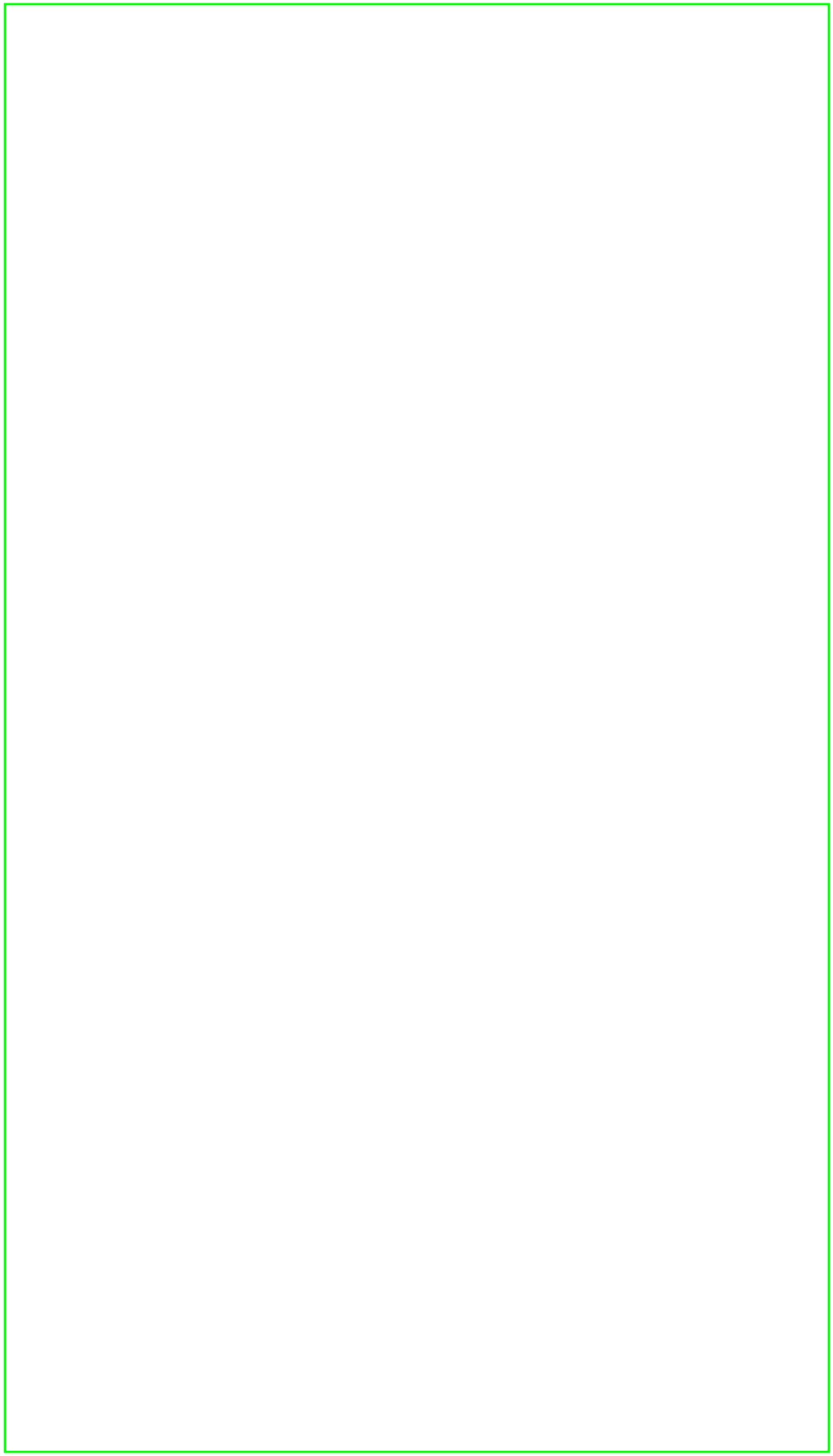
TABLE OF CHAPTERS

REISSUE REVISED STATUTES



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OF
NEBRASKA

2012 CUMULATIVE SUPPLEMENT

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CHAPTER 54
LIVESTOCK

ARTICLE 1
LIVESTOCK BRAND ACT

54-1,108 Brand inspections; when; inspection fee; surcharge; reinspection; when.

(1) All brand inspections provided for in the Livestock Brand Act or section 54-415 shall be from sunrise to sundown or during such other hours and under such conditions as the Nebraska Brand Committee determines.

(2)(a) An inspection fee, established by the Nebraska Brand Committee, of not more than seventy-five cents per head shall be charged for all cattle inspected in accordance with the Livestock Brand Act or section 54-415 or inspected within the brand inspection area by court order or at the request of any bank, credit agency, or lending institution with a legal or financial interest in such cattle. Such fee may vary to encourage inspection to be performed at times and locations that reduce the cost of performing the inspection but shall otherwise be uniform. The inspection fee for court-ordered inspections shall be paid from the proceeds of the sale of such cattle if ordered by the court or by either party as the court directs. For other inspections, the person requesting the inspection of such cattle is responsible for the inspection fee. If estray cattle are identified as a result of the inspection, such cattle shall be processed in the manner provided by section 54-415.

(b) A surcharge of not more than twenty dollars, as established by the brand committee, may be charged to cover travel expenses incurred by the brand inspector per inspection location when performing brand inspections. The surcharge shall be collected by the brand inspector and paid by the person requesting the inspection or the person required by law to have the inspection.

(3) Any person who has reason to believe that cattle were shipped erroneously due to an inspection error during a brand inspection may request a reinspection. The person making such request shall be responsible for the expenses incurred as a result of the reinspection unless the results of the reinspection

substantiate the claim of inspection error, in which case the brand committee shall be responsible for the reinspection expenses.

Source: Laws 1999, LB 778, § 39; Laws 2002, LB 589, § 7; Laws 2005, LB 441, § 2; Laws 2011, LB181, § 1.

54-1,121 Registered feedlot; cattle shipment; requirements.

Cattle sold or shipped from a registered feedlot, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119, and the seller or shipper shall bear the cost of such inspection at the regular fee.

Any other cattle shipped from a registered feedlot are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered feedlot. The shipping certificate form shall be prescribed by the Nebraska Brand Committee and shall show the registered feedlot operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered feedlot operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered feedlot operator. If a shipping certificate does not accompany a shipment of cattle from a registered feedlot to any destination where brand inspection is maintained by the brand committee, all such cattle shall be subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

Source: Laws 1999, LB 778, § 52; Laws 2000, LB 213, § 10; Laws 2011, LB181, § 2.

54-1,122 Registered feedlot; cattle received; requirements.

Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered feedlot. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered feedlot, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 1999, LB 778, § 53; Laws 2011, LB181, § 3.

54-1,122.02 Registered dairy; cattle shipment or receipt; requirements.

(1) Cattle sold or shipped from a registered dairy, for purposes other than direct slaughter or sale on any terminal market, are subject to the brand inspection under sections 54-1,110 to 54-1,119 and the seller or shipper shall bear the cost of such inspection at the regular fee.

(2) Any other cattle shipped from a registered dairy are not subject to brand inspection at origin or destination, but the shipper must have a shipping certificate from the registered dairy. The shipping certificate form shall be

prescribed by the Nebraska Brand Committee and shall show the registered dairy operator's name and registration number, date shipped, destination, agency receiving the cattle, number of head in the shipment, and sex of the cattle. The shipping certificate shall be completed in triplicate by the registered dairy operator at the time of shipment. One copy thereof shall be delivered to the brand inspector at the market along with shipment, if applicable, one copy shall be sent to the brand committee by the tenth day of the following month, and one copy shall be retained by the registered dairy operator. If a shipping certificate does not accompany a shipment of cattle from a registered dairy to any destination where brand inspection is maintained by the brand committee, all such cattle are subject to a brand inspection and the inspection fees and surcharge provided under section 54-1,108 shall be charged for the service.

(3) Any cattle originating in a state that has a brand inspection agency and which are accompanied by a certificate of inspection or brand clearance issued by such agency may be moved directly from the point of origin into a registered dairy. Any cattle not accompanied by such a certificate of inspection or brand clearance or by satisfactory evidence of ownership from states or portions of states not having brand inspection shall be inspected for brands by the Nebraska Brand Committee within a reasonable time after arrival at a registered dairy, and the inspection fee and surcharge provided under section 54-1,108 shall be collected by the brand inspector at the time the inspection is performed.

Source: Laws 2000, LB 213, § 2; Laws 2011, LB181, § 4.

ARTICLE 6
DOGS AND CATS

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

(d) DOG AND CAT PURCHASE PROTECTION ACT

(c) COMMERCIAL DOG AND CAT OPERATOR INSPECTION ACT

54-625 Act, how cited.

Sections 54-625 to 54-643 shall be known and may be cited as the Commercial Dog and Cat Operator Inspection Act.

Source: Laws 2000, LB 825, § 1; Laws 2003, LB 274, § 1; Laws 2006, LB 856, § 13; Laws 2007, LB12, § 1; Laws 2009, LB241, § 1; Laws 2012, LB427, § 1.
Operative date October 1, 2012.

54-626 Terms, defined.

For purposes of the Commercial Dog and Cat Operator Inspection Act:

(1) Animal control facility means a facility operated by or under contract with the state or any political subdivision of the state for the purpose of impounding or harboring seized, stray, homeless, abandoned, or unwanted animals;

(2) Animal rescue means a person or group of persons who hold themselves out as an animal rescue, accept or solicit for dogs or cats with the intention of finding permanent adoptive homes or providing lifelong care for such dogs or cats, or who use foster homes as the primary means of housing dogs or cats;

(3) Animal shelter means a facility used to house or contain dogs or cats and owned, operated, or maintained by an incorporated humane society, an animal welfare society, a society for the prevention of cruelty to animals, or another nonprofit organization devoted to the welfare, protection, and humane treatment of such animals;

(4) Boarding kennel means a facility which is primarily used to house or contain dogs or cats owned by persons other than the operator of such facility. The primary function of a boarding kennel is to temporarily harbor dogs or cats when the owner of the dogs or cats is unable to do so or to provide training, grooming, or other nonveterinary service for consideration before returning the dogs or cats to the owner. A facility which provides such training, grooming, or other nonveterinary service is not a boarding kennel for the purposes of the act unless dogs or cats owned by persons other than the operator of such facility are housed at such facility overnight. Veterinary clinics, animal control facilities, animal rescues, and nonprofit animal shelters are not boarding kennels for the purposes of the act;

(5) Breeding dog means any sexually intact male or female dog six months of age or older owned or harbored by a commercial dog breeder;

(6) Cat means any animal which is wholly or in part of the species Felis domesticus;

(7) Commercial cat breeder means a person engaged in the business of breeding cats:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more cats in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more cats, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose cats produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases cats for later retail sale or brokered trading;

(8) Commercial dog breeder means a person engaged in the business of breeding dogs:

(a) Who sells, exchanges, leases, or in any way transfers or offers to sell, exchange, lease, or transfer thirty-one or more dogs in a twelve-month period beginning on April 1 of each year;

(b) Who owns or harbors four or more dogs, intended for breeding, in a twelve-month period beginning on April 1 of each year;

(c) Whose dogs produce a total of four or more litters within a twelve-month period beginning on April 1 of each year; or

(d) Who knowingly sells, exchanges, or leases dogs for later retail sale or brokered trading;

(9) Dealer means any person who is not a commercial dog or cat breeder or a pet shop but is engaged in the business of buying for resale or selling or exchanging dogs or cats as a principal or agent or who claims to be so engaged. A person who purchases, sells, exchanges, or leases thirty or fewer dogs or cats in a twelve-month period is not a dealer;

(10) Department means the Bureau of Animal Industry of the Department of Agriculture with the State Veterinarian in charge, subordinate only to the director;

(11) Director means the Director of Agriculture or his or her designated employee;

(12) Dog means any animal which is wholly or in part of the species Canis familiaris;

(13) Foster home means any person who provides temporary housing for twenty or fewer dogs or cats that are six months of age or older in any twelve-month period and is affiliated with a person operating as an animal rescue that uses foster homes as its primary housing of dogs or cats. To be considered a foster home, a person shall not participate in the acquisition of the dogs or cats for which temporary care is provided. Any foster home which houses more than twenty dogs or cats that are six months of age or older in any twelve-month period or who participates in the acquisition of dogs or cats shall be licensed as an animal rescue;

(14) Housing facility means any room, building, or areas used to contain a primary enclosure;

(15) Inspector means any person who is employed by the department and who is authorized to perform inspections pursuant to the act;

(16) Licensee means a person who has qualified for and received a license from the department pursuant to the act;

(17) Pet animal means an animal kept as a household pet for the purpose of companionship, which includes, but is not limited to, dogs, cats, birds, fish, rabbits, rodents, amphibians, and reptiles;

(18) Pet shop means a retail establishment which sells pet animals and related supplies;

(19) Premises means all public or private buildings, kennels, pens, and cages used by a facility and the public or private ground upon which a facility is located if such buildings, kennels, pens, cages, or ground are used by the owner or operator of such facility in the usual course of business;

(20) Primary enclosure means any structure used to immediately restrict a dog or cat to a limited amount of space, such as a room, pen, cage, or compartment;

(21) Secretary of Agriculture means the Secretary of Agriculture of the United States Department of Agriculture;

(22) Stop-movement order means a directive preventing the movement or removal of any dog or cat from the premises; and

(23) Unaltered means any male or female dog or cat which has not been neutered or spayed or otherwise rendered incapable of reproduction.

Source: Laws 2000, LB 825, § 2; Laws 2003, LB 233, § 1; Laws 2003, LB 274, § 2; Laws 2004, LB 1002, § 1; Laws 2009, LB241, § 2; Laws 2010, LB910, § 5; Laws 2012, LB427, § 2.
Operative date October 1, 2012.

54-627 License requirements; fees; renewal; premises available for inspection.

(1) A person shall not operate as a commercial dog or cat breeder, a dealer, a boarding kennel, an animal control facility, an animal shelter, an animal rescue, or a pet shop unless the person obtains the appropriate license. A pet shop shall only be subject to the Commercial Dog and Cat Operator Inspection Act and the rules and regulations adopted and promulgated pursuant thereto in any area or areas of the establishment used for the keeping and selling of pet animals. If a facility listed in this subsection is not located at the owner's residence, the name and address of the owner shall be posted on the premises.

(2) An applicant for a license shall submit an application for the appropriate license to the department, on a form prescribed by the department, together with the annual license fee. Such fee is nonreturnable. Upon receipt of the application and annual license fee and upon completion of a qualifying inspection if required pursuant to section 54-630 for an initial license applicant or if a qualifying inspection is deemed appropriate by the department before a license is issued for any other applicant, the appropriate license may be issued by the department. Such license shall not be transferable to another person or location.

(3)(a) Except as otherwise provided in this subsection, the annual license fee shall be determined according to the following fee schedule based upon the daily average number of dogs or cats housed by the licensee over the previous annual licensure period:

(i) Ten or fewer dogs or cats, one hundred fifty dollars;

(ii) Eleven to fifty dogs or cats, two hundred dollars;

(iii) Fifty-one to one hundred dogs or cats, two hundred fifty dollars;

(iv) One hundred one to one hundred fifty dogs or cats, three hundred dollars;

(v) One hundred fifty-one to two hundred dogs or cats, three hundred fifty dollars;

(vi) Two hundred one to two hundred fifty dogs or cats, four hundred dollars;

(vii) Two hundred fifty-one to three hundred dogs or cats, four hundred fifty dollars;

(viii) Three hundred one to three hundred fifty dogs or cats, five hundred dollars;

(ix) Three hundred fifty-one to four hundred dogs or cats, five hundred fifty dollars;

(x) Four hundred one to four hundred fifty dogs or cats, six hundred dollars;

(xi) Four hundred fifty-one to five hundred dogs or cats, six hundred fifty dollars; and

(xii) More than five hundred dogs or cats, two thousand dollars.

(b) The initial license fee for any person required to be licensed pursuant to the act shall be one hundred twenty-five dollars.

(c) The annual license fee for a licensee that does not house dogs or cats shall be one hundred fifty dollars.

(d) The annual license fee for an animal rescue shall be one hundred fifty dollars.

(e) The annual license fee for a commercial dog or cat breeder shall be determined according to the fee schedule set forth in subdivision (a) of this subsection based upon the number of breeding dogs or cats owned or harbored by the commercial breeder.

(f) The fees charged under this subsection may be increased or decreased by the director after a public hearing is held outlining the reason for any proposed change in the fee. The maximum fee that may be charged shall not result in a fee for any license category that exceeds the license fee set forth in this subsection by more than one hundred dollars.

(4) A license to operate as a commercial dog or cat breeder, dealer, boarding kennel, or pet shop shall be renewed by filing with the department on or before April 1 of each year a renewal application and the annual license fee. A license to operate as an animal control facility, animal rescue, or animal shelter shall be renewed by filing with the department on or before October 1 of each year a renewal application and the annual license fee. Failure to renew a license prior to the expiration of the license shall result in a late renewal fee equal to twenty percent of the annual license fee due and payable each month, not to exceed one hundred percent of such fee, in addition to the license fee. The purpose of the late renewal fee is to pay for the administrative costs associated with the collection of fees under this section. The assessment of the late renewal fee shall not prohibit the director from taking any other action as provided in the act.

(5) A licensee under this section shall make its premises available for inspection pursuant to section 54-628 during normal business hours.

(6) The state or any political subdivision of the state which contracts out its animal control duties to a facility not operated by the state or any political subdivision of the state may be exempted from the licensing requirements of this section if such facility is licensed as an animal control facility, animal rescue, or animal shelter for the full term of the contract with the state or its political subdivision.

(7) Any fees collected pursuant to this section shall be remitted to the State Treasurer for credit to the Commercial Dog and Cat Operator Inspection Program Cash Fund.

Source: Laws 2000, LB 825, § 3; Laws 2003, LB 233, § 2; Laws 2003, LB 274, § 3; Laws 2004, LB 1002, § 2; Laws 2006, LB 856, § 14; Laws 2007, LB12, § 2; Laws 2009, LB241, § 3; Laws 2010, LB910, § 6; Laws 2012, LB427, § 3.
Operative date October 1, 2012.

54-630 Application; denial; grounds; appeal.

(1) Before the department approves an application for an initial license, an inspector of the department shall inspect the operation of the applicant to determine whether the applicant qualifies to hold a license pursuant to the

Commercial Dog and Cat Operator Inspection Act. Except as provided in subsection (2) of this section, an applicant who qualifies shall be issued a license.

