and agreements in effect on July 1, 2000, as to the Division of Rehabilitation Services for the Visually Impaired within the Department of Health and Human Services are binding and effective upon the Commission for the Blind and Visually Impaired.

Source: Laws 2000, LB 352, § 16.

ARTICLE 87
PATIENT SAFETY IMPROVEMENT ACT

Section

71-8701 Act, how cited.

Sections 71-8701 to 71-8721 shall be known and may be cited as the Patient Safety Improvement Act.

Source: Laws 2005, LB 361, § 1.

71-8702 Legislative findings and intent.

(1) The Legislature finds that:

(a) In 1999, the Institute of Medicine released a report entitled ''To Err is Human'' that described medical errors as the eighth leading cause of death in the United States;

(b) To address these errors, the health care system must be able to create a learning environment in which health care providers and facilities will feel safe reporting adverse health events and near misses in order to improve patient safety;

(c) To facilitate the learning environment, health care providers and facilities must have legal protections that will allow them to review protected health information so that they may collaborate in the development and implementation of patient safety improvement strategies;

(d) To carry out a program to promote patient safety, a policy should be established which provides for and promotes patient safety organizations; and

(e) There are advantages to having private nonprofit corporations act as patient safety organizations rather than a state agency, including the enhanced ability to obtain grants and donations to carry out patient safety improvement programs.

(2) It is the intent of the Legislature to encourage the establishment of broad-based patient safety organizations.

Source: Laws 2005, LB 361, § 2.

71-8703 Purposes of act.

The purposes of the Patient Safety Improvement Act are to (1) encourage a culture of safety and quality by providing for legal protection of information reported for the purposes of quality improvement and patient safety, (2) provide for the reporting of aggregate information about occurrences, and (3) provide for the reporting and sharing of information designed to improve health care delivery systems and reduce the incidence of adverse health events and near misses. The ultimate goal of the act is to ensure the safety of all individuals who seek health care in Nebraska's health care facilities or from Nebraska's health care professionals.

Source: Laws 2005, LB 361, § 3.

71-8704 Definitions, where found.

For purposes of the Patient Safety Improvement Act, unless the context otherwise requires, the definitions found in sections 71-8705 to 71-8709 apply.

Source: Laws 2005, LB 361, § 4.

71-8705 Identifiable information, defined.

Identifiable information means information that is presented in a form and manner that allows the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information includes any individually identifiable health information as that term is defined in the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on April 28, 2005.

Source: Laws 2005, LB 361, § 5.

71-8706 Nonidentifiable information, defined.

Nonidentifiable information means information presented in a form and manner that prevents the identification of any provider, patient, or reporter of patient safety work product. With respect to patients, such information must be de-identified consistent with the regulations promulgated pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as such regulations existed on April 28, 2005.

Source: Laws 2005, LB 361, § 6.

71-8707 Patient safety organization, defined.

Patient safety organization means an organization described in section 71-8714 that contracts with one or more providers subject to the Patient Safety Improvement Act and that performs the following activities:

(1) The conduct, as the organization's primary activity, of efforts to improve patient safety and the quality of health care delivery;

(2) The collection and analysis of patient safety work product that is submitted by providers;

(3) The development and dissemination of evidence-based information to providers with respect to improving patient safety, such as recommendations, protocols, or information regarding best practices;

(4) The utilization of patient safety work product to carry out activities limited to those described under this section and for the purposes of encouraging a culture of safety and of providing direct feedback and assistance to providers to effectively minimize patient risk;

(5) The maintenance of confidentiality with respect to identifiable information;

(6) The provision of appropriate security measures with respect to patient safety work product; and

(7) The possible submission, if authorized by federal law, of nonidentifiable information to a national patient safety data base.

Source: Laws 2005, LB 361, § 7.

71-8708 Patient safety work product, defined.

(1) Patient safety work product means any data, reports, records, memoranda, analyses, deliberative work, statements, root cause analyses, or quality improvement processes that are:

(a) Created or developed by a provider solely for the purposes of reporting to a patient safety organization;

(b) Reported to a patient safety organization for patient safety or quality improvement processes;

(c) Requested by a patient safety organization, including the contents of such request;

(d) Reported to a provider by a patient safety organization;

(e) Created by a provider to evaluate corrective actions following a report by or to a patient safety organization;

(f) Created or developed by a patient safety organization; or

(g) Reported among patient safety organizations after obtaining authorization.

(2) Patient safety work product does not include information, documents, or records otherwise available from original sources merely because they were collected for or submitted to a patient safety organization. Patient safety work product also does not include documents, investigations, records, or reports otherwise required by law.