(2) The department may deny an application for an initial or renewal license as a commercial dog or cat breeder, dealer, boarding kennel, animal control facility, animal shelter, animal rescue, or pet shop upon a finding that the applicant is unsuited to perform the obligations of a licensee. The applicant shall be determined unsuited to perform the obligations of a licensee if the department finds that the applicant has deliberately misrepresented or concealed any information provided on or with the application or any other information provided to the department under this section or that within the previous five years the applicant:

(a) Has been convicted of any law regarding the disposition or treatment of dogs or cats in any jurisdiction; or

(b) Has operated a breeder facility under a license or permit issued by any jurisdiction that has been revoked, suspended, or otherwise subject to a disciplinary proceeding brought by the licensing authority in that jurisdiction if such proceeding resulted in the applicant having voluntarily surrendered a license or permit to avoid disciplinary sanctions.

(3) In addition to the application, the department may require the applicant to provide additional documentation pertinent to the department's determination of the applicant's suitability to perform the duties of a licensee under the act.

(4) An applicant who is denied an initial or renewal license under this section shall be afforded the opportunity for a hearing before the director or the director's designee to present evidence that the applicant is qualified to hold a license should a license be issued or renewed. All such hearings shall be in accordance with the Administrative Procedure Act.

Source: Laws 2000, LB 825, § 6; Laws 2007, LB12, § 5; Laws 2012, LB427, § 4.
Operative date October 1, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

54-637 Information on spaying and neutering; requirements.

(1) Every dealer, commercial dog or cat breeder, animal shelter, animal rescue, animal control facility, or pet shop or any other retailer, who transfers ownership of a dog or cat to an ultimate consumer, shall deliver to the ultimate consumer of each dog or cat at the time of sale, written material, in a form determined by such seller, containing information on the benefits of spaying and neutering. The written material shall include recommendations on establishing a relationship with a veterinarian, information on early-age spaying and neutering, the health benefits associated with spaying and neutering pets, the importance of minimizing the risk of homeless or unwanted animals, and the need to comply with applicable license laws.

(2) The delivering of any model materials prepared by the Pet Industry Joint Advisory Council or the Nebraska Humane Society shall satisfy the requirements of subsection (1) of this section.

Source: Laws 2003, LB 274, § 4; Laws 2010, LB910, § 8; Laws 2012, LB427, § 5.
Operative date October 1, 2012.

54-640 Commercial dog or cat breeder; duties.

A commercial dog or cat breeder shall:

(1) Maintain housing facilities and primary enclosures in a sanitary condition;

(2) Enable all dogs and cats to remain dry and clean;

(3) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs and cats;

(4) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;

(5) Provide dogs and cats with easy and convenient access to adequate amounts of clean food and water;

(6) Provide dogs with adequate socialization. For purposes of this subdivision, adequate socialization means physical contact with other dogs and with human beings, other than being fed;

(7) Assure that a handler's hands are washed before and after handling each infectious or contagious cat;

(8) Maintain a written veterinary care plan developed in conjunction with an attending veterinarian; and

(9) Provide veterinary care without delay when necessary.

Source: Laws 2003, LB 274, § 7; Laws 2009, LB241, § 10; Laws 2012, LB427, § 6.
Operative date October 1, 2012.

54-641 Licensees; primary enclosures; requirements.

The primary enclosures of all licensees shall meet the following requirements:

(1) A primary enclosure shall provide adequate space appropriate to the age, size, weight, and breed of each dog or cat. For purposes of this subdivision, adequate space means sufficient room to allow each dog or cat to turn around without touching another animal, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner without the head of such animal touching the top of the enclosure, which shall be at least six inches above the head of the tallest animal when the animal is standing;

(2) A primary enclosure shall have solid surface flooring or a flooring material that protects the dogs' and cats' feet and legs from injury and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(3) If a primary enclosure has a suspended floor constructed of metal strands, the strands shall either be greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass; and

(4) The suspended floor of any primary enclosure shall be strong enough so that the floor does not sag or bend between the structural supports.

Source: Laws 2003, LB 274, § 8; Laws 2012, LB427, § 7.
Operative date October 1, 2012.

54-641.01 Commercial dog breeder; dogs; opportunity for exercise.

(1) A commercial dog breeder shall provide dogs with the opportunity for exercise as follows:

(a) A primary enclosure shall have an entry that allows each dog unfettered access to an exercise area that is at least three times the size of the requirements for a primary enclosure. The entry may be closed during cleaning, under direction of a licensed veterinarian, or in the case of inclement weather. The exercise area shall have solid surface flooring or a flooring material that if of mesh or slatted construction does not allow the dog's feet to pass through any openings in the floor. Any exercise area suspended floor constructed of metal strands shall be required to have strands that are greater than one-eighth of an inch in diameter (nine gauge) or coated with a material such as plastic or fiberglass. All suspended flooring shall be strong enough so as not to sag or bend between any structural supports and be of a surface that is easily cleaned and disinfected. The exercise area shall have protection available from wind, rain, and snow if access to the primary enclosure is unavailable; and

(b) Any dog not housed in a primary enclosure that meets the exercise area requirements of subdivision (a) of this subsection shall be provided with the opportunity for exercise according to a plan approved by the attending veterinarian, in writing. The opportunity for exercise shall be accomplished by:

(i) Providing access to a run or open area at a frequency and duration prescribed by the attending veterinarian; or

(ii) Removal of the dogs from the primary enclosure at least twice daily to be walked, allowed to move about freely in an open area, or placed in an exercise area that meets the requirements of subdivision (a) of this subsection.

(2) Subsection (1) of this section shall not apply to:

(a) Any dog that is less than six months of age;

(b) The primary enclosure of a nursing facility that houses any female dog that is due to give birth within the following two weeks or a nursing dog and her puppies;

(c) Any dog that is injured or displays any clinical signs of disease. In such case, any injury or clinical signs of disease shall be noted in the dog's health records and the dog shall be returned to exercise upon recovery from such injury or disease; or

(d) Any dog that is excluded from the exercise requirements of subsection (1) of this section pursuant to a written directive of a licensed veterinarian.

(3) Any primary enclosure newly constructed after October 1, 2012, shall comply with subdivision (1)(a) of this section. A primary enclosure in existence on October 1, 2012, shall not be required to comply with subdivision (1)(a) of this section for the life of such facility.

Source: Laws 2012, LB427, § 8.
Operative date October 1, 2012.

54-641.02 Commercial dog breeder; veterinary care; review of health records; duties of breeder.

(1) A commercial dog breeder shall ensure that each dog under his or her care, supervision, or control receives adequate veterinary care. A commercial dog breeder's written veterinary care plan shall provide for, in addition to requirements prescribed by rule and regulation of the department:

(a) The maintenance of individual health records for each dog bought, raised, or otherwise obtained, held, kept, maintained, sold, donated, or otherwise

disposed of, including by death or euthanasia, except that litter health records may be kept on litters when litter mates are treated with the same medication or procedure;

(b) Establishment of a program of disease control and prevention, pest and parasite control, before and after procedure care, nutrition, and euthanasia supervised by the attending veterinarian. Such program shall provide for regularly scheduled onsite visits to the facility by the veterinarian and shall be annually reviewed and updated by the veterinarian at the time of an onsite visit that includes the veterinarian's walk-through of the facility and observation by the veterinarian of dogs under the commercial dog breeder's care, supervision, or control; and

(c) A wellness examination by a licensed veterinarian of each breeding dog at least once every three years, to include a basic physical and dental examination and corresponding notations entered into the dog's health records. Such examination shall not require laboratory analysis unless directed by the veterinarian.

(2) During regularly scheduled inspections of a commercial dog breeder's facility conducted by the department, the health records of a random sample of at least five percent of the breeding dogs shall be reviewed to verify that such records correspond to the dog's permanent identification and verify that the health records are properly maintained.

(3) For each dog under the commercial dog breeder's care, supervision, or control, the breeder shall:

(a) Ensure that all breeding dogs receive regular grooming. Coat matting shall not exceed ten percent, and nails shall be trimmed short enough to ensure the comfort of the dog;

(b) Contact a licensed veterinarian without delay after an occurrence of a serious or life-threatening injury or medical condition of such dog. The dog shall be treated as prescribed by the veterinarian;

(c) Ensure that all surgical births or other surgical procedures shall be performed by a licensed veterinarian using anesthesia. Commercial dog breeders may remove dew claws and perform tail docking under sterile conditions within the first seven days of the dog's life. Wounds shall be treated and monitored by the breeder; and

(d) Ensure that, if euthanasia is necessary, it shall be performed by a licensed veterinarian in accordance with recommendations for the humane euthanization of dogs as published by the American Veterinary Medical Association.

Source: Laws 2012, LB427, § 9.
Operative date October 1, 2012.

54-641.03 Breeding dog; microchip; identification.

Each breeding dog shall be identified by the implantation of a microchip, and each dog's health records shall accurately record the appropriate identification. The department may by rule or regulation require identification of any dog by tag, tattoo, or other method if the microchip system is determined to be ineffective. A commercial dog breeder licensed prior to October 1, 2012, who utilizes a method or methods of identification other than microchipping as

authorized by rule and regulation of the department prior to October 1, 2012, may continue to utilize such method or methods.

Source: Laws 2012, LB427, § 10.
Operative date October 1, 2012.

54-642 Department; submit report of costs and revenue.

On or before November 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all costs incurred in the previous fiscal year in carrying out the Commercial Dog and Cat Operator Inspection Act. The report shall identify costs incurred by the department to administer the act and shall detail costs incurred by primary activity. The department shall also provide a breakdown by category of all revenue credited to the Commercial Dog and Cat Operator Inspection Program Cash Fund in the previous fiscal year. The Agriculture Committee and Appropriations Committee of the Legislature shall review the report to ascertain program activity levels and to determine funding requirements of the program.

Source: Laws 2006, LB 856, § 16; Laws 2012, LB782, § 82.
Operative date July 19, 2012.

(d) DOG AND CAT PURCHASE PROTECTION ACT

54-645 Terms, defined.

For purposes of the Dog and Cat Purchase Protection Act:

(1) Casual breeder means any person, other than a commercial dog or cat breeder as such terms are defined in section 54-626, who offers for sale, sells, trades, or receives consideration for one or more pet animals from a litter produced by a female dog or cat owned by such casual breeder;

(2) Clinical symptom means indication of an illness or dysfunction that is apparent to a veterinarian based on the veterinarian's observation, examination, or testing of an animal or on a review of the animal's medical records;

(3) Health certificate means the official small animal certificate of veterinary inspection of the Bureau of Animal Industry of the Department of Agriculture;

(4) Pet animal means a dog, wholly or in part of the species Canis familiaris, or a cat, wholly or in part of the species Felis domesticus, that is under fifteen months of age;

(5) Purchaser means the final owner of a pet animal purchased from a seller. Purchaser does not include a person who purchases a pet animal for resale;

(6) Seller means a casual breeder or any commercial establishment, including a commercial dog or cat breeder, dealer, or pet shop as such terms are defined in section 54-626, that engages in a business of selling pet animals to a purchaser. A seller does not include an animal control facility, animal rescue, or animal shelter as defined in section 54-626 or any animal adoption activity that an animal control facility, animal rescue, or animal shelter conducts offsite at any pet store or other commercial establishment; and

(7)(a) Serious health problem means a congenital or hereditary defect or contagious disease that causes severe illness or death of the pet animal.

(b) Serious health problem does not include (i) parvovirus if the diagnosis of parvovirus is made after the seven-business-day requirement in subsection (1)

of section 54-647 or (ii) any other contagious disease that causes severe illness or death after ten calendar days after delivery of the pet animal to the purchaser.

Source: Laws 2009, LB241, § 12; Laws 2010, LB910, § 10; Laws 2012, LB427, § 11.
Operative date October 1, 2012.

54-646 Seller; written disclosure statement; contents; receipt; notice of purchaser's rights and responsibilities; health certificate; retention of records.

(1) A seller shall deliver to the purchaser at the time of sale of a pet animal a written disclosure statement containing the following information regarding the pet animal:

(a) The name, address, and license number of any commercial dog or cat breeder or dealer as such terms are defined in section 54-626 or, if applicable, the United States Department of Agriculture license number of the breeder or any broker who has had possession of the animal prior to the seller's possession;

(b) The date of the pet animal's birth, if known, the state in which the pet animal was born, if known, and the date the seller received the pet animal;

(c) The sex and color of the pet animal, any other identifying marks apparent upon the pet animal, and the breed of the pet animal, if known, or a statement that the breed of the pet animal is unknown or the pet animal is of mixed breed;

(d) The pet animal's individual identifying tag, tattoo, microchip number, or collar number;

(e) The names and registration numbers of the sire and dam and the litter number, if applicable and if known;

(f) A record of any vaccination, worming treatment, or medication administered to the pet animal while in the possession of the seller and, if known, any such vaccination, treatment, or medication administered to the pet animal prior to the date the seller received the pet animal; and

(g) The date or dates of any examination of the pet animal by a licensed veterinarian while in the possession of the seller.

(2) The seller may include any of the following with the written disclosure statement required by subsection (1) of this section:

(a) A statement that a veterinarian examined the pet animal and, at the time of the examination, the pet animal had no apparent or clinical symptoms of a serious health problem that would adversely affect the health of the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future; and

(b) A record of any serious health problem that adversely affects the pet animal at the time of sale or that is likely to adversely affect the health of the pet animal in the future.

(3) The written disclosure statement made pursuant to this section shall be signed by the seller certifying the accuracy of the written disclosure statement and by the purchaser acknowledging receipt of the written disclosure statement. In addition to information required to be given to a purchaser under this section, at the time of sale the seller shall provide the purchaser with written

notice of the existence of the purchaser's rights and responsibilities under the Dog and Cat Purchase Protection Act or a legible copy of the act.

(4) If the pet animal is sold to a purchaser who resides outside of the state or intends that the pet animal will be relocated or permanently domiciled outside of the state, the seller shall provide the purchaser with a health certificate signed by a licensed veterinarian who has examined the pet animal and is authorized to certify such certificate.

(5) The seller shall maintain a copy of any written disclosure statements made and any other records on the health, status, or disposition of each pet animal for at least one year after the date of sale to a purchaser.

Source: Laws 2009, LB241, § 13; Laws 2012, LB427, § 12.
Operative date October 1, 2012.

ARTICLE 8
COMMERCIAL FEED

Section
54-857. Commercial Feed Administration Cash Fund; created; use; investment.

54-857 Commercial Feed Administration Cash Fund; created; use; investment.

All money received pursuant to the Commercial Feed Act shall be remitted by the director to the State Treasurer for credit to the Commercial Feed Administration Cash Fund which is hereby created. Such fund shall be used by the department to aid in defraying the expenses of administering the act and to aid in defraying the expenses related to a cooperative agreement with the United States Department of Agriculture Market News reporting program. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Commercial Feed Administration 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 1986, LB 322, § 11; Laws 1995, LB 7, § 57; Laws 2008, LB961, § 3; Laws 2009, First Spec. Sess., LB3, § 29; Laws 2011, LB305, § 1; Laws 2012, LB782, § 83.
Operative date July 19, 2012.

Cross References

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

ARTICLE 19
MEAT AND POULTRY INSPECTION

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

Section
54-1916. Repealed. Laws 2012, LB 782, § 253.

(b) STATE PROGRAM OF MEAT AND POULTRY INSPECTION

54-1916 Repealed. Laws 2012, LB 782, § 253.

Operative date July 19, 2012.

ARTICLE 24
LIVESTOCK WASTE MANAGEMENT ACT

Section
54-2428. National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

54-2428 National Pollutant Discharge Elimination System permit; construction and operating permit; application and modification; fees; Livestock Waste Management Cash Fund; created; use; investment; report.

(1) Any person required to obtain a National Pollutant Discharge Elimination System permit for an animal feeding operation or a construction and operating permit for a livestock waste control facility shall file an application with the department accompanied by the appropriate fees in the manner established by the department. The application fee shall be established by the council with a maximum fee of two hundred dollars. For major modifications to an application or a permit, the fee shall equal the amount of the application fee.

(2) On or before March 1, 2006, and each year thereafter, each person who has a National Pollutant Discharge Elimination System permit or who has a large concentrated animal feeding operation, as defined in 40 C.F.R. 122 and 123, as such regulations existed on January 1, 2004, and a state operating permit, a construction and operating permit, or a construction approval issued pursuant to the Environmental Protection Act or the Livestock Waste Management Act shall pay a per head annual fee based on the permitted capacity identified in the permit for that facility. The department shall invoice each permittee by February 1, 2006, and February 1 of each year thereafter.

(3) The initial annual fee shall be: Beef cattle, ten cents per head; veal calves, ten cents per head; dairy cows, fifteen cents per head; swine larger than fifty-five pounds, four dollars per one hundred head or fraction thereof; swine less than fifty pounds, one dollar per one hundred head or fraction thereof; horses, twenty cents per head; sheep or lambs, one dollar per one hundred head or fraction thereof; turkeys, two dollars per one thousand head or fraction thereof; chickens or ducks with liquid manure facility, three dollars per one thousand head or fraction thereof; and chickens or ducks with other than liquid manure facility, one dollar per one thousand head or fraction thereof. This fee structure may be reviewed in fiscal year 2007-08.

(4) Beginning in fiscal year 2007-08, the department shall annually review and adjust the fee structure in this section and section 54-2423 to ensure that fees are adequate to meet twenty percent of the program costs from the previous fiscal year. All fees collected under this section and sections 54-2423, 54-2435, and 54-2436 shall be remitted to the State Treasurer for credit to the Livestock Waste Management Cash Fund which is created for the purposes described in the Livestock Waste Management Act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Livestock Waste Management 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.

(5) On or before January 1 of each year, the department shall submit electronically a report to the Legislature in sufficient detail to document all direct and indirect costs incurred in the previous fiscal year in carrying out the

Livestock Waste Management Act, including the number of inspections conducted, the number of animal feeding operations with livestock waste control facilities, the number of animal feeding operations inspected, the size of the livestock waste control facilities, the results of water quality monitoring programs, and other elements relating to carrying out the act. The Appropriations Committee of the Legislature shall review the report in its analysis of executive programs in order to verify that the revenue generated from fees was used solely to offset appropriate and reasonable costs associated with carrying out the act.

Source: Laws 1998, LB 1209, § 8; Laws 1999, LB 870, § 10; R.S.Supp.,2002, § 54-2408; Laws 2004, LB 916, § 17; Laws 2006, LB 975, § 10; Laws 2009, First Spec. Sess., LB3, § 30; Laws 2012, LB782, § 84.
Operative date July 19, 2012.

Cross References

Environmental Protection Act, see section 81-1532.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

CHAPTER 55
MILITIA

Article
1. Military Code. 55-157.

ARTICLE 1
MILITARY CODE

Section
55-157. Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.

55-157 Militia; active duty; personnel; compensation; travel expenses; health insurance reimbursement.

(1) When an active or retired officer or enlisted person of the National Guard is ordered to active service of the state by the Governor or Adjutant General, he or she shall receive compensation as provided in this subsection. For service during a disaster or emergency, an officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations. For advice, counsel, duties, or service to the Governor or Adjutant General, an officer or enlisted person may, at the discretion of the Adjutant General, be in a pay or nonpay status. If in a pay status, the officer or enlisted person shall be entitled to the same pay, subsistence, and quarters allowance as officers and enlisted personnel of corresponding grades of the Army and Air Force of the United States and shall be reimbursed for travel expenses in accordance with the Joint Federal Travel Regulations.

(2) For any period of active service of the state in excess of thirty consecutive days, performed at the order of the Governor or Adjutant General or at the request of the federal government, a state, or other agency or entity, an officer or enlisted person shall be entitled to reimbursement of one hundred percent of the cost of his or her privately purchased health insurance or up to one hundred two percent of the cost of his or her employer-provided health insurance. The officer or enlisted person shall provide evidence of payment and shall be reimbursed to the extent that evidence of payment can be provided. The reimbursement for health insurance shall be treated as an allowance but may be paid separately once received by the State of Nebraska from the federal government, a state, or other agency or entity requesting the services of the officer or enlisted person. The State of Nebraska will not pay or advance the cost of such health insurance reimbursement for the federal government, a state, or other agency or entity. The State of Nebraska is exempt from the requirement under this subsection to reimburse officers and enlisted persons for their health insurance costs.

Source: Laws 1909, c. 90, § 44, p. 380; R.S.1913, § 3943; C.S.1922, § 3343; C.S.1929, § 55-170; R.S.1943, § 55-184; Laws 1953, c.

188, § 33, p. 606; R.R.S.1943, § 55-184; Laws 1969, c. 459, § 55, p. 1599; Laws 1984, LB 934, § 5; Laws 1990, LB 930, § 2; Laws 2004, LB 963, § 4; Laws 2012, LB1141, § 1.
Effective date July 19, 2012.

CHAPTER 57
MINERALS, OIL, AND GAS

ARTICLE 7
OIL AND GAS SEVERANCE TAX

57-706 Tax; security; notice; use.

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with the provisions of sections 57-701 to 57-719, may require any person subject to the tax to deposit with the Tax Commissioner suitable indemnity bond to insure payment of the taxes, levied under the provisions of sections 57-701 to 57-719, as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use thereof shall be given to such person by mail.

Source: Laws 1955, c. 219, § 6, p. 612; Laws 1957, c. 242, § 48, p. 860; Laws 1967, c. 351, § 4, p. 934; Laws 2012, LB727, § 14.
Operative date April 12, 2012.

ARTICLE 9
OIL AND GAS CONSERVATION

57-909 Spacing unit; pooling of interests; order of commission; provisions for drilling and operation; costs; determination; recording.

(1) When two or more separately owned tracts are embraced within a spacing unit or when there are separately owned interests in all or part of the spacing unit, then the owners and royalty owners thereof may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling, the commission, upon the application of any interested person, or upon its own motion, may enter an order pooling all interests in the spacing unit for the development and operation thereof. Each such pooling order shall be made only after notice and hearing and shall be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, his or her just and equitable share. Operations

incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the drilling unit by the several owners thereof. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from such tract by a well drilled thereon.

(2) Each such pooling order shall make provision for the drilling and operation of the authorized well on the spacing unit and for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision. As to each owner who refuses to agree upon the terms for drilling and operating the well, the order shall provide for reimbursement for his or her share of the costs out of, and only out of, production from the unit representing his or her interest, excluding royalty or other interest not obligated to pay any part of the cost thereof. In the event of any dispute as to such cost, the commission shall determine the proper cost. The order shall determine the interest of each owner in the unit and may provide in substance that, as to each owner who agrees with the person or persons drilling and operating the well for the payment by the owner of his or her share of the costs, such owner, unless he or she has agreed otherwise, shall be entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the tract of the consenting owner; and as to each owner who does not agree, he or she shall be entitled to receive from the person or persons drilling and operating such well on the unit his or her share of the production applicable to his or her interest, after the person or persons drilling and operating such well have recovered, depending on the total measured depth of the well, three hundred percent for wells less than five thousand feet deep, four hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of that portion of the costs and expenses of staking, well site preparation, drilling, reworking, deepening or plugging back, testing, completing, and other intangible expenses approved by the commission chargeable to each owner who does not agree, and, depending on the total measured depth of the well, two hundred percent for wells less than five thousand feet deep, three hundred percent for wells five thousand feet deep but less than six thousand five hundred feet deep, and five hundred percent for wells six thousand five hundred feet deep or deeper, of all equipment including wellhead connections, casing, tubing, packers, and other downhole equipment and surface equipment, including, but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation and a reasonable rate of interest on the unpaid balance. For the purpose of this section, the owner or owners of oil and gas rights in and under an unleased tract of land shall be regarded as a lessee to the extent of a seven-eighths interest in and to such rights and a lessor to the extent of the remaining one-eighth interest therein.

(3) A certified copy of the order may be filed for record with the county clerk or register of deeds of the county, as the case may be, where the property involved is located, which recording shall constitute constructive notice thereof. The county clerk, or register of deeds, as the case may be, shall record the same in the real property records of the county and shall index the same against the property affected.

Source: Laws 1959, c. 262, § 9, p. 907; Laws 1978, LB 447, § 1; Laws 2011, LB458, § 1.

ARTICLE 11
EMINENT DOMAIN FOR PIPELINES

Section
57-1101. Acquisition of property by eminent domain; authorized; procedure.

57-1101 Acquisition of property by eminent domain; authorized; procedure.

Any person engaged in, and any company, corporation, or association formed or created for the purpose of, transporting or conveying crude oil, petroleum, gases, or other products thereof in interstate commerce through or across the State of Nebraska or intrastate within the State of Nebraska, and desiring or requiring a right-of-way or other interest in real estate and being unable to agree with the owner or lessee of any land, lot, right-of-way, or other property for the amount of compensation for the use and occupancy of so much of any lot, land, real estate, right-of-way, or other property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline, shall have the right to acquire the same for such purpose through the exercise of the power of eminent domain, except that for any major oil pipeline as defined in section 57-1404 to be placed in operation in the State of Nebraska after November 23, 2011, any such person, company, corporation, or association shall comply with section 57-1503 and receive the approval of the Governor for the route of the pipeline under such section or shall apply for and receive an order approving the application under the Major Oil Pipeline Siting Act, prior to having the rights provided under this section. If condemnation procedures have not been commenced within two years after the date the Governor's approval is granted or after the date of receipt of an order approving an application under the Major Oil Pipeline Siting Act, the right under this section expires. The procedure to condemn property shall be exercised in the manner set forth in sections 76-704 to 76-724.

Source: Laws 1963, c. 323, § 1, p. 979; Laws 2011, First Spec. Sess., LB1, § 1; Laws 2012, LB1161, § 1.
Effective date April 18, 2012.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

ARTICLE 12
URANIUM SEVERANCE TAX

Section
57-1206. Tax; security; notice; use.

57-1206 Tax; security; notice; use.

The Tax Commissioner, whenever he or she deems it necessary to insure compliance with sections 57-1201 to 57-1214, may require any person subject to the tax imposed by section 57-1202 to deposit with the Tax Commissioner a suitable indemnity bond to insure payment of the tax as the Tax Commissioner may determine. Such security may be used if it becomes necessary to collect any tax, interest, or penalty due. Notice of the use of the bond shall be given to such person by mail.

Source: Laws 1983, LB 356, § 18; Laws 2012, LB727, § 15.
Operative date April 12, 2012.

ARTICLE 14
MAJOR OIL PIPELINE SITING ACT

Section

57-1401 Act, how cited.

Sections 57-1401 to 57-1413 shall be known and may be cited as the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 2; Laws 2012, LB1161, § 2. Effective date April 18, 2012.

57-1402 Purposes of act.

(1) The purposes of the Major Oil Pipeline Siting Act are to:

(a) Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests;

(b) Consider the lawful protection of Nebraska's natural resources in determining the location of routes of major oil pipelines within Nebraska;

(c) Ensure that a major oil pipeline is not constructed within Nebraska without receiving the approval of the commission under section 57-1408;

(d) Ensure that the location of routes for major oil pipelines is in compliance with Nebraska law; and

(e) Ensure that a coordinated and efficient method for the authorization of such construction is provided.

(2) Nothing in the Major Oil Pipeline Siting Act shall be construed to regulate any safety issue with respect to any aspect of any interstate oil pipeline. The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from safety considerations. The Legislature acknowledges and respects the exclusive federal authority over safety issues established by the federal law, the Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express preemption provision stated in that act. The Major Oil Pipeline Siting Act is intended to exercise only the remaining

sovereign powers and purposes of Nebraska which are not included in the category of safety regulation.

Source: Laws 2011, First Spec. Sess., LB1, § 3; Laws 2012, LB1161, § 4. Effective date April 18, 2012.

57-1403 Legislative findings.

The Legislature finds that:

(1) Nebraska has the authority as a sovereign state to protect its land and natural resources for economic and aesthetic purposes for the benefit of its residents and future generations by regulation through approval or disapproval of major oil pipeline siting and the location of routes, so long as it does not regulate in the area of safety as to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of major oil pipelines and pipeline facilities;

(2) The water and other natural resources in Nebraska will become increasingly valuable, both economically and strategically, as the demand for agricultural products for both food and fuel increases;

(3) The construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy; and

(4) The irrigation economy of Nebraska which relies on quality water adds over one billion dollars annually to net farm income and increases the gross state product by three billion dollars annually.

Source: Laws 2011, First Spec. Sess., LB1, § 4. Effective date November 23, 2011.

57-1404 Terms, defined.

For purposes of the Major Oil Pipeline Siting Act:

(1) Commission means the Public Service Commission;

(2) Major oil pipeline means a pipeline which is larger than six inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means a person that engages in owning, operating, or managing a major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 5; Laws 2012, LB1161, § 5. Effective date April 18, 2012.

57-1405 Pipeline carrier; construction of major oil pipeline; application; substantive change to route; application; contents; notice.

(1) If a pipeline carrier proposes to construct a major oil pipeline to be placed in operation in Nebraska after November 23, 2011, and the pipeline carrier has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application with the commission and receive approval pursuant to section 57-1408 prior to beginning construction of the major oil pipeline within Nebraska. If a pipeline carrier proposes a substantive change to the route of a major oil pipeline and the pipeline carrier

has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to section 57-1503, the pipeline carrier shall file an application for the proposed change with the commission and receive approval pursuant to section 57-1408 prior to beginning construction relating to the proposed change. The applicant shall also file a copy of the application with the agencies listed in subsection (3) of section 57-1407.

(2) The application shall be accompanied by written agreement to pay expenses assessed pursuant to section 57-1406 and written testimony and exhibits in support of the application. The application shall include:

(a) The name and address of the pipeline carrier;

(b) A description of the nature and proposed route of the major oil pipeline and evidence of consideration of alternative routes;

(c) A statement of the reasons for the selection of the proposed route of the major oil pipeline;

(d) A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;

(e) A description of the product or material to be transported through the major oil pipeline;

(f) The person who will own the major oil pipeline;

(g) The person who will manage the major oil pipeline;

(h) A plan to comply with the Oil Pipeline Reclamation Act; and

(i) A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

(3) The applicant shall publish notice of the application in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed and forward a copy of such notice to the commission. The applicant shall serve notice of the application upon the governing bodies of the counties and municipalities specified pursuant to subdivision (2)(d) of this section.

Source: Laws 2011, First Spec. Sess., LB1, § 6; Laws 2012, LB1161, § 6. Effective date April 18, 2012.

Cross References

Oil Pipeline Reclamation Act, see section 76-3301.

57-1406 Commission; assess expenses; payment; neglect or refusal to pay; failure to file objection; notice of delinquency; collection.

(1) The commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under section 57-1405, including expenses billed by agencies filing reports as required in subsection (3) of section 57-1407 and both direct and indirect expenses incurred by the commission or its staff or consultants, to the applicant as agreed under section 57-1405.

(2) The commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under section 57-1408 is issued or from time to time during such

application process. Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen days after the mailing thereof, such applicant shall pay to the commission the amount of the assessment for which it is billed. The commission shall remit the payment to the State Treasurer for credit to the Public Service Commission Pipeline Regulation Fund. The commission may render bills in one fiscal year for costs incurred within a previous fiscal year. The commission shall direct the State Treasurer to credit any reimbursement of expenses billed by agencies pursuant to subsection (3) of section 57-1407 to the appropriate fund of the appropriate agency.

(3) If any applicant against which an assessment has been made pursuant to this section, within fifteen days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the commission as provided in subsection (4) of this section, 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 applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant 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 applicant.

(4) Within fifteen days after the date of the mailing of any notice of assessment under subsection (2) of this section, the applicant against which such assessment has been made may file with the commission objections setting out in detail the ground upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. 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.

(5) 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 applicant in the manner provided for in subsection (3) of this section. 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 applicant 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 2011, First Spec. Sess., LB1, § 7.
Effective date November 23, 2011.

57-1407 Commission; duties; public meetings; agency reports; approval by commission; considerations.

(1) After receipt of an application under section 57-1405, the commission shall:

(a) Within sixty days, schedule a public hearing;

(b) Notify the pipeline carrier of the time, place, and purpose of the public hearing;

(c) Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and

(d) Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subdivision (2)(d) of section 57-1405.

(2) The commission may hold additional public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The commission shall make the public input part of the record.

(3) If requested by the commission, the following agencies shall file a report with the commission, prior to the hearing on the application, regarding information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline: The Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Department of Roads, the Game and Parks Commission, the Nebraska Oil and Gas Conservation Commission, the Nebraska State Historical Society, the State Fire Marshal, and the Board of Educational Lands and Funds. The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to this subsection.

(4) An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Public Service Commission to be in the public interest. The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the commission shall not evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the commission shall evaluate:

(a) Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

(b) Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources;

(c) Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

(d) Evidence regarding the economic and social impacts of the major oil pipeline;

(e) Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

(f) The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

(g) The reports of the agencies filed pursuant to subsection (3) of this section; and

(h) The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

Source: Laws 2011, First Spec. Sess., LB1, § 8.
Effective date November 23, 2011.

57-1408 Commission order; findings; extension of time; status reports; notice of completion; denial of application; amended application; commission; duties.

(1) Within seven months after the receipt of the application under section 57-1405, the commission shall enter an order approving the application or denying the application. The commission shall include in the order the findings of the commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under section 57-1101.

(2) The commission may, for just cause, extend the time for the entry of an order under subsection (1) of this section. The extension shall not exceed twelve months after the receipt of the application under section 57-1405 unless all parties agree to a longer extension, except that no extension shall extend more than eight months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

(3) If the commission approves the application, the pipeline carrier shall file a status report with the commission regarding the construction of the major oil pipeline every six months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the commission of the completion of the major oil pipeline within Nebraska within thirty days after such completion.

(4) If the commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the commission and submit the amended application within sixty days after the issuance of the order denying the application. Within sixty days after the receipt of the amended application, the commission shall enter an order approving or denying the amended application after making new findings under subsection (4) of section 57-1407.

Source: Laws 2011, First Spec. Sess., LB1, § 9.
Effective date November 23, 2011.

57-1409 Appeal.

Any party aggrieved by a final order of the commission regarding an application or assessment under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 2011, First Spec. Sess., LB1, § 10.
Effective date November 23, 2011.

Cross References

Administrative Procedure Act, see section 84-920.

57-1410 Rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 11.
Effective date November 23, 2011.

57-1411 Public Service Commission Pipeline Regulation Fund; created; use; investment.

The Public Service Commission Pipeline Regulation Fund is created. The fund shall be administered by the commission. The fund shall be used by the commission to carry out the Major Oil Pipeline Siting 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 2011, First Spec. Sess., LB1, § 12.
Effective date November 23, 2011.

Cross References

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

57-1412 Commission; powers.

The commission may contract for professional services and expert assistance, including, but not limited to, the services of engineers, hydrogeologists, accountants, attorneys, and economists, to assist with reviewing applications under the Major Oil Pipeline Siting Act.

Source: Laws 2011, First Spec. Sess., LB1, § 13.
Effective date November 23, 2011.

57-1413 Documents or records; not withheld from public.

The commission shall not withhold any documents or records relating to a major oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

Source: Laws 2012, LB1161, § 3.
Effective date April 18, 2012.

ARTICLE 15

OIL PIPELINE PROJECTS

Section
57-1501. Legislative findings.
57-1502. Terms, defined.
57-1503. Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.

57-1501 Legislative findings.

The Legislature finds that:

(1) The State of Nebraska is responsible for protecting its natural resources, agricultural resources, aesthetics, economy, and communities through reason-

able regulation for the common good and welfare. As such, the state is responsible for ensuring that an oil pipeline proposed to be located within, through, or across Nebraska is in compliance with all state laws, rules, and regulations relating to water, air, and wildlife under the Constitution of Nebraska and state law;

(2) Public policy should reflect this responsibility while simultaneously recognizing the necessity for energy use and the economic benefits to Nebraska of transporting oil within, through, or across the state, the need for economic development in Nebraska, and the opportunities for jobs and revenue that new development brings to the state;

(3) The United States has the important ability to work with foreign suppliers of crude oil to meet our overall energy needs and to further our national security interests; and

(4) The economic benefits of oil pipeline construction projects are important to the state, including the creation of jobs. Nevertheless, the benefits of any proposed oil pipeline project must be weighed against any concerns brought by the residents of Nebraska.

Source: Laws 2011, First Spec. Sess., LB4, § 1.
Effective date November 23, 2011.

57-1502 Terms, defined.

For purposes of sections 57-1501 to 57-1503:

(1) Department means the Department of Environmental Quality;

(2) Oil pipeline means a pipeline which is larger than eight inches in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines; and

(3) Pipeline carrier means an individual, a company, a corporation, an association, or any other legal entity that engages in owning, operating, or managing an oil pipeline.

Source: Laws 2011, First Spec. Sess., LB4, § 2.
Effective date November 23, 2011.