(3) Patient safety work product does not include reports and information disclosed pursuant to sections 71-8719 and 71-8720.

Source: Laws 2005, LB 361, § 8.

71-8709 Provider, defined.

Provider means a person that is either:

(1) A facility licensed under the Health Care Facility Licensure Act; or

(2) A health care professional licensed under the Uniform Credentialing Act.

Source: Laws 2005, LB 361, § 9; Laws 2007, LB463, § 1307.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-8710 Patient safety work product; confidentiality; use; restrictions.

(1) Patient safety work product shall be privileged and confidential.

(2) Patient safety work product shall not be:

(a) Subject to a civil, criminal, or administrative subpoena or order;

(b) Subject to discovery in connection with a civil, criminal, or administrative proceeding;

(c) Subject to disclosure pursuant to the Freedom of Information Act, 5 U.S.C. 552, as such act existed on April 28, 2005, or any other similar federal or state law, including sections 84-712 to 84-712.09;

(d) Offered in the presence of the jury or other factfinder or received into evidence in any civil, criminal, or administrative proceeding before any local, state, or federal tribunal; or

(e) If the patient safety work product is identifiable information and is received by a national accreditation organization in its capacity:

(i) Used by a national accreditation organization in an accreditation action against the provider that reported the information;

(ii) Shared by such organization with its survey team; or

(iii) Required as a condition of accreditation by a national accreditation organization.

Source: Laws 2005, LB 361, § 10.

71-8711 Patient safety organization; proceedings and records; restrictions on use; violation; penalty.

No person shall disclose the actions, decisions, proceedings, discussions, or deliberations occurring at a meeting of a patient safety organization except to the extent necessary to carry out one or more of the purposes of a patient safety organization. The proceedings and records of a patient safety organization shall not be subject to discovery or introduction into evidence in any civil action against a provider arising out of the matter or matters that are the subject of consideration by a patient safety organization. Information, documents, or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a patient safety organization. This section shall not be construed to prevent a person from testifying to or reporting information obtained independently of the activities of a patient safety organization or which is public information. A person who knowingly violates this section shall be guilty of a Class IV misdemeanor.

Source: Laws 2005, LB 361, § 11.

71-8712 Patient safety work product; unlawful use; effect.

Any reference to, or offer into evidence in the presence of the jury or other factfinder or admission into evidence of, patient safety work product during any proceeding contrary to the Patient Safety Improvement Act shall constitute grounds for a mistrial or a similar termination of the proceeding and reversible error on appeal from any judgment or order entered in favor of any party who

discloses or offers into evidence patient safety work product in violation of the act.

Source: Laws 2005, LB 361, § 12.

71-8713 Act; cumulative to other law.

The prohibition in the Patient Safety Improvement Act against discovery, disclosure, or admission into evidence of patient safety work product is in addition to any other protections provided by law.

Source: Laws 2005, LB 361, § 13.

71-8714 Patient safety organization; conditions.

A patient safety organization shall meet the following conditions:

(1) It shall be a Nebraska nonprofit corporation described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, contributions to which are deductible under section 170 of the code;

(2) The purposes of the organization shall include carrying out the activities of a patient safety organization as described in the Patient Safety Improvement Act; and

(3) It shall have a representative board of directors as described in section 71-8715.

Source: Laws 2005, LB 361, § 14.

71-8715 Patient safety organization; board of directors; membership.

The board of directors of a patient safety organization shall include at least one representative each from a statewide association of Nebraska hospitals, Nebraska physicians and surgeons, Nebraska nurses, Nebraska pharmacists, and Nebraska physician assistants as recommended by such associations. At least one consumer shall be a member of the board. The board shall consist of at least twelve but no more than fifteen members as established at the discretion of the board.

Source: Laws 2005, LB 361, § 15.

71-8716 Election to be subject to act; contract; requirements.

(1) A patient safety organization shall contract with providers that elect to be subject to the Patient Safety Improvement Act. The patient safety organization shall establish a formula for determining fees and assessments uniformly within categories of providers.

(2) A provider may elect to be subject to the Patient Safety Improvement Act by contracting with a patient safety organization to make reports as described in the act.

Source: Laws 2005, LB 361, § 16.

71-8717 Reportable patient safety events; provider; duties.