57-1503 Evaluation of route; supplemental environmental impact statement; department; powers and duties; pipeline carrier; reimburse cost; submit to Governor; duty; denial; notice to pipeline carrier; documents or records; not withheld from public.

(1)(a) The department may:

(i) Evaluate any route for an oil pipeline within, through, or across the state and submitted by a pipeline carrier for the stated purpose of being included in a federal agency's or agencies' National Environmental Policy Act review process. Any such evaluation shall include at least one public hearing, provide opportunities for public review and comment, and include, but not be limited to, an analysis of the environmental, economic, social, and other impacts associated with the proposed route and route alternatives in Nebraska. The department may collaborate with a federal agency or agencies and set forth the responsibilities and schedules that will lead to an effective and timely evaluation; or

(ii) Collaborate with a federal agency or agencies in a review under the National Environmental Policy Act involving a supplemental environmental impact statement for oil pipeline projects within, through, or across the state. Prior to entering into such shared jurisdiction and authority, the department shall collaborate with such agencies to set forth responsibilities and schedules for an effective and timely review process.

(b) A pipeline carrier that has submitted a route for evaluation or review pursuant to subdivision (1)(a) of this section shall reimburse the department for the cost of the evaluation or review within sixty days after notification from the department of the cost. The department shall remit any reimbursement to the State Treasurer for credit to the Department of Environmental Quality Cash Fund.

(2) The department may contract with outside vendors in the process of preparation of a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this section. The department shall make every reasonable effort to ensure that each vendor has no conflict of interest or relationship to any pipeline carrier that applies for an oil pipeline permit.

(3) In order for the process to be efficient and expeditious, the department's contracts with vendors pursuant to this section for a supplemental environmental impact statement or an evaluation conducted under subdivision (1)(a) of this section shall not be subject to the Nebraska Consultants' Competitive Negotiation Act or sections 73-301 to 73-306 or 73-501 to 73-510.

(4) After the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section is prepared, the department shall submit it to the Governor. Within thirty days after receipt of the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section from the department, the Governor shall indicate, in writing, to the federal agency or agencies involved in the review or any other appropriate federal agency or body as to whether he or she approves any of the routes reviewed in the supplemental environmental impact statement or the evaluation conducted under subdivision (1)(a) of this section. If the Governor does not approve any of the reviewed routes, he or she shall notify the pipeline carrier that in order to obtain approval of a route in Nebraska the pipeline carrier is required to file an application with the Public Service Commission pursuant to the Major Oil Pipeline Siting Act.

(5) The department shall not withhold any documents or records relating to an oil pipeline from the public unless the documents or records are of the type that can be withheld under section 84-712.05 or unless federal law provides otherwise.

Source: Laws 2011, First Spec. Sess., LB4, § 3; Laws 2012, LB858, § 16; Laws 2012, LB1161, § 7.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB858, section 16, with LB1161, section 7, to reflect all amendments.

Note: Changes made by LB1161 became effective April 18, 2012. Changes made by LB858 became effective July 19, 2012.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.
Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

CHAPTER 58
MONEY AND FINANCING

Article
2. Nebraska Investment Finance Authority. 58-246, 58-270.
3. Small Business Development. 58-326. Repealed.
4. Research and Development Authority. 58-443. Repealed.
7. Nebraska Affordable Housing Act. 58-702 to 58-711.

ARTICLE 2
NEBRASKA INVESTMENT FINANCE AUTHORITY

Section
58-246. Agricultural projects; loan reports; public information; borrower's name omitted.
58-270. Authority; reports; contents; audit; issuance of bonds; notices.

58-246 Agricultural projects; loan reports; public information; borrower's name omitted.

The reports required pursuant to section 58-245 shall be public information. No such report shall reveal the name of any individual borrower. The authority shall, following the close of each fiscal year, deliver to the Governor and to the Clerk of the Legislature a set of the individual reporting forms from the preceding year together with the report required pursuant to subsection (2) of section 58-245. The reporting forms and the report submitted to the Clerk of the Legislature shall be submitted electronically. Any member of the Legislature shall receive an electronic copy of such reports by making a request to the chairperson of the authority.

Source: Laws 1983, LB 626, § 46; Laws 1991, LB 253, § 47; Laws 2012, LB782, § 85.
Operative date July 19, 2012.

58-270 Authority; reports; contents; audit; issuance of bonds; notices.

(1) The authority shall, following the close of each fiscal year, submit a report of its activities for the preceding year to the Governor and the Clerk of the Legislature. The report submitted to the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the authority. Each report shall set forth a complete operating and financial statement for the authority during the fiscal year it covers. An independent certified public accountant shall at least once in each year audit the books and accounts of the authority.

(2) At least fourteen days prior to taking any final action to authorize the issuance of bonds to provide financing for projects, the beneficiaries or borrowers of which are not specifically identified, the authority shall notify the Governor, the Clerk of the Legislature, and any news media requesting notification of such proposed issuance of bonds. The notification submitted to the Clerk of the Legislature shall be submitted electronically. Such notice shall include:

(a) The public purposes to be effectuated and the needs to be addressed through the issuance of the bonds;

(b) The manner in which such need was identified;

(c) The anticipated principal amount of the bond issue and the anticipated date of issuance of the bonds;

(d) The anticipated size of any reserve funds; and

(e) The professionals involved in connection with the issuance of the bonds.

(3) Within thirty days following the issuance of bonds subject to subsection (2) of this section, the authority shall notify the Governor and the Clerk of the Legislature of:

(a) The final principal amount of the bonds;

(b) The net interest cost of the bonds;

(c) The costs of issuance paid and to whom paid;

(d) The total amount of any reserve funds;

(e) The net interest cost to the beneficiaries or borrowers; and

(f) The amount of funds available for loans.

The notification submitted to the Clerk of the Legislature shall be submitted electronically.

(4) With respect to bonds subject to subsection (2) of this section, until ninety-five percent of the proceeds of such bonds to be made available for loans are so used or a corresponding amount of such bonds are redeemed, the authority shall, no less often than quarterly after the issuance of such bonds, report to the Governor and the Clerk of the Legislature the status of the use of the proceeds of such issue of bonds. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Once the notice required pursuant to subsection (2) of this section is filed, nothing in this section shall require the authority to amend or supplement the notice prior to the issuance of the bonds.

(5) The notice and reporting requirements contained in this section shall be deemed satisfied upon good faith compliance by the authority. The failure to comply with any part of this section shall not affect the validity of any bonds issued by the authority.

Source: Laws 1983, LB 626, § 70; Laws 1984, LB 372, § 12; Laws 1991, LB 253, § 67; Laws 2012, LB782, § 86.
Operative date July 19, 2012.

ARTICLE 3

SMALL BUSINESS DEVELOPMENT

Section
58-326. Repealed. Laws 2011, LB 4, § 1.

58-326 Repealed. Laws 2011, LB 4, § 1.

ARTICLE 4
RESEARCH AND DEVELOPMENT AUTHORITY

Section
58-443. Repealed. Laws 2011, LB 5, § 1.

58-443 Repealed. Laws 2011, LB 5, § 1.

ARTICLE 7
NEBRASKA AFFORDABLE HOUSING ACT

Section
58-702. Legislative findings.
58-703. Affordable Housing Trust Fund; created; use.
58-706. Affordable Housing Trust Fund; eligible activities.
58-708. Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.
58-711. Information on status of Affordable Housing Trust Fund; report.

58-702 Legislative findings.

The Legislature finds that current economic conditions, lack of available affordable housing, federal housing policies that have placed an increasing burden on the state, and declining resources at all levels of government adversely affect the ability of Nebraska's citizens to obtain safe, decent, and affordable housing. Lack of affordable housing also affects the ability of communities to maintain and develop viable and stable economies.

Furthermore, the Legislature finds that impediments exist to the construction and rehabilitation of affordable housing. Local codes and state statutes have an important effect on housing's affordability by placing increased costs on developers. Financing affordable housing, especially in rural areas and smaller communities, is becoming increasingly difficult. In addition, existing dilapidated housing stock and industrial buildings are detrimental to new affordable housing development and the general health and safety of people living and working in or around such places. An affordable housing trust fund would assist all Nebraska communities in financing affordable housing projects and other projects which make the community safer for residents.

To enhance the economic development of the state and to provide for the general prosperity of all of Nebraska's citizens, it is in the public interest to assist in the provision of safe, decent, and affordable housing in all areas of the state. The establishment of the Nebraska Affordable Housing Act will assist in creating conditions favorable to meeting the affordable housing needs of the state.

Source: Laws 1996, LB 1322, § 12; Laws 2011, LB388, § 10.

58-703 Affordable Housing Trust Fund; created; use.

The Affordable Housing Trust Fund is created. The fund shall receive money pursuant to sections 8-1120 and 76-903 and may include revenue from sources recommended by the housing advisory committee established in section 58-704, appropriations from the Legislature, transfers authorized by the Legislature, grants, private contributions, repayment of loans, and all other sources, except

that appropriations from the General Fund and transfers from the General Fund or the Cash Reserve Fund may not be used as a revenue source for the Affordable Housing Trust Fund after June 30, 2013. The Department of Economic Development as part of its comprehensive housing affordability strategy shall administer the Affordable Housing Trust Fund.

Transfers may be made from the Affordable Housing Trust Fund to the General Fund, the Behavioral Health Services Fund, and the Site and Building Development Fund at the direction of the Legislature.

Source: Laws 1996, LB 1322, § 13; Laws 1997, LB 864, § 9; Laws 2004, LB 1083, § 100; Laws 2005, LB 40, § 1; Laws 2011, LB388, § 11; Laws 2012, LB969, § 6.
Operative date April 3, 2012.

58-706 Affordable Housing Trust Fund; eligible activities.

The following activities are eligible for assistance from the Affordable Housing Trust Fund:

(1) New construction, rehabilitation, or acquisition of housing to assist low-income and very low-income families;

(2) Matching funds for new construction, rehabilitation, or acquisition of housing units to assist low-income and very low-income families;

(3) Technical assistance, design and finance services, and consultation for eligible nonprofit community or neighborhood-based organizations involved in the creation of affordable housing;

(4) Matching funds for operating costs for housing assistance groups or organizations when such grant or loan will substantially increase the recipient's ability to produce affordable housing;

(5) Mortgage insurance guarantees for eligible projects;

(6) Acquisition of housing units for the purpose of preservation of housing to assist low-income or very low-income families;

(7) Projects making affordable housing more accessible to families with elderly members or members who have disabilities;

(8) Projects providing housing in areas determined by the Department of Economic Development to be of critical importance for the continued economic development and economic well-being of the community and where, as determined by the department, a shortage of affordable housing exists;

(9) Infrastructure projects necessary for the development of affordable housing;

(10) Downpayment and closing cost assistance;

(11) Demolition of existing vacant, condemned, or obsolete housing or industrial buildings or infrastructure;

(12) Housing education programs developed in conjunction with affordable housing projects. The education programs must be directed toward:

(a) Preparing potential home buyers to purchase affordable housing and postpurchase education;

(b) Target audiences eligible to utilize the services of housing assistance groups or organizations; and

(c) Developers interested in the rehabilitation, acquisition, or construction of affordable housing; and

(13) Support for efforts to improve programs benefiting homeless youth.

Source: Laws 1996, LB 1322, § 16; Laws 2004, LB 1083, § 101; Laws 2005, LB 40, § 2; Laws 2011, LB388, § 12; Laws 2011, LB413, § 1.

58-708 Department of Economic Development; selection of projects to receive assistance; duties; recapture funds; when.

(1) During each calendar year in which funds are available from the Affordable Housing Trust Fund for use by the Department of Economic Development, the department shall allocate a specific amount of funds, not less than twenty-five percent, to each congressional district. Entitlement area funds allocated under this section that are not awarded to an eligible project from within the entitlement area within one year shall be made available for distribution to eligible projects elsewhere in the state. The department shall announce a grant and loan application period of at least ninety days duration for all nonentitlement areas. In selecting projects to receive trust fund assistance, the department shall develop a qualified allocation plan and give first priority to financially viable projects that serve the lowest income occupants for the longest period of time. The qualified allocation plan shall:

(a) Set forth selection criteria to be used to determine housing priorities of the housing trust fund which are appropriate to local conditions, including the community's immediate need for affordable housing, proposed increases in home ownership, private dollars leveraged, level of local government support and participation, and repayment, in part or in whole, of financial assistance awarded by the fund; and

(b) Give first priority in allocating trust fund assistance among selected projects to those projects which serve the lowest income occupant and are obligated to serve qualified occupants for the longest period of time.

(2) The department shall fund in order of priority as many applications as will utilize available funds less actual administrative costs of the department in administering the program. In administering the program the department may contract for services or directly provide funds to other governmental entities or instrumentalities.

(3) The department may recapture any funds which were allocated to a qualified recipient for an eligible project through an award agreement if such funds were not utilized for eligible costs within the time of performance under the agreement and are therefor no longer obligated to the project. The recaptured funds shall be credited to the Industrial Recovery Fund except as provided in section 81-1213.

Source: Laws 1996, LB 1322, § 18; Laws 2005, LB 40, § 3; Laws 2011, LB388, § 13.

58-711 Information on status of Affordable Housing Trust Fund; report.

The Department of Economic Development shall submit, as part of the department's annual status report under section 81-1201.11, information detailing the status of the Affordable Housing Trust Fund. The status report shall list (1) the applications funded during the previous calendar year, (2) the applica-

tions funded in previous years, (3) the identity of the organizations receiving funds, (4) the location of each project, (5) the amount of funding provided to the project, (6) the amount of funding leveraged as a result of the project, (7) the number of units of housing created by the project and the occupancy rate, (8) the expected cost of rent or monthly payment of those units, (9) the projected number of new employees and community investment as a result of the project, and (10) the amount of revenue deposited into the Affordable Housing Trust Fund pursuant to sections 8-1120 and 76-903. The status report shall contain no information that is protected by state or federal confidentiality laws.

Source: Laws 1997, LB 864, § 7; Laws 2011, LB404, § 3.

CHAPTER 59
MONOPOLIES AND UNLAWFUL COMBINATIONS

ARTICLE 15
CIGARETTE SALES

(b) GREY MARKET SALES

(b) GREY MARKET SALES

59-1520 Prohibited acts.

It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or import or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on January 1, 2011;

(b) The permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(c) The rotation of label statements pursuant to the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on January 1, 2011;

(d) The restrictions on the importation, transfer, and sale of previously exported tobacco products pursuant to 19 U.S.C. 1681 et seq. and Chapter 52 of the Internal Revenue Code, 26 U.S.C. 5701 et seq., as such sections existed on January 1, 2011; and

(e) The federal trademark and copyright laws;

(2) Alter a package of cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(a) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, labels stating ''For Export Only'', ''U.S. Tax Exempt'', ''For Use Outside U.S.'', or similar wording; or

(b) Any health warning that is not the precise package warning statement in the precise format specified in the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on January 1, 2011;

(3) Affix any stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

Source: Laws 2001, LB 358, § 2; Laws 2011, LB590, § 1.

59-1523 Disciplinary actions; contraband.

(1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 59-1520 the license or licenses of any person licensed under sections 28-1418 to 28-1429 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 59-1520 are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 59-1520 is knowing or otherwise.

Source: Laws 2001, LB 358, § 5; Laws 2011, LB590, § 2.

ARTICLE 16

CONSUMER PROTECTION ACT

Section
59-1608.04. State Settlement Cash Fund; created; use; investment.

59-1608.04 State Settlement Cash Fund; created; use; investment.

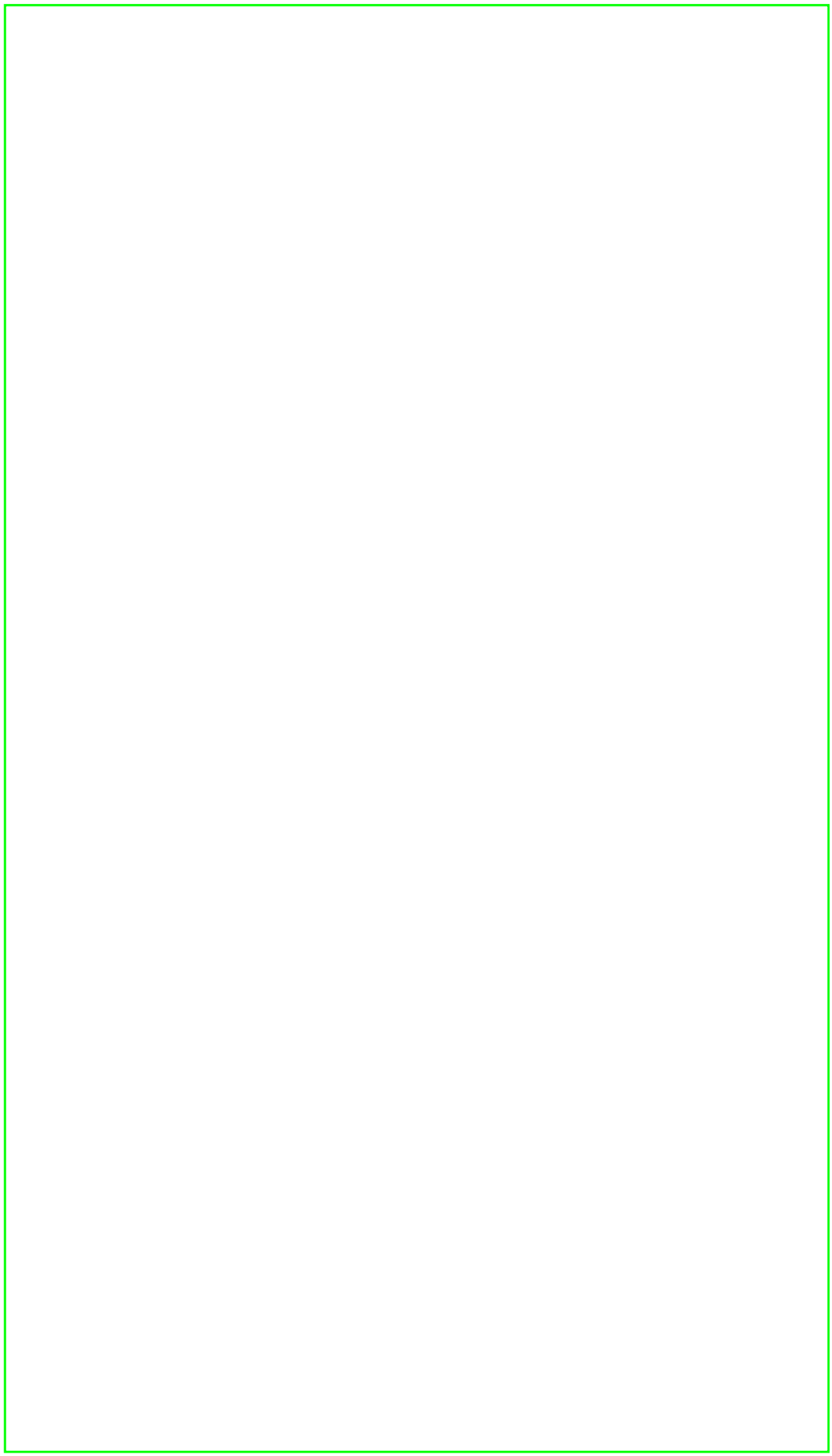
The State Settlement Cash Fund is created. The fund shall be maintained by the Department of Justice and administered by the Attorney General. Except as otherwise provided by law, the fund shall consist of all recoveries received pursuant to the Consumer Protection Act, including any money, funds, securities, or other things of value in the nature of civil damages or other payment, 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, or any other payments received on behalf of the state by the Department of Justice and administered by the Attorney General for the benefit of the state or the general welfare of its citizens, but excluding all funds held in a trust capacity where specific benefits accrue to specific individuals, organizations, or governments. The fund may be expended for any allowable legal purposes as determined by the Attorney General. To provide necessary financial accountability and management oversight, revenue from individual settlement agreements or other separate sources credited to the State Settlement Cash Fund may be tracked and accounted for within the state accounting system through the use of separate and distinct funds, subfunds, or any other

available accounting mechanism specifically approved by the Accounting Administrator for use by the Department of Justice. 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 1061, § 4; Laws 2009, First Spec. Sess., LB3, § 34; Laws 2010, LB190, § 7; Laws 2011, LB549, § 8.