(1) Every provider subject to the Patient Safety Improvement Act shall track and report pursuant to section 71-8718 the following occurrences of patient safety events:

(a) Surgery or procedures performed on the wrong patient or the wrong body part of a patient;

(b) Foreign object accidentally left in a patient during a procedure or surgery;

(c) Hemolytic transfusion reaction in a patient resulting from the administration of blood or blood products with major blood group incompatibilities;

(d) Sexual assault of a patient during treatment or while the patient was on the premises of a facility;

(e) Abduction of a newborn infant patient from the hospital or the discharge of a newborn infant patient from the hospital into the custody of an individual in circumstances in which the hospital knew, or in the exercise of ordinary care should have known, that the individual did not have legal custody of the infant;

(f) Suicide of a patient in a setting in which the patient received care twenty-four hours a day;

(g) Medication error resulting in a patient's unanticipated death or permanent or temporary loss of bodily function, including (i) treatment intervention, temporary harm, (ii) initial-prolonged hospitalization, temporary harm, (iii) permanent patient harm, and (iv) near death event in circumstances unrelated to the natural course of the illness or underlying condition of the patient, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong time, the wrong rate, the wrong preparation, or the wrong route of administration, but excluding reasonable differences in clinical judgment on drug selection and dose;

(h) Patient death or serious disability associated with the use of adulterated drugs, devices, or biologics provided by the provider;

(i) Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended; and

(j) Unanticipated death or major permanent loss of function associated with health care associated nosocomial infection.

(2) A patient safety organization, based on a review of new indicators of patient safety events identified by the Joint Commission on Accreditation of Healthcare Organizations, shall recommend changes, additions, or deletions to the list of reportable patient safety events, which changes, additions, or deletions shall be binding on the providers. Providers may voluntarily report any other patient safety events not otherwise identified.

Source: Laws 2005, LB 361, § 17.

71-8718 Reporting requirements.

(1) Every provider subject to the Patient Safety Improvement Act shall report aggregate numbers of occurrences for each patient safety event category listed in section 71-8717 to a patient safety organization. Reporting shall be done on an annual basis by March 31 for the prior calendar year.

(2) For each occurrence listed in section 71-8717, a root cause analysis shall be completed and an action plan developed within forty-five days after such occurrence. The action plan shall (a) identify changes that can be implemented to reduce risk of the patient safety event occurring again or formulate a rationale for not implementing change and (b) if an improvement action is planned, identify who is responsible for implementation, when the action will

be implemented, and how the effectiveness of the action will be evaluated. The provider shall, within thirty days after the development of an action plan, provide a summary report to a patient safety organization which includes a brief description of the patient safety event, a brief description of the root cause analysis, and a description of the action plan steps.

(3) The facility where a reportable event occurred shall be responsible for coordinating the reporting of information required under the Patient Safety Improvement Act and ensuring that the required reporting is completed, and such coordination satisfies the obligation of reporting imposed on each individual provider under the act.

Source: Laws 2005, LB 361, § 18.

71-8719 Nonidentifiable information; disclosure.

A patient safety organization may disclose nonidentifiable information, including nonidentifiable aggregate trend data and educational material developed as a result of the patient safety work product reported to it.

Source: Laws 2005, LB 361, § 19.

71-8720 Public disclosure of data and information.

A patient safety organization shall release to the public nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. A patient safety organization shall publish educational and evidence-based information from the summary reports, which shall be available to the public, that can be used by all providers to improve the care they provide.

Source: Laws 2005, LB 361, § 20.

71-8721 Immunity from liability.

Any person who receives or releases information in the form and manner prescribed by the Patient Safety Improvement Act and the procedures established by a patient safety organization shall not be civilly or criminally liable for such receipt or release unless the receipt or release is done with actual malice, fraudulent intent, or bad faith. A patient safety organization shall not be liable civilly for the release of nonidentifiable aggregate trend data identifying the number and types of patient safety events that occur. Because the candid and conscientious evaluation of patient safety events is essential to the improvement of medical care and to encourage improvements in patient safety, any provider furnishing services to a patient safety organization shall not be liable for civil damages as a result of such acts, omissions, decisions, or other such conduct in connection with the duties on behalf of a patient safety organization if done pursuant to the Patient Safety Improvement Act except for acts done with actual malice, fraudulent intent, or bad faith.

Source: Laws 2005, LB 361, § 21.

ARTICLE 88
STEM CELL RESEARCH ACT

Section

Section
71-8804. Committee; establish grant process; reports.
71-8805. Stem Cell Research Cash Fund; created; use; investment.
71-8806. Limitation on use of facilities and funds.

71-8801 Act, how cited.

Sections 71-8801 to 71-8806 shall be known and may be cited as the Stem Cell Research Act.

Source: Laws 2008, LB606, § 1.

71-8802 Terms, defined.

For purposes of the Stem Cell Research Act:

(1) Committee means the Stem Cell Research Advisory Committee;

(2) Human embryo means the developing human organism from the time of fertilization until the end of the eighth week of gestation and includes an embryo or developing human organism created by somatic cell nuclear transfer; and

(3) Somatic cell nuclear transfer means a technique in which the nucleus of an oocyte is replaced with the nucleus of a somatic cell.

Source: Laws 2008, LB606, § 2.

71-8803 Stem Cell Research Advisory Committee; created; qualifications; terms; meetings; stipend; expenses.

(1) The Stem Cell Research Advisory Committee is created. The committee shall consist of the dean of every medical school in Nebraska that is accredited by the Liaison Committee on Medical Education or his or her designee and additional members appointed as follows: (a) The dean of every medical school in Nebraska shall nominate three scientists from outside Nebraska conducting human stem cell research with funding from the National Institutes of Health of the United States Department of Health and Human Services; and (b) the chief medical officer as designated in section 81-3115 shall select two of such scientists from each set of nominations to serve on the committee. Appointments by the chief medical officer pursuant to this subsection shall be approved by the Legislature. Members appointed by the chief medical officer shall serve for staggered terms of three years each and until their successors are appointed and qualified. Such members may be reappointed for additional three-year terms.

(2) The committee shall meet not less than twice each year.

(3) Members of the committee not employed by medical schools in Nebraska shall receive a stipend per meeting to be determined by the Division of Public Health of the Department of Health and Human Services based on standard consultation fees, and all members of the committee shall be reimbursed for their actual and necessary expenses incurred in service on the committee pursuant to sections 81-1174 to 81-1177.

Source: Laws 2008, LB606, § 3.

71-8804 Committee; establish grant process; reports.

(1) The committee shall establish a grant process to award grants to Nebraska institutions or researchers for the purpose of conducting nonembryonic stem

cell research. The grant process shall include, but not be limited to, an application identifying the institution or researcher applying for the grant, the amount of funds to be received by the applicant from sources other than state funds, the sources of such funds, and a description of the goal of the research for which the funds will be used and research methods to be used by the applicant.

(2) The committee shall annually report to the Legislature the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded. No more than three years after March 26, 2008, the committee shall report to the Legislature on the progress of any projects that have been awarded grants under the Stem Cell Research Act.

Source: Laws 2008, LB606, § 4.

71-8805 Stem Cell Research Cash Fund; created; use; investment.

(1) The Stem Cell Research Cash Fund is created. 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.

(2) Money credited to the Stem Cell Research Cash Fund pursuant to section 71-7611 shall be used to provide a dollar-for-dollar match, up to five hundred thousand dollars per fiscal year, of funds received by institutions or researchers from sources other than funds provided by the State of Nebraska for nonembryonic stem cell research. Such matching funds shall be awarded through the grant process established pursuant to section 71-8804. No single institution or researcher shall receive more than seventy percent of the funds available for distribution under this section on an annual basis.

(3) Up to three percent of the funds credited to the Stem Cell Research Cash Fund shall be available to the Division of Public Health of the Department of Health and Human Services for administrative costs, including stipends and reimbursements pursuant to section 71-8803.

Source: Laws 2008, LB606, § 5; Laws 2009, LB316, § 20.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

71-8806 Limitation on use of facilities and funds.

No state facilities, no state funds, fees, or charges, and no investment income on state funds shall be used to destroy human embryos for the purpose of research. In no case shall state facilities, state funds, fees, or charges, or investment income on state funds be used to create a human embryo by somatic cell nuclear transfer for any purpose.

Source: Laws 2008, LB606, § 6.

ARTICLE 89

VETERINARY DRUG DISTRIBUTION LICENSING ACT

Section
71-8901. Act, how cited.
71-8902. Purpose of act.
71-8903. Definitions, where found.

Section

71-8901 Act, how cited.

Sections 71-8901 to 71-8929 shall be known and may be cited as the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 1.

71-8902 Purpose of act.

The purpose of the Veterinary Drug Distribution Licensing Act is to protect the public health, safety, and welfare by providing for the authorization and licensure of veterinary drug distributors in the State of Nebraska and for the development, establishment, and enforcement of basic standards for such distributors.

Source: Laws 2008, LB1022, § 2.

71-8903 Definitions, where found.

For purposes of the Veterinary Drug Distribution Licensing Act, the definitions found in sections 71-8904 to 71-8911 shall apply.