Cross References

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



CHAPTER 60
MOTOR VEHICLES

Article.
1. Motor Vehicle Certificate of Title Act. 60-101 to 60-189.
3. Motor Vehicle Registration. 60-301 to 60-3,221.
4. Motor Vehicle Operators' Licenses.
   (e) General Provisions. 60-462 to 60-471.
   (f) Provisions Applicable to All Operators' Licenses. 60-479 to 60-4,111.01.
   (g) Provisions Applicable to Operation of Motor Vehicles Other than Commercial. 60-4,112 to 60-4,130.03.
   (h) Provisions Applicable to Operation of Commercial Motor Vehicles. 60-4,131 to 60-4,171.
   (j) State Identification Cards. 60-4,181.
   (k) Point System. 60-4,182, 60-4,184.
5. Motor Vehicle Safety Responsibility.
   (a) Definitions. 60-501.
   (c) Security Following Accident. 60-507.
   (d) Proof of Financial Responsibility. 60-520, 60-547.
6. Nebraska Rules of the Road.
   (a) General Provisions. 60-601 to 60-636.01.
   (d) Accidents and Accident Reporting. 60-697, 60-698.
   (e) Applicability of Traffic Laws. 60-6,109.
   (g) Use of Roadway and Passing. 60-6,133.
   (l) Special Stops. 60-6,175.
   (m) Miscellaneous Rules. 60-6,179.01, 60-6,179.02.
   (o) Alcohol and Drug Violations. 60-6,196.01 to 60-6,211.11.
   (q) Lighting and Warning Equipment. 60-6,232.
   (t) Windshields, Windows, and Mirrors. 60-6,256.
   (u) Occupant Protection Systems. 60-6,267, 60-6,268.
   (y) Size, Weight, and Load. 60-6,288.01 to 60-6,299.
   (ee) Special Rules for Minibikes and Other Off-Road Vehicles. 60-6,348, 60-6,349.
   (ff) Special Rules for All-Terrain Vehicles. 60-6,355.
   (kk) Special Rules for Low-Speed Vehicles. 60-6,380.
   (ll) Special Rules for Golf Car Vehicles. 60-6,381.
14. Motor Vehicle Industry Licensing. 60-1401 to 60-1438.01.
18. Camper Units. 60-1803, 60-1807.
21. Minibikes or Motorcycles.
   (b) Motorcycle Safety Education. 60-2120 to 60-2139.
29. Uniform Motor Vehicle Records Disclosure Act. 60-2909.01.

ARTICLE 1
MOTOR VEHICLE CERTIFICATE OF TITLE ACT

Section
60-101. Act, how cited.
60-102. Definitions, where found.
60-105. Body, defined.
60-111. Repealed. Laws 2012, LB 801, § 102.
60-116.01. Golf car vehicle, defined.
60-119.01. Low-speed vehicle, defined.
60-121.01. Minitruck, defined.
60-123. Motor vehicle, defined.
60-126. Parts vehicle, defined.
60-135.01. Utility-type vehicle, defined.

Section

60-101 Act, how cited.

Sections 60-101 to 60-197 shall be known and may be cited as the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 1; Laws 2006, LB 663, § 1; Laws 2006, LB 1061, § 6; Laws 2007, LB286, § 1; Laws 2009, LB49, § 5; Laws

2009, LB202, § 10; Laws 2010, LB650, § 3; Laws 2011, LB289, § 6; Laws 2012, LB1155, § 2.
Operative date January 1, 2013.

60-102 Definitions, where found.

For purposes of the Motor Vehicle Certificate of Title Act, unless the context otherwise requires, the definitions found in sections 60-103 to 60-136.01 shall be used.

Source: Laws 2005, LB 276, § 2; Laws 2007, LB286, § 2; Laws 2010, LB650, § 4; Laws 2012, LB1155, § 3.
Operative date January 1, 2013.

60-105 Body, defined.

Body means that portion of a vehicle which determines its shape and appearance and is attached to the frame. Body does not include the box or bed of a truck.

Source: Laws 2005, LB 276, § 5; Laws 2012, LB751, § 6.
Operative date July 19, 2012.

60-111 Repealed. Laws 2012, LB 801, § 102.

60-116.01 Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

Source: Laws 2012, LB1155, § 4.
Operative date January 1, 2013.

60-119.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2007, LB286, § 5; Laws 2011, LB289, § 7.

60-121.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview

mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 5; Laws 2012, LB898, § 1.
Effective date July 19, 2012.

60-123 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 276, § 23; Laws 2006, LB 765, § 1; Laws 2007, LB286, § 6; Laws 2010, LB650, § 6; Laws 2011, LB289, § 8; Laws 2012, LB1155, § 5.
Operative date January 1, 2013.

60-126 Parts vehicle, defined.

Parts vehicle means a vehicle the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 276, § 26; Laws 2011, LB241, § 1.

60-135.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway device which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf car vehicles or low-speed vehicles.

Source: Laws 2010, LB650, § 7; Laws 2012, LB1155, § 6.
Operative date January 1, 2013.

60-137 Act; applicability.

(1) The Motor Vehicle Certificate of Title Act applies to all vehicles as defined in the act, except:

(a) Farm trailers;

(b) Well-boring apparatus, backhoes, bulldozers, and front-end loaders; and

(c) Trucks and buses from other jurisdictions required to pay registration fees under the Motor Vehicle Registration Act, except a vehicle registered or eligible to be registered as part of a fleet of apportionable vehicles under section 60-3,198.

(2)(a) All new all-terrain vehicles and minibikes sold on or after January 1, 2004, shall be required to have a certificate of title. An owner of an all-terrain vehicle or minibike sold prior to such date may apply for a certificate of title for such all-terrain vehicle or minibike as provided in rules and regulations of the department.

(b) All new low-speed vehicles sold on or after January 1, 2012, shall be required to have a certificate of title. An owner of a low-speed vehicle sold prior to such date may apply for a certificate of title for such low-speed vehicle as provided in rules and regulations of the department.

(3) An owner of a utility trailer may apply for a certificate of title upon compliance with the Motor Vehicle Certificate of Title Act.

(4)(a) Every owner of a manufactured home or mobile home shall obtain a certificate of title for the manufactured home or mobile home prior to affixing it to real estate.

(b) If a manufactured home or mobile home has been affixed to real estate and a certificate of title was not issued before it was so affixed, the owner of such manufactured home or mobile home shall apply for and be issued a certificate of title at any time for surrender and cancellation as provided in section 60-169.

(5) All new utility-type vehicles sold on or after January 1, 2011, shall be required to have a certificate of title. An owner of a utility-type vehicle sold prior to such date may apply for a certificate of title for such utility-type vehicle as provided in rules and regulations of the department.

Source: Laws 2005, LB 276, § 37; Laws 2006, LB 765, § 2; Laws 2007, LB286, § 9; Laws 2008, LB953, § 2; Laws 2010, LB650, § 9; Laws 2011, LB289, § 9.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-139 Certificate of title; vehicle identification number; required; when.

Except as provided in section 60-137, 60-138, 60-142, or 60-142.01, no person shall sell or otherwise dispose of a vehicle without (1) delivering to the purchaser or transferee of such vehicle a certificate of title with such assignments thereon as are necessary to show title in the purchaser and (2) having affixed to the vehicle its vehicle identification number if it is not already affixed. No person shall bring into this state a vehicle for which a certificate of title is required in Nebraska, except for temporary use, without complying with the Motor Vehicle Certificate of Title Act.

No purchaser or transferee shall receive a certificate of title which does not contain such assignments as are necessary to show title in the purchaser or transferee. Possession of a certificate of title which does not comply with this requirement shall be prima facie evidence of a violation of this section, and such purchaser or transferee, upon conviction, shall be subject to the penalty provided by section 60-180.

Source: Laws 2005, LB 276, § 39; Laws 2006, LB 663, § 3; Laws 2011, LB241, § 2.

60-140 Acquisition of vehicle; proof of ownership; effect.

(1) Except as provided in section 60-164, no person acquiring a vehicle from the owner thereof, whether such owner is a manufacturer, importer, dealer, or entity or person, shall acquire any right, title, claim, or interest in or to such vehicle until the acquiring person has had delivered to him or her physical possession of such vehicle and (a) a certificate of title or a duly executed manufacturer's or importer's certificate with such assignments as are necessary to show title in the purchaser, (b) a written instrument as required by section 60-1417, (c) an affidavit and notarized bill of sale as provided in section 60-142.01, or (d) a bill of sale for a parts vehicle as required by section 60-142.

(2) No waiver or estoppel shall operate in favor of such person against a person having physical possession of such vehicle and such documentation. No court shall recognize the right, title, claim, or interest of any person in or to a vehicle, for which a certificate of title has been issued in Nebraska, sold, disposed of, mortgaged, or encumbered, unless there is compliance with this section. Beginning on the implementation date of the electronic title and lien system designated by the director pursuant to section 60-164, an electronic certificate of title record shall be evidence of an owner's right, title, claim, or interest in a vehicle.

Source: Laws 2005, LB 276, § 40; Laws 2006, LB 663, § 4; Laws 2009, LB202, § 11; Laws 2011, LB241, § 3.

60-142 Historical vehicle or parts vehicle; sale or transfer; parts vehicle; bill of sale; prohibited act; violation; penalty.

(1) The sale or trade and subsequent legal transfer of ownership of a historical vehicle or parts vehicle shall not be contingent upon any condition that would require the historical vehicle or parts vehicle to be in operating condition at the time of the sale or transfer of ownership.

(2) No owner of a parts vehicle shall sell or otherwise dispose of the parts vehicle without delivering to the purchaser a bill of sale for the parts vehicle prescribed by the department. The bill of sale may include, but shall not be limited to, the vehicle identification number, the year, make, and model of the vehicle, the name and residential and mailing addresses of the owner and purchaser, the acquisition date, and the odometer statement provided for in section 60-192. A person who uses a bill of sale for a parts vehicle to transfer ownership of any vehicle that does not meet the definition of a parts vehicle shall be guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 42; Laws 2006, LB 663, § 5; Laws 2011, LB241, § 4.

60-142.03 Recognized car club; qualified car club representative; department; powers and duties.

(1) For purposes of this section, car club means an organization that has members with knowledge of and expertise pertaining to authentic vehicles and that has members with knowledge of and expertise pertaining to the restoration and preservation of specific makes and models of vehicles using replacement parts that are essentially the same in design and material to that originally supplied by the manufacturer for a specific year, make, and model of vehicle.

(2) To become a recognized car club, a car club shall apply to the department. For a car club to become recognized, it must be a nonprofit organization with established bylaws and at least twenty members. The applicant shall provide a copy of the bylaws and a membership list to the department. The department shall determine if a car club qualifies as a recognized car club. The determination of the department shall be final and nonappealable.

(3) A member of a recognized car club may apply to the department to become a qualified car club representative. Each qualified car club representative shall be designated by the president or director of the local chapter of the recognized car club of which he or she is a member. The department shall identify and maintain a list of qualified car club representatives. A qualified car club representative may apply to be placed on the list of qualified car club representatives by providing the department with his or her name, address, and telephone number, the name, address, and telephone number of the recognized car club he or she represents, a copy of the designation of the representative by the president or director of the local chapter of the recognized car club, and such other information as may be required by the department. The department may place a qualified car club representative on the list upon receipt of a completed application and may provide each representative with information for inspection of vehicles and parts. The determination of the department regarding designation of an individual as a qualified car club representative and placement on the list of qualified car club representatives shall be final and nonappealable. The department shall distribute the list to county treasurers.

(4) When a qualified car club representative inspects vehicles and replacement parts, he or she shall determine whether all major component parts used in the assembly of a vehicle are original or essentially the same in design and material to that originally supplied by the manufacturer for the specific year, make, and model of vehicle, including the appropriate engine, body material, body shape, and other requirements as prescribed by the department. After such inspection, the representative shall provide the owner with a statement in the form prescribed by the department which includes the findings of the inspection. No qualified car club representative shall charge any fee for the inspection or the statement. No qualified car club representative shall provide a statement for any vehicle owned by such representative or any member of his or her immediate family.

(5) The director may summarily remove a person from the list of qualified car club representatives upon written notice. Such person may reapply for inclusion on the list upon presentation of suitable evidence satisfying the director that the cause for removal from the list has been corrected, eliminated, no longer exists, or will not affect or interfere with the person's judgment or qualifications for inspection of vehicles to determine whether or not any replacement parts are essentially the same in design and material to that

originally supplied by the original manufacturer for the specific year, make, and model of vehicle.

(6) The department may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2006, LB 663, § 8; Laws 2012, LB801, § 28.
Effective date July 19, 2012.

60-142.08 Low-speed vehicle; application for certificate of title indicating year and make; procedure.

If a low-speed vehicle does not have a manufacturer's vehicle identification number, the owner of the low-speed vehicle may apply for a certificate of title by presenting a manufacturer's statement of origin for the low-speed vehicle, a statement that an inspection has been conducted on the low-speed vehicle, and a vehicle identification number as described in section 60-148. The certificate of title shall indicate the year of the low-speed vehicle as the year application for title was made and the make of the low-speed vehicle.

Source: Laws 2011, LB289, § 10.

60-144 Certificate of title; issuance; filing; application; form.

(1)(a) Except as provided in subdivisions (b), (c), and (d) of this subsection, the county treasurer shall be responsible for issuing and filing certificates of title for vehicles, and each county shall issue and file such certificates of title using the vehicle titling and registration computer system prescribed by the department. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(b) The department shall issue and file certificates of title for Nebraska-based fleet vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(c) The department shall issue and file certificates of title for state-owned vehicles. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(d) The department shall issue certificates of title pursuant to section 60-142.06. Application for a certificate of title shall be made upon a form prescribed by the department. All applications shall be accompanied by the appropriate fee or fees.

(2) If the owner of an all-terrain vehicle, a utility-type vehicle, or a minibike resides in Nebraska, the application shall be filed with the county treasurer of the county in which the owner resides.

(3)(a) Except as otherwise provided in subdivision (b) of this subsection, if a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, has situs in Nebraska, the application shall be filed with the county treasurer of the county in which the vehicle has situs.

(b) If a motor vehicle dealer licensed under the Motor Vehicle Industry Regulation Act, applies for a certificate of title for a vehicle, the application may be filed with the county treasurer of any county.

(4) If the owner of a vehicle is a nonresident, the application shall be filed in the county in which the transaction is consummated.

(5) The application shall be filed within thirty days after the delivery of the vehicle.

(6) All applicants registering a vehicle pursuant to section 60-3,198 shall file the application for a certificate of title with the Division of Motor Carrier Services of the department. The division shall deliver the certificate to the applicant if there are no liens on the vehicle. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164. All certificates of title issued by the division shall be issued in the manner prescribed for the county treasurer in section 60-152.

Source: Laws 2005, LB 276, § 44; Laws 2006, LB 663, § 13; Laws 2006, LB 765, § 3; Laws 2009, LB202, § 12; Laws 2010, LB650, § 11; Laws 2010, LB816, § 4; Laws 2011, LB212, § 2; Laws 2012, LB801, § 29.
Effective date July 19, 2012.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-146 Application; identification inspection required; exceptions; form; procedure; additional inspection authorized.

(1) An application for a certificate of title for a vehicle shall include a statement that an identification inspection has been conducted on the vehicle unless (a) the title sought is a salvage branded certificate of title or a nontransferable certificate of title, (b) the surrendered ownership document is a Nebraska certificate of title, a manufacturer's statement of origin, an importer's statement of origin, a United States Government Certificate of Release of a vehicle, or a nontransferable certificate of title, (c) the application contains a statement that the vehicle is to be registered under section 60-3,198, (d) the vehicle is a cabin trailer, (e) the title sought is the first title for the vehicle sold directly by the manufacturer of the vehicle to a dealer franchised by the manufacturer, or (f) the vehicle was sold at an auction authorized by the manufacturer and purchased by a dealer franchised by the manufacturer of the vehicle.

(2) The department shall prescribe a form to be executed by a dealer and submitted with an application for a certificate of title for vehicles exempt from inspection pursuant to subdivision (1)(e) or (f) of this section. The form shall clearly identify the vehicle and state under penalty of law that the vehicle is exempt from inspection.

(3) The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183, shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county treasurer shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state.

(4) The identification inspection shall include examination and notation of the then current odometer reading, if any, and a comparison of the vehicle identification number with the number listed on the ownership records, except

that if a lien is registered against a vehicle and recorded on the vehicle's ownership records, the county treasurer shall provide a copy of the ownership records for use in making such comparison. If such numbers are not identical, if there is reason to believe further inspection is necessary, or if the inspection is for a Nebraska assigned number, the person performing the inspection shall make a further inspection of the vehicle which may include, but shall not be limited to, examination of other identifying numbers placed on the vehicle by the manufacturer and an inquiry into the numbering system used by the state issuing such ownership records to determine ownership of a vehicle. The identification inspection shall also include a statement that the vehicle identification number has been checked for entry in the National Crime Information Center and the Nebraska Crime Information Service. In the case of an assembled vehicle, the identification inspection shall include, but not be limited to, an examination of the records showing the date of receipt and source of each major component part. No identification inspection shall be conducted unless all major component parts are properly attached to the vehicle in the correct location.