Source: Laws 2008, LB1022, § 3.

71-8904 Controlled substance, defined.

Controlled substance has the definition found in section 28-401.

Source: Laws 2008, LB1022, § 4.

71-8905 Department, defined.

Department means the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2008, LB1022, § 5.

71-8906 Distribution, defined.

(1) Distribution means the act of receiving orders, possessing, warehousing, and record keeping related to the sale and delivery of veterinary legend drugs.

(2) Distribution does not include (a) intracompany sales of veterinary legend drugs, including any transaction or transfer between any division, subsidiary, or parent company and an affiliated or related company under common ownership or common control or (b) the delivery of or the offer to deliver veterinary legend drugs by a common carrier solely in the usual course of business of transporting such drugs as a common carrier if the common carrier does not store, warehouse, or take legal ownership of such drugs.

Source: Laws 2008, LB1022, § 6.

71-8907 Human legend drug, defined.

Human legend drug means any drug labeled for human use and required by federal law or regulation to be dispensed pursuant to a prescription, including finished dosage forms and active ingredients. Human legend drug does not include a device or a device component, part, or accessory.

Source: Laws 2008, LB1022, § 7.

71-8908 Veterinarian-client-patient relationship, defined.

Veterinarian-client-patient relationship means a relationship pursuant to which (1) a veterinarian has assumed the responsibility for making clinical judgments regarding the health of an animal and the need for medical treatment and the client has agreed to follow the veterinarian's instructions, (2) the veterinarian has sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the medical condition of the animal, meaning that the veterinarian has recently seen and is personally acquainted with the keeping and care of the animal by virtue of an examination of the animal or by medically appropriate and timely visits to the premises where the animal is kept, and (3) the veterinarian is readily available or has arranged for emergency coverage and for followup evaluation in the event of adverse reactions or the failure of the treatment regimen.

Source: Laws 2008, LB1022, § 8.

71-8909 Veterinary drug distributor, defined.

Veterinary drug distributor means any person or entity that engages in the distribution of veterinary legend drugs in the State of Nebraska other than a pharmacy or a veterinarian licensed under the Uniform Credentialing Act acting within the scope of practice of veterinary medicine and surgery as defined in section 38-3312.

Source: Laws 2008, LB1022, § 9; Laws 2009, LB463, § 12.

Cross References

Uniform Credentialing Act, see section 38-101.

71-8910 Veterinary drug order, defined.

Veterinary drug order means a lawful order or prescription of a veterinarian licensed to practice in this state issued pursuant to a bona fide veterinarian-client-patient relationship. For purposes of the Veterinary Drug Distribution Licensing Act, a veterinary drug order expires and becomes void one hundred eighty days after the date of issue.

Source: Laws 2008, LB1022, § 10; Laws 2009, LB463, § 13.

71-8911 Veterinary legend drug, defined.

Veterinary legend drug means a drug which under federal law is required, prior to being distributed, to be labeled with the following statement: ''Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.''.

Source: Laws 2008, LB1022, § 11.

71-8912 License required; exception.

No person or entity shall distribute, sell, or offer for sale any veterinary legend drug in this state without first obtaining a license issued by the department under the Veterinary Drug Distribution Licensing Act, except that a veterinarian licensed under the Veterinary Medicine and Surgery Practice Act acting within the scope of practice of his or her profession shall not be required to be licensed under the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 12.

Cross References

Veterinary Medicine and Surgery Practice Act, see section 38-3301.

71-8913 Veterinary drug distributor license; application; contents; authority.

(1) Any person or entity that acts as a veterinary drug distributor in this state shall obtain a veterinary drug distributor license from the department prior to engaging in distribution of veterinary legend drugs in or into this state.

(2) An applicant for an initial or renewal license as a veterinary drug distributor shall file a written application with the department. The application shall be accompanied by the fee established by the department pursuant to section 71-8918 and shall include the following information:

(a) The applicant's name, business address, type of business entity, and telephone number. If the applicant is a partnership, the application shall include the name of each partner and the name of the partnership. If the applicant is a corporation, the application shall include the name and title of each corporate officer and director, all corporate names of the applicant, and the applicant's state of incorporation. If the applicant is a sole proprietorship, the application shall include the name of the sole proprietor, the name of the proprietorship, and the proprietor's social security number. The social security number shall not be a public record and may only be used by the department for administrative purposes;

(b) All trade or business names used by the applicant;

(c) The addresses and telephone numbers of all facilities to be used by the applicant for the storage, handling, and distribution of veterinary legend drugs

and the names of persons to be in charge of such facilities. A separate license shall be obtained for each such facility;

(d) A listing of all licenses, permits, or other similar documentation issued to the applicant in any other state authorizing the applicant to purchase, possess, and distribute veterinary legend drugs;

(e) The names and addresses of the owner of the applicant's veterinary legend drug distribution facilities, a designated representative at each such facility, and all managerial employees at each such facility; and

(f) Other information as required by the department, including affirmative evidence of the applicant's ability to comply with the Veterinary Drug Distribution Licensing Act and the rules and regulations adopted under the act.

(3) The application shall be signed by:

(a) The owner, if the applicant is an individual or partnership;

(b) The member, if the applicant is a limited liability company with only one member, or two of its members, if the applicant is a limited liability company with two or more members; or

(c) Two of its officers, if the applicant is a corporation.

(4) A veterinary drug distributor holding a valid license issued pursuant to the Veterinary Drug Distribution Licensing Act shall have the authority to purchase, possess, or otherwise acquire veterinary legend drugs.

Source: Laws 2008, LB1022, § 13.

71-8914 Written policies and procedures required.

A veterinary drug distributor shall establish, maintain, and adhere to written policies and procedures for the receipt, storage, security, inventory, and distribution of veterinary legend drugs, including policies and procedures for identifying, recording, and reporting destruction, losses, or thefts of veterinary legend drugs and for correcting all errors and inaccuracies in inventories. The policies shall contain a provision for annual review at which time the policies shall be updated as necessary. A record documenting the review shall be kept with the policies and procedures and shall indicate the date of the review and the signature of the designated representative of the veterinary drug distributor.

Source: Laws 2008, LB1022, § 14.

71-8915 Provisional license conditions.

To enable the establishment of distribution of veterinary legend drugs in this state, the department may issue a provisional license on or before July 1, 2009, to any applicant who meets the following conditions:

(1) The applicant has not been found to have committed any of the acts or offenses described in section 71-8917;

(2) The applicant has established written policies and procedures as required by section 71-8914; and

(3) The applicant has paid a fee of five hundred dollars.

Source: Laws 2008, LB1022, § 15.

71-8916 Department; waiver of requirements.

The department may waive requirements under sections 71-8912 to 71-8915 upon proof satisfactory to the department that such requirements are duplicative of other requirements of Nebraska laws, rules, or regulations and that the granting of such waiver will not endanger the public safety.

Source: Laws 2008, LB1022, § 16.

71-8917 License; denied; disciplinary actions; grounds; department; duties.

(1) A veterinary drug distributor license may be denied, refused renewal, suspended, limited, or revoked by the Director of Public Health if he or she finds that the applicant or licensee; the designated representative; the owner if a sole proprietorship; or any person having an interest in the applicant or licensee of more than ten percent has been found to have committed any of the following acts or offenses:

(a) Violation of the Veterinary Drug Distribution Licensing Act or the rules and regulations adopted and promulgated under the act;

(b) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the person's capacity to distribute veterinary legend drugs;

(c) Unprofessional conduct under the Uniform Credentialing Act;

(d) Active addiction as defined in section 38-106;

(e) Permitting, aiding, or abetting veterinary drug distribution or the performance of activities requiring a license under the Veterinary Drug Distribution Licensing Act by a person not licensed under the Veterinary Drug Distribution Licensing Act;

(f) Having had his or her credential denied, refused renewal, limited, suspended, or revoked or having had such credential disciplined in any other manner by another jurisdiction relating to the performance of veterinary drug distribution;

(g) Performing veterinary drug distribution without a valid license or in contravention of any limitation placed upon the license; or

(h) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license under the Veterinary Drug Distribution Licensing Act.

(2) The department shall issue or renew a license to any applicant that satisfies the requirements for licensure or license renewal under the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 17.

Cross References

Uniform Credentialing Act, see section 38-101.

71-8918 Fees.

(1) An applicant for an initial or renewal license under the Veterinary Drug Distribution Licensing Act shall pay a license fee as provided in this section.

(2) License fees shall include (a) a base fee of fifty dollars and (b) an additional fee of not more than five hundred dollars based on variable costs to the department of inspections and of receiving and investigating complaints,

other similar direct and indirect costs, and other costs of administering the act as determined by the department. If an application under the act is denied, the license fee shall be returned to the applicant, except that the department may retain up to twenty-five dollars as an administrative fee and may retain the entire license fee if an inspection has been completed prior to such denial.