(5) If there is cause to believe that odometer fraud exists, written notification shall be given to the office of the Attorney General. If after such inspection the sheriff or his or her designee determines that the vehicle is not the vehicle described by the ownership records, no statement shall be issued.

(6) The county treasurer or the department may also request an identification inspection of a vehicle to determine if it meets the definition of motor vehicle as defined in section 60-123.

Source: Laws 2005, LB 276, § 46; Laws 2006, LB 765, § 4; Laws 2007, LB286, § 11; Laws 2012, LB801, § 30.
Effective date July 19, 2012.

60-147 Mobile home or cabin trailer; application; contents; mobile home transfer statement.

(1) An application for a certificate of title for a mobile home or cabin trailer shall be accompanied by a certificate that states that sales or use tax has been paid on the purchase of the mobile home or cabin trailer or that the transfer of title was exempt from sales and use taxes. The county treasurer shall issue a certificate of title for a mobile home or cabin trailer but shall not deliver the certificate of title unless the certificate required under this subsection accompanies the application for certificate of title for the mobile home or cabin trailer, except that the failure of the application to be accompanied by such certificate shall not prevent the notation of a lien on the certificate of title to the mobile home or cabin trailer pursuant to section 60-164.

(2) An application for a certificate of title to a mobile home shall be accompanied by a mobile home transfer statement prescribed by the Tax Commissioner. The mobile home transfer statement shall be filed by the applicant with the county treasurer of the county of application for title. The county treasurer shall issue a certificate of title to a mobile home but shall not deliver the certificate of title unless the mobile home transfer statement accompanies the application for title, except that the failure to provide the mobile home transfer statement shall not prevent the notation of a lien on the

certificate of title to the mobile home pursuant to section 60-164 and delivery to the holder of the first lien.

Source: Laws 2005, LB 276, § 47; Laws 2007, LB166, § 1; Laws 2007, LB334, § 9; Laws 2009, LB202, § 13; Laws 2012, LB801, § 31. Effective date July 19, 2012.

60-148 Assignment of distinguishing identification number; when.

(1) Whenever a person applies for a certificate of title for a vehicle, the department shall assign a distinguishing identification number to the vehicle if the vehicle identification number is destroyed, obliterated, or missing. The owner of such a vehicle to which such number is assigned shall have such number affixed to such vehicle as provided in subsection (2) of this section and sign an affidavit on a form prepared by the department that such number has been attached. Before the certificate of title for an assigned number is released to the applicant by the county treasurer, the applicant shall also provide a statement that an inspection has been conducted.

(2) The department shall develop a metallic assigned vehicle identification number plate which can be permanently secured to a vehicle by rivets or a permanent sticker or other form of marking or identifying the vehicle with the distinguishing identification number as determined by the director. All distinguishing identification numbers shall contain seventeen characters in conformance with national standards. When the manufacturer's vehicle identification number is known, it shall be used by the department as the assigned number. In the case of an assembled all-terrain vehicle, utility-type vehicle, or minibike or assembled vehicle, the department shall use a distinguishing identification number. The department shall, upon application by an owner, provide the owner with a number plate or a permanent sticker or other form of marking or identification displaying a distinguishing identification number or the manufacturer's number.

(3) Any vehicle to which a distinguishing identification number is assigned shall be titled under such distinguishing identification number when titling of the vehicle is required under the Motor Vehicle Certificate of Title Act.

Source: Laws 2005, LB 276, § 48; Laws 2006, LB 663, § 14; Laws 2010, LB650, § 12; Laws 2012, LB801, § 32.
Effective date July 19, 2012.

60-149 Application; documentation required.

(1)(a) If a certificate of title has previously been issued for a vehicle in this state, the application for a new certificate of title shall be accompanied by the certificate of title duly assigned except as otherwise provided in the Motor Vehicle Certificate of Title Act.

(b) Except for manufactured homes or mobile homes as provided in subsection (2) of this section, if a certificate of title has not previously been issued for the vehicle in this state or if a certificate of title is unavailable pursuant to subsection (4) of section 52-1801, the application shall be accompanied by:

(i) A manufacturer's or importer's certificate except as otherwise provided in subdivision (vii) of this subdivision;

(ii) A duly certified copy of the manufacturer's or importer's certificate;

(iii) An affidavit by the owner affirming ownership in the case of an all-terrain vehicle, a utility-type vehicle, or a minibike;

(iv) A certificate of title from another state;

(v) A court order issued by a court of record, a manufacturer's certificate of origin, or an assigned registration certificate, if the law of the state from which the vehicle was brought into this state does not have a certificate of title law;

(vi) Documentation prescribed in section 60-142.01, 60-142.02, 60-142.04, or 60-142.05; or

(vii) A manufacturer's or importer's certificate and an affidavit by the owner affirming ownership in the case of a minitruck.

(c) If the application for a certificate of title in this state is accompanied by a valid certificate of title issued by another state which meets that state's requirements for transfer of ownership, then the application may be accepted by this state.

(d) If a certificate of title has not previously been issued for the vehicle in this state and the applicant is unable to provide such documentation, the applicant may apply for a bonded certificate of title as prescribed in section 60-167.

(2)(a) If the application for a certificate of title for a manufactured home or a mobile home is being made in accordance with subdivision (4)(b) of section 60-137 or if the certificate of title for a manufactured home or a mobile home is unavailable pursuant to section 52-1801, the application shall be accompanied by proof of ownership in the form of:

(i) A duly assigned manufacturer's or importer's certificate;

(ii) A certificate of title from another state;

(iii) A court order issued by a court of record;

(iv) Evidence of ownership as provided for in section 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, or 60-2401 to 60-2411; or

(v) Assessment records for the manufactured home or mobile home from the county assessor and an affidavit by the owner affirming ownership.

(b) If the applicant cannot produce proof of ownership described in subdivision (a) of this subsection, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize the county treasurer to issue a certificate of title, as the case may be.

(3) For purposes of this section, certificate of title includes a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle. Only a salvage branded certificate of title shall be issued to any vehicle conveyed upon a salvage certificate, a salvage branded certificate of title, or any other document of ownership issued by another state or jurisdiction for a salvage vehicle.

(4) The county treasurer shall retain the evidence of title presented by the applicant and on which the certificate of title is issued.

Source: Laws 2005, LB 276, § 49; Laws 2006, LB 663, § 15; Laws 2010, LB650, § 13; Laws 2010, LB933, § 1; Laws 2012, LB801, § 33. Effective date July 19, 2012.

60-150 Application; county treasurer; duties.

The county treasurer shall use reasonable diligence in ascertaining whether or not the statements in the application for a certificate of title are true by checking the application and documents accompanying the same with the records available. If he or she is satisfied that the applicant is the owner of such vehicle and that the application is in the proper form, the county treasurer shall issue a certificate of title over his or her signature and sealed with the appropriate seal.

Source: Laws 2005, LB 276, § 50; Laws 2012, LB801, § 34.
Effective date July 19, 2012.

60-151 Certificate of title obtained in name of purchaser; exceptions.

The certificate of title for a vehicle shall be obtained in the name of the purchaser upon application signed by the purchaser, except that (1) for titles to be held by husband and wife, applications may be accepted upon the signature of either one as a signature for himself or herself and as agent for his or her spouse and (2) for an applicant providing proof that he or she is a handicapped or disabled person as defined in section 60-331.02, applications may be accepted upon the signature of the applicant's parent, legal guardian, foster parent, or agent.

Source: Laws 2005, LB 276, § 51; Laws 2011, LB163, § 14.

60-152 Certificate of title; issuance; delivery of copies; seal; county treasurer; duties.

(1) The county treasurer shall issue a certificate of title for a vehicle in duplicate and retain one copy in his or her office. An electronic copy, in a form prescribed by the department, shall be transmitted on the day of issuance to the department. The county treasurer shall sign and affix the appropriate seal to the original certificate of title and, if there are no liens on the vehicle, deliver the certificate to the applicant. If there are one or more liens on the vehicle, the certificate of title shall be handled as provided in section 60-164 or 60-165.

(2) The county treasurers of the various counties shall adopt a circular seal with the words County Treasurer of ..... (insert name) County thereon. Such seal shall be used by the county treasurer or the deputy or legal authorized agent of such officer, without charge to the applicant, on any certificate of title, application for certificate of title, duplicate copy, assignment or reassignment, power of attorney, statement, or affidavit pertaining to the issuance of a Nebraska certificate of title.

(3) The department shall prescribe a uniform method of numbering certificates of title.

(4) The county treasurer shall (a) file all certificates of title according to rules and regulations adopted and promulgated by the department, (b) maintain in the office indices for such certificates of title, (c) be authorized to destroy all previous records five years after a subsequent transfer has been made on a vehicle, and (d) be authorized to destroy all certificates of title and all supporting records and documents which have been on file for a period of five years or more from the date of filing the certificate or a notation of lien, whichever occurs later.

Source: Laws 2005, LB 276, § 52; Laws 2007, LB286, § 12; Laws 2009, LB202, § 14; Laws 2012, LB801, § 35.
Effective date July 19, 2012.

60-153 Certificate of title; form; contents; secure power-of-attorney form.

(1) A certificate of title shall be printed upon safety security paper to be selected by the department. The certificate of title, manufacturer's statement of origin, and assignment of manufacturer's certificate shall be upon forms prescribed by the department and may include, but shall not be limited to, county of issuance, date of issuance, certificate of title number, previous certificate of title number, vehicle identification number, year, make, model, and body type of the vehicle, name and residential and mailing address of the owner, acquisition date, issuing county treasurer's signature and official seal, and sufficient space for the notation and release of liens, mortgages, or encumbrances, if any. A certificate of title issued on or after September 1, 2007, shall include the words ''void if altered''. A certificate of title that is altered shall be deemed a mutilated certificate of title. The certificate of title of an all-terrain vehicle, utility-type vehicle, or minibike shall include the words ''not to be registered for road use''.

(2) An assignment of certificate of title shall appear on each certificate of title and shall include, but not be limited to, a statement that the owner of the vehicle assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the owner or the owner's parent, legal guardian, foster parent, or agent in the case of an owner who is a handicapped or disabled person as defined in section 60-331.02.

(3) A reassignment by a dealer shall appear on each certificate of title and shall include, but not be limited to, a statement that the dealer assigns all his or her right, title, and interest in the vehicle, the name and address of the assignee, the name and address of the lienholder or secured party, if any, and the signature of the dealer or designated representative. Reassignments shall be printed on the reverse side of each certificate of title as many times as convenient.

(4) The department may prescribe a secure power-of-attorney form and may contract with one or more persons to develop, provide, sell, and distribute secure power-of-attorney forms in the manner authorized or required by the federal Truth in Mileage Act of 1986 and any other federal law or regulation. Any secure power-of-attorney form authorized pursuant to a contract shall conform to the terms of the contract and be in strict compliance with the requirements of the department.

Source: Laws 2005, LB 276, § 53; Laws 2007, LB286, § 13; Laws 2010, LB650, § 14; Laws 2011, LB163, § 15; Laws 2012, LB801, § 36. Effective date July 19, 2012.

60-154 Fees.

(1)(a) For each original certificate of title issued by a county for a motor vehicle or trailer, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; forty-five cents to the Nebraska State Patrol Cash Fund; and ten cents to the Nebraska Motor Vehicle Industry Licensing Fund.

(b) For each original certificate of title issued by a county for an all-terrain vehicle, a utility-type vehicle, or a minibike, the fee shall be ten dollars. Three dollars and twenty-five cents shall be retained by the county. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars shall be remitted to the State Treasurer for credit to the General Fund. Seventy-five cents shall be remitted to the State Treasurer for credit as follows: Twenty cents to the Motor Vehicle Fraud Cash Fund; and fifty-five cents to the Nebraska State Patrol Cash Fund.

(2) For each original certificate of title issued by the department for a vehicle except as provided in section 60-159.01, the fee shall be ten dollars. Four dollars shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Six dollars shall be remitted to the State Treasurer for credit to the Motor Carrier Division Cash Fund.

Source: Laws 2005, LB 276, § 54; Laws 2006, LB 663, § 16; Laws 2006, LB 1061, § 7; Laws 2010, LB650, § 15; Laws 2012, LB751, § 7.
Operative date July 19, 2012.

60-161 County treasurer; remit funds; when.

The county treasurer shall remit all funds due the State Treasurer under sections 60-154 to 60-160 monthly and not later than the fifteenth day of the month following collection. The county treasurer shall credit the fees not due the State Treasurer to the county general fund.

Source: Laws 2005, LB 276, § 61; Laws 2011, LB135, § 2; Laws 2012, LB801, § 37.
Effective date July 19, 2012.

60-162 Department; powers; rules and regulations.

(1) The department may adopt and promulgate rules and regulations to insure uniform and orderly operation of the Motor Vehicle Certificate of Title Act, and the county treasurer of each county shall conform to such rules and regulations and proceed at the direction of the department. The department shall also provide the county treasurers with the necessary training for the proper administration of the act.

(2) The department shall receive all instruments relating to vehicles forwarded to it by the county treasurers under the act and shall maintain indices covering the state at large for the instruments so received. These indices shall be by motor number or by an identification number and alphabetically by the owner's name and shall be for the state at large and not for individual counties.

(3) The department shall provide and furnish the forms required by the act, except manufacturers' or importers' certificates.

(4) The county treasurer shall keep on hand a sufficient supply of blank forms which, except certificate of title forms, shall be furnished and distributed without charge to manufacturers, dealers, or other persons residing within the county.

Source: Laws 2005, LB 276, § 62; Laws 2012, LB801, § 38.
Effective date July 19, 2012.

60-162.01 Repealed. Laws 2012, LB 801, § 102.

60-163 Department; cancellation of certificate of title; procedure.

(1) The department shall check with its records all duplicate certificates of title received from a county treasurer. If it appears that a certificate of title has been improperly issued, the department shall cancel the same. Upon cancellation of any certificate of title, the department shall notify the county treasurer who issued the same, and such county treasurer shall thereupon enter the cancellation upon his or her records. The department shall also notify the person to whom such certificate of title was issued, as well as any lienholders appearing thereon, of the cancellation and shall demand the surrender of such certificate of title, but the cancellation shall not affect the validity of any lien noted thereon. The holder of such certificate of title shall return the same to the department forthwith.

(2) If a certificate of registration has been issued to the holder of a certificate of title so canceled, the department shall immediately cancel the same and demand the return of such certificate of registration and license plates or tags, and the holder of such certificate of registration and license plates or tags shall return the same to the department forthwith.

Source: Laws 2005, LB 276, § 63; Laws 2012, LB801, § 39.
Effective date July 19, 2012.

60-164 Department; implement electronic title and lien system for vehicles; liens on motor vehicles; when valid; notation on certificate; inventory, exception; priority; adjustment to rental price; how construed; notation of cancellation; failure to deliver certificate; damages; release.

(1) The department shall implement an electronic title and lien system for vehicles no later than January 1, 2011. The director shall designate the date for the implementation of the system. Beginning on the implementation date, the holder of a security interest, trust receipt, conditional sales contract, or similar instrument regarding a vehicle may file a lien electronically as prescribed by the department. Beginning on the implementation date, upon receipt of an application for a certificate of title for a vehicle, any lien filed electronically shall become part of the electronic certificate of title record created by the county treasurer or department maintained on the electronic title and lien system. Beginning on the implementation date, if an application for a certificate of title indicates that there is a lien or encumbrance on a vehicle or if a lien or notice of lien has been filed electronically, the department shall retain an electronic certificate of title record and shall note and cancel such liens electronically on the system. The department shall provide access to the electronic certificate of title records for motor vehicle dealers and lienholders who participate in the system by a method determined by the director.

(2) Except as provided in section 60-165, the provisions of article 9, Uniform Commercial Code, shall never be construed to apply to or to permit or require the deposit, filing, or other record whatsoever of a security agreement, conveyance intended to operate as a mortgage, trust receipt, conditional sales contract, or similar instrument or any copy of the same covering a vehicle. Any mortgage, conveyance intended to operate as a security agreement as provided by article 9, Uniform Commercial Code, trust receipt, conditional sales contract, or other similar instrument covering a vehicle, if such instrument is

accompanied by delivery of such manufacturer's or importer's certificate and followed by actual and continued possession of the same by the holder of such instrument or, in the case of a certificate of title, if a notation of the same has been made electronically as prescribed in subsection (1) of this section or by the county treasurer or department on the face of the certificate of title or on the electronic certificate of title record, shall be valid as against the creditors of the debtor, whether armed with process or not, and subsequent purchasers, secured parties, and other lienholders or claimants but otherwise shall not be valid against them, except that during any period in which a vehicle is inventory, as defined in section 9-102, Uniform Commercial Code, held for sale by a person or corporation that is required to be licensed as provided in the Motor Vehicle Industry Regulation Act and is in the business of selling such vehicles, the filing provisions of article 9, Uniform Commercial Code, as applied to inventory, shall apply to a security interest in such vehicle created by such person or corporation as debtor without the notation of lien on the certificate of title. A buyer of a vehicle at retail from a dealer required to be licensed as provided in the Motor Vehicle Industry Regulation Act shall take such vehicle free of any security interest. A purchase-money security interest, as defined in section 9-103, Uniform Commercial Code, in a vehicle is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase-money security interest attaches.

(3) Subject to subsections (1) and (2) of this section, all liens, security agreements, and encumbrances noted upon a certificate of title or an electronic certificate of title record and all liens noted electronically as prescribed in subsection (1) of this section shall take priority according to the order of time in which the same are noted by the county treasurer or department. Exposure for sale of any vehicle by the owner thereof with the knowledge or with the knowledge and consent of the holder of any lien, security agreement, or encumbrance on such vehicle shall not render the same void or ineffective as against the creditors of such owner or holder of subsequent liens, security agreements, or encumbrances upon such vehicle.

(4) The holder of a security agreement, trust receipt, conditional sales contract, or similar instrument, upon presentation of such instrument to the department or to any county treasurer, together with the certificate of title and the fee prescribed for notation of lien, may have a notation of such lien made on the face of such certificate of title. The owner of a vehicle may present a valid out-of-state certificate of title issued to such owner for such vehicle with a notation of lien on such certificate of title and the prescribed fee to the county treasurer or department and have the notation of lien made on the new certificate of title issued pursuant to section 60-144 without presenting a copy of the lien instrument. The county treasurer or the department shall enter the notation and the date thereof over the signature of the person making the notation and the seal of the office. If noted by a county treasurer, he or she shall on that day notify the department which shall note the lien on its records. The county treasurer or the department shall also indicate by appropriate notation and on such instrument itself the fact that such lien has been noted on the certificate of title.