(3) The department shall also collect a fee established by the department, not to exceed the actual cost to the department, for reinstatement of a license that has lapsed or has been suspended or revoked. The department shall collect a fee of ten dollars for a duplicate original license.

(4) The department shall remit all license fees collected under the act to the State Treasurer for credit to the Health and Human Services Cash Fund. License fees collected under this section shall only be used for activities related to the licensure of veterinary drug distributors.

Source: Laws 2008, LB1022, § 18.

71-8919 License; expiration; renewal.

A veterinary drug distributor license shall expire on July 1 of each odd-numbered year and may be renewed. The license shall not be transferable. The department shall mail an application for renewal to each licensee not later than May 15 of the year the license expires. If an application for renewal is received from the licensee after July 1, the department may impose a late fee and shall refuse to issue the license until such late fee and renewal fee are paid. Failure to receive an application for renewal shall not relieve the licensee from the late fee imposed by this section.

Source: Laws 2008, LB1022, § 19.

71-8920 Inspections; fees; compliance with act.

(1) Except as otherwise provided in section 71-8915, each veterinary drug distributor transacting commerce in this state shall be inspected by the department prior to the issuance of an initial or renewal license by the department under the Veterinary Drug Distribution Licensing Act.

(2) The department may provide in rules and regulations for the inspection of any veterinary drug distributor licensed in this state in such manner and at such times as the department determines. As part of any such inspection, the department may require an analysis of suspected veterinary legend drugs to determine authenticity.

(3) For applicants not located in this state, the department may accept an inspection which was accepted for licensure by another state in which the applicant is licensed or by a nationally-recognized accreditation program in lieu of an inspection by the department under this section.

(4) The department may establish and collect fees for inspection activities conducted under this section. Such fees shall not exceed the department's actual cost for such inspection activities.

(5) The department may adopt and promulgate rules and regulations which permit the use of alternative methods for assessing a licensee's compliance with the Veterinary Drug Distribution Licensing Act and the rules and regulations adopted and promulgated under the act.

Source: Laws 2008, LB1022, § 20.

71-8921 Records; available to department.

(1) A veterinary drug distributor transacting commerce in this state shall establish and maintain accurate records of all transactions regarding the receipt and distribution or other disposition of veterinary legend drugs as provided in the Veterinary Drug Distribution Licensing Act.

(2) All records of receipt, distribution, or other disposal of veterinary legend drugs shall be available to the department upon request for inspection, copying, verifying, or other proper use.

(3) If a veterinary drug distributor is authorized by the department to maintain records at a central location, such records shall be made available for authorized inspections within forty-eight hours.

(4) Records kept at a central location that can be retrieved by computer or other electronic means shall be readily available for authorized inspection during the inspection period.

Source: Laws 2008, LB1022, § 21.

71-8922 Distribution of veterinary legend drugs; authorized; applicability of labeling provisions.

A veterinary drug distributor may distribute veterinary legend drugs to:

(1) A licensed veterinarian or to another veterinary drug distributor subject to the requirements of section 71-8921; and

(2) A layperson responsible for the control of an animal if:

(a) A licensed veterinarian has issued, prior to such distribution, a veterinary drug order for the veterinary legend drug in the course of an existing, valid veterinarian-client-patient relationship and the veterinary drug order is in compliance with all federal laws and regulations;

(b) At the time the veterinary legend drug leaves the licensed location of the veterinary drug distributor, those in the employ of the veterinary drug distributor possess a copy of the veterinary drug order for the veterinary legend drug issued according to subdivision (a) of this subdivision and deliver a copy to the layperson responsible for the control of the animal at the time of the distribution;

(c) The original veterinary drug order issued according to subdivision (a) of this subdivision is retained on the premises of the veterinary drug distributor or an authorized central location for three years after the date of the last transaction affecting the veterinary drug order;

(d) All veterinary legend drugs distributed on the veterinary drug order issued according to subdivision (a) of this subdivision are sold in the original, unbroken manufacturer's containers; and

(e) The veterinary legend drugs, once distributed, are not returned to the veterinary drug distributor for resale or redistribution.

Nothing contained in Nebraska statutes governing the practice of pharmacy shall be construed to prohibit a veterinary drug distributor from selling or otherwise distributing a veterinary legend drug pursuant to a veterinary drug order by a veterinarian licensed in this state and, when a valid veterinarian-client-patient relationship exists, to the layperson responsible for the control of the animal.

(3) If all federal labeling requirements are met, labeling provisions of Nebraska laws governing the practice of pharmacy shall not apply to veterinary legend drugs distributed pursuant to the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 22; Laws 2009, LB463, § 14.

71-8923 Limitations on veterinary drug distributor.

A veterinary drug distributor shall not:

(1) Operate from a place of residence;

(2) Possess, sell, purchase, trade, or otherwise furnish controlled substances; and

(3) Possess, sell, purchase, trade, or otherwise furnish human legend drugs.

Source: Laws 2008, LB1022, § 23.

71-8924 Enforcement of act.

The department, the Attorney General, or any county attorney may institute an action in the name of the state for an injunction or other process against any person to restrain or prevent any violation of the Veterinary Drug Distribution Licensing Act or any rules and regulations adopted and promulgated under the act.

Source: Laws 2008, LB1022, § 24.

71-8925 Prohibited acts.

It is unlawful for any person to commit or to permit, cause, aid, or abet the commission of any of the following acts in this state:

(1) Any violation of the Veterinary Drug Distribution Licensing Act or rules and regulations adopted and promulgated under the act;

(2) Providing the department, any of its representatives, or any federal official with false or fraudulent records or making false or fraudulent statements regarding any matter under the act;

(3) Obtaining or attempting to obtain a veterinary legend drug by fraud, deceit, or misrepresentation or engaging in the intentional misrepresentation or fraud in the distribution of a veterinary legend drug;

(4) Except for the distribution by manufacturers of a veterinary legend drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the manufacture, repackaging, sale, transfer, delivery, holding, or offering for sale of any veterinary legend drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or otherwise rendered unfit for distribution;

(5) Except for the wholesale distribution by manufacturers of a veterinary legend drug that has been delivered into commerce pursuant to an application approved under federal law by the federal Food and Drug Administration, the adulteration, misbranding, or counterfeiting of any veterinary legend drug;

(6) The deliberate receipt of any veterinary legend drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit and the delivery or proffered delivery of such drug for pay or otherwise;

(7) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a veterinary legend drug or the commission of any other act with respect to a veterinary legend drug that results in the veterinary legend drug being misbranded;

(8) For purposes of the Veterinary Drug Distribution Licensing Act, the manufacture, repackaging, sale, transfer, delivery, holding, possessing or offering for sale, trade, or any other form of dissemination, any controlled substance; and

(9) Prohibiting or otherwise impeding access, during normal business hours, to any paper or electronic records or any premises, facility, area, or location to which access is authorized by the act.

Source: Laws 2008, LB1022, § 25.

71-8926 Final disciplinary action; fines.

(1) Upon issuance of a final disciplinary action against a person who knowingly and intentionally violates any provision of section 71-8925 other than as provided in subsection (2) of this section, the department shall assess a fine of one thousand dollars against such person. For each subsequent final disciplinary action for violation of such section issued by the department against such person, the department shall assess a fine of one thousand dollars plus one thousand dollars for each final disciplinary action for violation of such section previously issued against such person, not to exceed ten thousand dollars.

(2) Upon issuance of a final disciplinary action against a person who fails to provide an authorized person the right of entry provided in section 71-8925, the department shall assess a fine of five hundred dollars against such person. For each subsequent final disciplinary action for such failure issued against such person, the department shall assess a fine equal to one thousand dollars times the number of such disciplinary actions, not to exceed ten thousand dollars.

(3) All fines collected under this section shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2008, LB1022, § 26.

71-8927 Order to cease distribution of drug; notice; hearing; powers of department.

(1) If the department finds there is a reasonable probability that (a) a veterinary drug distributor has knowingly and intentionally falsified documents relevant to the purchase, sale, or distribution of veterinary legend drugs or has sold, distributed, transferred, manufactured, repackaged, handled, or held a counterfeit veterinary legend drug and (b) such drug could cause serious, adverse health consequences or death, the department may issue an order to immediately cease distribution of such drug.

(2) Persons subject to any order issued by the department under this section shall be provided with notice and an opportunity for an informal hearing to be held not later than thirty days after the date the order was issued. If the department determines, after such hearing, that inadequate grounds exist to

support the actions required by the order, the department shall vacate the order.

Source: Laws 2008, LB1022, § 27.

71-8928 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Veterinary Drug Distribution Licensing Act.

Source: Laws 2008, LB1022, § 28.

71-8929 Criminal penalty.

Any person who knowingly and intentionally engages in distribution of veterinary legend drugs in this state in violation of the Veterinary Drug Distribution Licensing Act is guilty of a Class III felony.

Source: Laws 2008, LB1022, § 29.