(5) A transaction does not create a sale or a security interest in a vehicle, other than an all-terrain vehicle, a utility-type vehicle, or a minibike, merely because it provides that the rental price is permitted or required to be adjusted

under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the vehicle.

(6) The county treasurer or the department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county treasurer or the department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien and, after notation of such other lien, the county treasurer or the department shall deliver the certificate of title to the first lienholder. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or the department for the purpose of showing such other lien on such certificate of title within fifteen days after the date of notice shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the showing of such lien on the certificate of title.

(7) Beginning on the implementation date of the electronic title and lien system, upon receipt of a subsequent lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments or a notice of lien filed electronically, together with an application for notation of the subsequent lien, the fee prescribed in section 60-154, and, if a printed certificate of title exists, the presentation of the certificate of title, the county treasurer or department shall make notation of such other lien. If the certificate of title is not an electronic certificate of title record, the county treasurer or department, upon receipt of a lien instrument duly signed by the owner in the manner prescribed by law governing such lien instruments together with the fee prescribed for notation of lien, shall notify the first lienholder to deliver to the county treasurer or department, within fifteen days after the date of notice, the certificate of title to permit notation of such other lien. After such notation of lien, the lien shall become part of the electronic certificate of title record created by the county treasurer or department which is maintained on the electronic title and lien system. The holder of a certificate of title who refuses to deliver a certificate of title to the county treasurer or department for the purpose of noting such other lien on such certificate of title within fifteen days after the date when notified to do so shall be liable for damages to such other lienholder for the amount of damages such other lienholder suffered by reason of the holder of the certificate of title refusing to permit the noting of such lien on the certificate of title.

(8) When a lien is discharged, the holder shall, within fifteen days after payment is received, note a cancellation of the lien on the certificate of title over his, her, or its signature and deliver the certificate of title to the county treasurer or the department, which shall note the cancellation of the lien on the face of the certificate of title and on the records of such office. If delivered to a county treasurer, he or she shall on that day notify the department which shall note the cancellation on its records. The county treasurer or the department shall then return the certificate of title to the owner or as otherwise directed by the owner. The cancellation of lien shall be noted on the certificate of title without charge. For an electronic certificate of title record, the lienholder shall, within fifteen days after payment is received when such lien is discharged, notify the department electronically or provide written notice of such lien release, in a manner prescribed by the department, to the county treasurer or department. The department shall note the cancellation of lien and, if no other

liens exist, issue the certificate of title to the owner or as otherwise directed by the owner or lienholder. If the holder of the title cannot locate a lienholder, a lien may be discharged ten years after the date of filing by presenting proof that thirty days have passed since the mailing of a written notice by certified mail, return receipt requested, to the last-known address of the lienholder.

Source: Laws 2005, LB 276, § 64; Laws 2007, LB286, § 14; Laws 2008, LB756, § 3; Laws 2008, LB953, § 3; Laws 2009, LB202, § 15; Laws 2010, LB650, § 17; Laws 2010, LB816, § 5; Laws 2012, LB801, § 40.
Effective date July 19, 2012.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-165 Security interest in all-terrain vehicle, minibike, utility-type vehicle, or low-speed vehicle; perfection; priority; notation of lien; when.

(1) Any security interest in an all-terrain vehicle or minibike perfected pursuant to article 9, Uniform Commercial Code, before, on, or after January 1, 2004, in a utility-type vehicle so perfected before, on, or after January 1, 2011, or in a low-speed vehicle so perfected before, on, or after January 1, 2012, shall continue to be perfected until (a) the financing statement perfecting such security interest is terminated or lapses in the absence of the filing of a continuation statement pursuant to article 9, Uniform Commercial Code, or (b) an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title is issued and a notation of lien is made as provided in section 60-164.

(2) Any lien noted on the face of an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle certificate of title or on an electronic certificate of title record pursuant to subsection (1), (3), (4), (5), or (6) of this section, on behalf of the holder of a security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle which was previously perfected pursuant to article 9, Uniform Commercial Code, shall have priority as of the date such security interest was originally perfected.

(3) The holder of a certificate of title for an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall, upon request, surrender the certificate of title to a holder of a previously perfected security interest in the all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle to permit notation of a lien on the certificate of title or on an electronic certificate of title record and shall do such other acts as may be required to permit such notation.

(4) If the owner of an all-terrain vehicle or minibike subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2004, the security interest holder may obtain a certificate of title in the name of the owner of the all-terrain vehicle or minibike following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(5) If the owner of a utility-type vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2011, the security interest holder may obtain a certificate of title in the name of the owner of the utility-type vehicle following

the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(6) If the owner of a low-speed vehicle subject to a security interest perfected pursuant to article 9, Uniform Commercial Code, fails or refuses to obtain a certificate of title after January 1, 2012, the security interest holder may obtain a certificate of title in the name of the owner of the low-speed vehicle following the procedures of section 60-144 and may have a lien noted on the certificate of title or on an electronic certificate of title record pursuant to section 60-164.

(7) The assignment, release, or satisfaction of a security interest in an all-terrain vehicle, utility-type vehicle, minibike, or low-speed vehicle shall be governed by the laws under which it was perfected.

Source: Laws 2005, LB 276, § 65; Laws 2009, LB202, § 16; Laws 2010, LB650, § 18; Laws 2011, LB289, § 11.

60-166 New certificate of title; issued when; proof required; processing of application.

(1) In the event of (a) the transfer of ownership of a vehicle by operation of law as upon inheritance, devise, or bequest, order in bankruptcy, insolvency, replevin, or execution sale or as provided in sections 30-24,125, 52-601.01 to 52-605, 60-1901 to 60-1911, and 60-2401 to 60-2411, (b) the engine of a vehicle being replaced by another engine, (c) a vehicle being sold to satisfy storage or repair charges, or (d) repossession being had upon default in performance of the terms of a chattel mortgage, trust receipt, conditional sales contract, or other like agreement, the county treasurer of any county or the department, upon the surrender of the prior certificate of title or the manufacturer's or importer's certificate, or when that is not possible, upon presentation of satisfactory proof of ownership and right of possession to such vehicle, and upon payment of the appropriate fee and the presentation of an application for certificate of title, may issue to the applicant a certificate of title thereto. If the prior certificate of title issued for such vehicle provided for joint ownership with right of survivorship, a new certificate of title shall be issued to a subsequent purchaser upon the assignment of the prior certificate of title by the surviving owner and presentation of satisfactory proof of death of the deceased owner. Only an affidavit by the person or agent of the person to whom possession of such vehicle has so passed, setting forth facts entitling him or her to such possession and ownership, together with a copy of the journal entry, court order, or instrument upon which such claim of possession and ownership is founded, shall be considered satisfactory proof of ownership and right of possession, except that if the applicant cannot produce such proof of ownership, he or she may submit to the department such evidence as he or she may have, and the department may thereupon, if it finds the evidence sufficient, issue the certificate of title or authorize any county treasurer to issue a certificate of title, as the case may be.

(2) If from the records of the county treasurer or the department there appear to be any liens on such vehicle, such certificate of title shall comply with section 60-164 or 60-165 regarding such liens unless the application is accompanied by proper evidence of their satisfaction or extinction.

Source: Laws 2005, LB 276, § 66; Laws 2007, LB286, § 15; Laws 2009, LB202, § 18; Laws 2012, LB751, § 8; Laws 2012, LB801, § 41.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB751, section 8, with LB801, section 41, to reflect all amendments.

Note: Changes made by LB801 became effective July 19, 2012. Changes made by LB751 became operative July 19, 2012.

60-168 Certificate of title; loss or mutilation; duplicate certificate; subsequent purchaser, rights; recovery of original; duty of owner.

(1) In the event of a lost or mutilated certificate of title, the owner of the vehicle or the holder of a lien on the vehicle shall apply, upon a form prescribed by the department, to the department or to any county treasurer for a duplicate certificate of title and shall pay the fee prescribed by section 60-156. The application shall be signed and sworn to by the person making the application or a person authorized to sign under section 60-151. Thereupon the county treasurer, with the approval of the department, or the department shall issue a duplicate certificate of title to the person entitled to receive the certificate of title. If the records of the title have been destroyed pursuant to section 60-152, the county treasurer shall issue a duplicate certificate of title to the person entitled to receive the same upon such showing as the county treasurer may deem sufficient. If the applicant cannot produce such proof of ownership, he or she may apply directly to the department and submit such evidence as he or she may have, and the department may, if it finds the evidence sufficient, authorize the county treasurer to issue a duplicate certificate of title. A duplicate certificate of title so issued shall show only those unreleased liens of record. The new purchaser shall be entitled to receive an original certificate of title upon presentation of the assigned duplicate copy of the certificate of title, properly assigned to the new purchaser, to the county treasurer prescribed in section 60-144.

(2) Any purchaser of a vehicle for which a certificate of title was lost or mutilated may at the time of purchase require the seller of the same to indemnify him or her and all subsequent purchasers of the vehicle against any loss which he, she, or they may suffer by reason of any claim presented upon the original certificate. In the event of the recovery of the original certificate of title by the owner, he or she shall forthwith surrender the same to the county treasurer or the department for cancellation.

Source: Laws 2005, LB 276, § 68; Laws 2007, LB286, § 16; Laws 2012, LB751, § 9; Laws 2012, LB801, § 42.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB751, section 9, with LB801, section 42, to reflect all amendments.

Note: Changes made by LB801 became effective July 19, 2012. Changes made by LB751 became operative July 19, 2012.

60-168.01 Certificate of title; failure to note required brand or lien; notice to holder of title; corrected certificate of title; failure of holder to deliver certificate; effect.

The department, upon receipt of clear and convincing evidence of a failure to note a required brand or failure to note a lien on a certificate of title, shall notify the holder of such certificate of title to deliver to the county treasurer or the department, within fifteen days after the date on the notice, such certificate of title to permit the noting of such brand or lien. After notation, the county treasurer or the department shall deliver the corrected certificate of title to the holder as provided by section 60-152. If a holder fails to deliver a certificate of title to the county treasurer or to the department, within fifteen days after the date on the notice for the purpose of noting such brand or lien on the certificate

of title, the department shall cancel the certificate of title. This section does not apply when noting a lien in accordance with subsection (6) of section 60-164.

Source: Laws 2007, LB286, § 17; Laws 2009, LB202, § 19; Laws 2012, LB801, § 43.
Effective date July 19, 2012.

60-169 Vehicle; certificate of title; surrender and cancellation; when required; mobile home or manufactured home affixed to real property; certificate of title; surrender and cancellation; procedure; effect; detachment; owner; duties.

(1)(a) Except as otherwise provided in subdivision (b) of this subsection, each owner of a vehicle and each person mentioned as owner in the last certificate of title, when the vehicle is dismantled, destroyed, or changed in such a manner that it loses its character as a vehicle or changed in such a manner that it is not the vehicle described in the certificate of title, shall surrender his or her certificate of title to any county treasurer or to the department. If the certificate of title is surrendered to a county treasurer, he or she shall, with the consent of any holders of any liens noted thereon, enter a cancellation upon the records and shall notify the department of such cancellation. If the certificate is surrendered to the department, it shall, with the consent of any holder of any lien noted thereon, enter a cancellation upon its records.

(b)(i) In the case of a mobile home or manufactured home for which a certificate of title has been issued, if such mobile home or manufactured home is affixed to real property in which each owner of the mobile home or manufactured home has any ownership interest, the certificate of title may be surrendered for cancellation to the county treasurer of the county where such mobile home or manufactured home is affixed to real property if at the time of surrender the owner submits to the county treasurer an affidavit of affixture on a form provided by the department that contains all of the following, as applicable:

(A) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(B) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(C) The legal description of the real property upon which the mobile home or manufactured home is affixed and the names of all of the owners of record of the real property;

(D) A statement that the mobile home or manufactured home is affixed to the real property;

(E) The written consent of each holder of a lien duly noted on the certificate of title to the release of such lien and the cancellation of the certificate of title;

(F) A copy of the certificate of title surrendered for cancellation; and

(G) The name and address of an owner, a financial institution, or another entity to which notice of cancellation of the certificate of title may be delivered.

(ii) The person submitting an affidavit of affixture pursuant to subdivision (b)(i) of this subsection shall swear or affirm that all statements in the affidavit are true and material and further acknowledge that any false statement in the

affidavit may subject the person to penalties relating to perjury under section 28-915.

(2) If a certificate of title of a mobile home or manufactured home is surrendered to the county treasurer, along with the affidavit required by subdivision (1)(b) of this section, he or she shall enter a cancellation upon his or her records, notify the department of such cancellation, forward a duplicate original of the affidavit to the department, and deliver a duplicate original of the executed affidavit under subdivision (1)(b) of this section to the register of deeds for the county in which the real property is located to be filed by the register of deeds. The county treasurer shall be entitled to collect fees from the person submitting the affidavit in accordance with section 33-109 to cover the costs of filing such affidavit. Following the cancellation of a certificate of title for a mobile home or manufactured home, the county treasurer or designated county official shall not issue a certificate of title for such mobile home or manufactured home, except as provided in subsection (5) of this section.

(3) If a mobile home or manufactured home is affixed to real estate before June 1, 2006, a person who is the holder of a lien or security interest in both the mobile home or manufactured home and the real estate to which it is affixed on such date may enforce its liens or security interests by accepting a deed in lieu of foreclosure or in the manner provided by law for enforcing liens on the real estate.

(4) A mobile home or manufactured home for which the certificate of title has been canceled and for which an affidavit of affixture has been duly recorded pursuant to subsection (2) of this section shall be treated as part of the real estate upon which such mobile home or manufactured home is located. Any lien thereon shall be perfected and enforced in the same manner as a lien on real estate. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only as a part of the real estate to which it is affixed.

(5)(a) If each owner of both the mobile home or manufactured home and the real estate described in subdivision (1)(b) of this section intends to detach the mobile home or manufactured home from the real estate, the owner shall do both of the following: (i) Before detaching the mobile home or manufactured home, record an affidavit of detachment in the office of the register of deeds in the county in which the affidavit is recorded under subdivision (1)(b) of this section; and (ii) apply for a certificate of title for the mobile home or manufactured home pursuant to section 60-147.

(b) The affidavit of detachment shall contain all of the following:

(i) The names and addresses of all of the owners of record of the mobile home or manufactured home;

(ii) A description of the mobile home or manufactured home that includes the name of the manufacturer, the year of manufacture, the model, and the manufacturer's serial number;

(iii) The legal description of the real estate from which the mobile home or manufactured home is to be detached and the names of all of the owners of record of the real estate;

(iv) A statement that the mobile home or manufactured home is to be detached from the real property;

(v) A statement that the certificate of title of the mobile home or manufactured home has previously been canceled;

(vi) The name of each holder of a lien of record against the real estate from which the mobile home or manufactured home is to be detached, with the written consent of each holder to the detachment; and

(vii) The name and address of an owner, a financial institution, or another entity to which the certificate of title may be delivered.

(6) An owner of an affixed mobile home or manufactured home for which the certificate of title has previously been canceled pursuant to subsection (2) of this section shall not detach the mobile home or manufactured home from the real estate before a certificate of title for the mobile home or manufactured home is issued by the county treasurer or department. If a certificate of title is issued by the county treasurer or department, the mobile home or manufactured home is no longer considered part of the real property. Any lien thereon shall be perfected pursuant to section 60-164. The owner of such mobile home or manufactured home may convey ownership of the mobile home or manufactured home only by way of a certificate of title.

(7) For purposes of this section:

(a) A mobile home or manufactured home is affixed to real estate if the wheels, towing hitches, and running gear are removed and it is permanently attached to a foundation or other support system; and

(b) Ownership interest means the fee simple interest in real estate or an interest as the lessee under a lease of the real property that has a term that continues for at least twenty years after the recording of the affidavit under subsection (2) of this section.

(8) Upon cancellation of a certificate of title in the manner prescribed by this section, the county treasurer and the department may cancel and destroy all certificates and all memorandum certificates in that chain of title.

Source: Laws 2005, LB 276, § 69; Laws 2006, LB 663, § 19; Laws 2012, LB14, § 6; Laws 2012, LB751, § 10; Laws 2012, LB801, § 44.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB14, section 6, with LB751, section 10, and LB801, section 44, to reflect all amendments.

Note: Changes made by LB801 became effective July 19, 2012. Changes made by LB751 became operative July 19, 2012. Changes made by LB14 became operative January 1, 2013.

60-170 Nontransferable certificate of title; when issued; procedure; surrender for certificate of title; procedure.

(1) When an insurance company authorized to do business in Nebraska acquires a vehicle which has been properly titled and registered in a state other than Nebraska through payment of a total loss settlement on account of theft and the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair, the company shall obtain the certificate of title from the owner and may make application for a nontransferable certificate of title by surrendering the certificate of title to the county treasurer. A nontransferable certificate of title shall be issued in the same manner and for the same fee or fees as provided for a certificate of title in sections 60-154 to 60-160 and shall be on a form prescribed by the department.

(2) A vehicle which has a nontransferable certificate of title shall not be sold or otherwise transferred or disposed of without first obtaining a certificate of title under the Motor Vehicle Certificate of Title Act.

(3) When a nontransferable certificate of title is surrendered for a certificate of title, the application shall be accompanied by a statement from the insurance company stating that to the best of its knowledge the vehicle has not become unusable for transportation through damage and has not sustained any malfunction beyond reasonable maintenance and repair. The statement shall not constitute or imply a warranty of condition to any subsequent purchaser or operator of the vehicle.

Source: Laws 2005, LB 276, § 70; Laws 2012, LB801, § 45.
Effective date July 19, 2012.

60-173 Salvage branded certificate of title; insurance company; total loss settlement; when issued.

When an insurance company acquires a salvage vehicle through payment of a total loss settlement on account of damage, the company shall obtain the certificate of title from the owner, surrender such certificate of title to the county treasurer, and make application for a salvage branded certificate of title which shall be assigned when the company transfers ownership. An insurer shall take title to a salvage vehicle for which a total loss settlement is made unless the owner of the salvage vehicle elects to retain the salvage vehicle. If the owner elects to retain the salvage vehicle, the insurance company shall notify the department of such fact in a format prescribed by the department. The department shall immediately enter the salvage brand onto the computerized record of the vehicle. The insurance company shall also notify the owner of the owner's responsibility to comply with this section. The owner shall, within thirty days after the settlement of the loss, forward the properly endorsed acceptable certificate of title to the county treasurer in the county designated in section 60-144. The county treasurer shall, upon receipt of the certificate of title, issue a salvage branded certificate of title for the vehicle.

Source: Laws 2005, LB 276, § 73; Laws 2007, LB286, § 19; Laws 2012, LB801, § 46.
Effective date July 19, 2012.

60-175 Salvage branded or manufacturer buyback branded certificate of title; when issued; procedure.

Any person who acquires ownership of a salvage or manufacturer buyback vehicle for which he or she does not obtain a salvage branded or manufacturer buyback branded certificate of title shall surrender the certificate of title to the county treasurer and make application for a salvage branded or manufacturer buyback branded certificate of title within thirty days after acquisition or prior to the sale or resale of the vehicle or any major component part of such vehicle or use of any major component part of the vehicle, whichever occurs earlier.

Source: Laws 2005, LB 276, § 75; Laws 2012, LB801, § 47.
Effective date July 19, 2012.

60-178 Stolen vehicle; duties of law enforcement and department.

Every sheriff, chief of police, or member of the patrol having knowledge of a stolen vehicle shall immediately furnish the department with full information in

connection therewith. The department, whenever it receives a report of the theft or conversion of such a vehicle, whether owned in this or any other state, together with the make and manufacturer's serial number or motor number, if applicable, shall make a distinctive record thereof and file the same in the numerical order of the manufacturer's serial number with the index records of such vehicle of such make. The department shall prepare a report listing such vehicles stolen and recovered as disclosed by the reports submitted to it, and the report shall be distributed as it may deem advisable. In the event of the receipt from any county treasurer of a copy of a certificate of title to such vehicle, the department shall immediately notify the rightful owner thereof and the county treasurer who issued such certificate of title, and if upon investigation it appears that such certificate of title was improperly issued, the department shall immediately cancel the same. In the event of the recovery of such stolen or converted vehicle, the owner shall immediately notify the department, which shall cause the record of the theft or conversion to be removed from its file.

Source: Laws 2005, LB 276, § 78; Laws 2012, LB801, § 48.
Effective date July 19, 2012.

60-180 Violations; penalty.

(1) A person who operates in this state a vehicle for which a certificate of title is required without having such certificate in accordance with the Motor Vehicle Certificate of Title Act or upon which the certificate of title has been canceled is guilty of a Class III misdemeanor.

(2) A person who is a dealer or acting on behalf of a dealer and who acquires, purchases, holds, or displays for sale a new vehicle without having obtained a manufacturer's or importer's certificate or a certificate of title therefor as provided for in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(3) A person who fails to surrender any certificate of title or any certificate of registration or license plates or tags upon cancellation of the same by the department and notice thereof as prescribed in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(4) A person who fails to surrender the certificate of title to the county treasurer or department as provided in section 60-169 in case of the destruction or dismantling or change of a vehicle in such respect that it is not the vehicle described in the certificate of title is guilty of a Class III misdemeanor.

(5) A person who purports to sell or transfer a vehicle without delivering to the purchaser or transferee thereof a certificate of title or a manufacturer's or importer's certificate thereto duly assigned to such purchaser as provided in the Motor Vehicle Certificate of Title Act is guilty of a Class III misdemeanor.

(6) A person who knowingly alters or defaces a certificate of title or manufacturer's or importer's certificate is guilty of a Class III misdemeanor.

(7) Except as otherwise provided in section 60-179, a person who violates any of the other provisions of the Motor Vehicle Certificate of Title Act or any rules or regulations adopted and promulgated pursuant to the act is guilty of a Class III misdemeanor.

Source: Laws 2005, LB 276, § 80; Laws 2012, LB751, § 11; Laws 2012, LB801, § 49.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB751, section 11, with LB801, section 49, to reflect all amendments.

Note: Changes made by LB801 became effective July 19, 2012. Changes made by LB751 became operative July 19, 2012.

60-181 Vehicle identification inspections; training expenses; how paid.

The Nebraska State Patrol Cash Fund shall be used to defray the expenses of training personnel in title document examination, vehicle identification, and fraud and theft investigation and to defray the patrol's expenses arising pursuant to sections 60-181 to 60-189, including those incurred for printing and distribution of forms, personal services, hearings, and similar administrative functions. Personnel may include, but shall not be limited to, county treasurers, investigative personnel of the Nebraska Motor Vehicle Industry Licensing Board, and peace officers as defined in section 60-646. The training program shall be administered by the patrol. The patrol may utilize the Nebraska Law Enforcement Training Center to accomplish the training requirements of sections 60-181 to 60-189. The superintendent may make expenditures from the fund necessary to implement such training.

Source: Laws 2005, LB 276, § 81; Laws 2012, LB801, § 50.
Effective date July 19, 2012.

60-184 Vehicle identification inspections; application for training; contents.

The sheriff may designate an employee of his or her office, any individual who is a peace officer as defined in section 60-646, or, by agreement, a county treasurer to assist in accomplishing inspections. Upon designation, the person shall request approval for training from the superintendent. Any person requesting approval for training shall submit a written application to the patrol. Such application shall include the following information: (1) The name and address of the applicant; (2) the name and address of the agency employing the applicant and the name of the agency head; and (3) such biographical information as the superintendent may require to facilitate the designation authorized by this section.

Source: Laws 2005, LB 276, § 84; Laws 2012, LB801, § 51.
Effective date July 19, 2012.

60-189 Vehicle identification inspections; superintendent; duty.

The superintendent shall, from time to time, provide each county treasurer and each sheriff with a list of persons holding then current certificates of training.

Source: Laws 2005, LB 276, § 89; Laws 2012, LB801, § 52.
Effective date July 19, 2012.

ARTICLE 3

MOTOR VEHICLE REGISTRATION

Section
60-301. Act, how cited.
60-302. Definitions, where found.
60-302.01. Access aisle, defined.
60-306. Alternative fuel, defined.
60-320. Repealed. Laws 2012, LB 801, § 102.
60-329.01. Golf car vehicle, defined.
60-331.01. Handicapped or disabled parking permit, defined.

Section

Section
60-3,135.01. Special interest motor vehicle license plates; application; fee; special interest motor vehicle; restrictions on use; prohibited acts; penalty.
60-3,140. Registration fees; to whom payable.
60-3,141. Agents of department; fees; collection.
60-3,142. Fees; retention by county.
60-3,144. Buses; registration fees.
60-3,147. Commercial motor vehicles; registration fees.
60-3,148. Commercial motor vehicle; increase of gross vehicle weight; where allowed.
60-3,156. Additional fees.
60-3,157. Lost or mutilated license plate or registration certificate; duplicate; fees.
60-3,158. Methods of payment authorized.
60-3,159. Registration fees; fees for previous years.
60-3,161. Registration; records; copy or extract provided; electronic access; fee.
60-3,163. Repealed. Laws 2012, LB 751, § 57.
60-3,166. Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.
60-3,186. Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.
60-3,187. Motor vehicle tax schedules; calculation of tax.
60-3,189. Tax exemption; procedure; appeal.
60-3,190. Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.
60-3,191. Alternative fuel; fee.
60-3,193.01. International Registration Plan; adopted.
60-3,198. Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.
60-3,202. Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.
60-3,205. Registration certificate; disciplinary actions; director; powers; procedure.
60-3,209. Snowmobiles; registration; application.
60-3,217. Snowmobiles; fees; disposition.
60-3,221. Towing of trailers; restrictions; section; how construed.

60-301 Act, how cited.

Sections 60-301 to 60-3,222 shall be known and may be cited as the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 1; Laws 2006, LB 663, § 21; Laws 2007, LB286, § 20; Laws 2007, LB349, § 1; Laws 2007, LB570, § 1; Laws 2008, LB756, § 5; Laws 2009, LB110, § 1; Laws 2009, LB129, § 1; Laws 2010, LB650, § 20; Laws 2011, LB163, § 16; Laws 2011, LB289, § 12; Laws 2012, LB216, § 1; Laws 2012, LB1155, § 7.
Operative date January 1, 2013.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB216, section 1, with LB1155, section 7, to reflect all amendments.

60-302 Definitions, where found.

For purposes of the Motor Vehicle Registration Act, unless the context otherwise requires, the definitions found in sections 60-302.01 to 60-360 shall be used.

Source: Laws 2005, LB 274, § 2; Laws 2007, LB286, § 21; Laws 2008, LB756, § 6; Laws 2010, LB650, § 21; Laws 2011, LB163, § 17; Laws 2012, LB1155, § 8.
Operative date January 1, 2013.

60-302.01 Access aisle, defined.

Access aisle means a space adjacent to a handicapped parking space or passenger loading zone which is constructed and designed in compliance with the federal Americans with Disabilities Act of 1990 and the federal regulations adopted in response to the act, as the act and the regulations existed on January 1, 2011.

Source: Laws 2011, LB163, § 18.

60-306 Alternative fuel, defined.

Alternative fuel includes electricity, solar power, and any other source of energy not otherwise taxed under the motor fuel laws as defined in section 66-712 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.

Source: Laws 2005, LB 274, § 6; Laws 2011, LB289, § 13.

60-320 Repealed. Laws 2012, LB 801, § 102.

60-329.01 Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes.

Source: Laws 2012, LB1155, § 9.
Operative date January 1, 2013.

60-331.01 Handicapped or disabled parking permit, defined.

Handicapped or disabled parking permit means:

(1) A permit issued under section 18-1738 or 18-1738.01 prior to the implementation date designated by the director under section 60-3,113.01; or

(2) A permit issued under section 60-3,113.02 or 60-3,113.03 on or after the implementation date designated by the director under section 60-3,113.01.

Source: Laws 2011, LB163, § 19.

60-331.02 Handicapped or disabled person, defined.

Handicapped or disabled person means any individual with a severe visual or physical impairment which limits personal mobility and results in an inability to travel unassisted more than two hundred feet without the use of a wheelchair, crutch, walker, or prosthetic, orthotic, or other assistant device, any individual whose personal mobility is limited as a result of respiratory problems, any individual who has a cardiac condition to the extent that his or her functional limitations are classified in severity as being Class III or Class IV, according to standards set by the American Heart Association, and any individ-

ual who has permanently lost all or substantially all the use of one or more limbs.

Source: Laws 2011, LB163, § 20.

60-336.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2007, LB286, § 26; Laws 2011, LB289, § 14.

60-337.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 22; Laws 2012, LB898, § 2.
Effective date July 19, 2012.

60-339 Motor vehicle, defined.

Motor vehicle means any vehicle propelled by any power other than muscular power. Motor vehicle does not include (1) mopeds, (2) farm tractors, (3) self-propelled equipment designed and used exclusively to carry and apply fertilizer, chemicals, or related products to agricultural soil and crops, agricultural floater-spreader implements, and other implements of husbandry designed for and used primarily for tilling the soil and harvesting crops or feeding livestock, (4) power unit hay grinders or a combination which includes a power unit and a hay grinder when operated without cargo, (5) vehicles which run only on rails or tracks, (6) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles, utility-type vehicles, snowmobiles registered or exempt from registration under sections 60-3,207 to 60-3,219, and minibikes, (7) road and general-purpose construction and maintenance machinery not designed or used primarily for the transportation of persons or property, including, but not limited to, ditchdigging apparatus, asphalt spreaders, bucket loaders, leveling graders, earthmoving carryalls, power shovels, earthmoving equipment, and crawler tractors, (8) self-propelled chairs used by persons who are disabled, and (9) electric personal assistive mobility devices.

Source: Laws 2005, LB 274, § 39; Laws 2007, LB286, § 27; Laws 2010, LB650, § 23; Laws 2011, LB289, § 15; Laws 2012, LB1155, § 10.
Operative date January 1, 2013.

60-344 Parts vehicle, defined.

Parts vehicle means a vehicle or trailer the title to which has been surrendered (1) in accordance with subdivision (1)(a) of section 60-169 or (2) to any other state by the owner of the vehicle or an insurance company to render the vehicle fit for sale for scrap and parts only.

Source: Laws 2005, LB 274, § 44; Laws 2011, LB241, § 5.

60-352.01 Temporarily handicapped or disabled person, defined.

Temporarily handicapped or disabled person means any handicapped or disabled person whose personal mobility is expected to be limited as described in section 60-331.02 for no longer than one year.

Source: Laws 2011, LB163, § 21.

60-358.01 Utility-type vehicle, defined.

(1) Utility-type vehicle means any motorized off-highway vehicle which (a) is not less than forty-eight inches nor more than seventy-four inches in width, (b) is not more than one hundred thirty-five inches, including the bumper, in length, (c) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (d) travels on four or more low-pressure tires, and (e) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(2) Utility-type vehicle does not include golf car vehicles or low-speed vehicles.

Source: Laws 2010, LB650, § 24; Laws 2012, LB1155, § 11.
Operative date January 1, 2013.

60-365 Operation of vehicle without registration; limitation; proof of ownership.

Any person purchasing a motor vehicle or trailer in this state other than from a licensed dealer in motor vehicles or trailers shall not operate or tow such motor vehicle or trailer in this state without registration except as provided in this section. Such purchaser may operate or tow such motor vehicle or trailer without registration for a period not to exceed thirty days. Upon demand of proper authorities, there shall be presented by the person in charge of such motor vehicle or trailer, for examination, a bill of sale showing the date of transfer or the certificate of title to such motor vehicle or trailer with assignment thereof duly executed. When such motor vehicle or trailer is purchased from a nonresident, the person in charge of such motor vehicle or trailer shall present upon demand proper evidence of ownership from the state where such motor vehicle or trailer was purchased.

Source: Laws 2005, LB 274, § 65; Laws 2008, LB756, § 11; Laws 2012, LB751, § 12.
Operative date July 19, 2012.

60-371 Exemption from civil liability.

The county and the county treasurer and his or her employees or agents shall be exempt from all civil liability when carrying out powers and duties delegated under the Motor Vehicle Registration Act.

Source: Laws 2005, LB 274, § 71; Laws 2012, LB801, § 53.
Effective date July 19, 2012.

60-372 Vehicle titling and registration computer system; agent of county treasurer; appointment.

(1) Each county shall issue and file registration certificates using the vehicle titling and registration computer system prescribed by the department.

(2) The county treasurer may appoint an agent to issue registration certificates and to accept the payment of taxes and fees as provided in the Motor Vehicle Registration Act, upon approval of the county board. The agent shall furnish a bond in such amount and upon such conditions as determined by the county board.

Source: Laws 2005, LB 274, § 72; Laws 2012, LB801, § 54.
Effective date July 19, 2012.

60-382 Nonresident owners; thirty-day license plate; application; fee; certificate; contents.

(1) Any person, not a resident of this state, who is the owner of a motor vehicle or trailer required to be registered in this state or any other state may, for the sole purpose of delivering, or having delivered, such motor vehicle or trailer, to his or her home or place of business in another state, apply for and obtain a thirty-day license plate which shall allow such person or his or her agent or employee to operate such motor vehicle or trailer upon the highways under conditions set forth in subsection (2) of this section, without obtaining a certificate of title to such motor vehicle in this state.

(2) Applications for such thirty-day license plate shall be made to the county treasurer of the county where such motor vehicle or trailer was purchased or acquired. Upon receipt of such application and payment of the fee of five dollars, the county treasurer shall issue to such applicant a thirty-day license plate, which shall be devised by the director, and evidenced by the official certificate of the county treasurer, which certificate shall state the name of the owner and operator of the motor vehicle or trailer so licensed, the description of such motor vehicle or trailer, the place in Nebraska where such motor vehicle or trailer was purchased or otherwise acquired, the place where delivery is to be made, and the time, not to exceed thirty days from date of purchase or acquisition of the motor vehicle or trailer, during which time such license plate shall be valid.

(3) Nonresident owner thirty-day license plates issued under this section shall be the same size and of the same basic design as regular license plates issued pursuant to section 60-3,100.

Source: Laws 2005, LB 274, § 82; Laws 2012, LB801, § 55.
Effective date July 19, 2012.

60-383.02 Low-speed vehicle; registration; fee.

For the registration of every low-speed vehicle, the fee shall be fifteen dollars.

Source: Laws 2011, LB289, § 16.

60-384 Nonresident carnival operator; thirty-day permit; fees; reciprocity.

Upon receipt of an application duly verified, a nonresident carnival operator shall be issued a thirty-day carnival operators' permit to operate in Nebraska upon the payment of the following fees: For the gross vehicle weight of sixteen thousand pounds or less, ten dollars; for more than sixteen thousand pounds and not more than twenty-eight thousand pounds, fifteen dollars; for more than twenty-eight thousand pounds and not more than forty thousand pounds, twenty dollars; and for more than forty thousand pounds and not more than seventy-three thousand two hundred eighty pounds, twenty-five dollars, except that such a permit shall be issued only to out-of-state operators when the jurisdiction in which the motor vehicle and trailer is registered grants reciprocity to Nebraska. Such fees shall be paid to the county treasurer or persons designated by the director, who shall have authority to issue the permit when the applicant is eligible and pays the required fee. All fees collected under this section shall be paid into the state treasury and by the State Treasurer credited to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 84; Laws 2012, LB801, § 56.
Effective date July 19, 2012.

60-385 Application; situs.

Every owner of a motor vehicle or trailer required to be registered shall make application for registration to the county treasurer of the county in which the motor vehicle or trailer has situs. The application shall be by any means designated by the department. A salvage branded certificate of title and a nontransferable certificate of title provided for in section 60-170 shall not be valid for registration purposes.

Source: Laws 2005, LB 274, § 85; Laws 2006, LB 765, § 6; Laws 2007, LB286, § 33; Laws 2012, LB801, § 57.
Effective date July 19, 2012.

60-386 Application; contents.

Each new application shall contain, in addition to other information as may be required by the department, the name and residential and mailing address of the applicant and a description of the motor vehicle or trailer, including the color, the manufacturer, the identification number, and the weight of the motor vehicle or trailer required by the Motor Vehicle Registration Act. With the application the applicant shall pay the proper registration fee and shall state whether the motor vehicle is propelled by alternative fuel and, if alternative fuel, the type of fuel. The form shall also contain a notice that bulk fuel purchasers may be subject to federal excise tax liability. The department shall prescribe a form, containing the notice, for supplying the information for motor vehicles to be registered. The county treasurer shall include the form in each mailing made pursuant to section 60-3,186.

Source: Laws 2005, LB 274, § 86; Laws 2011, LB289, § 17; Laws 2012, LB801, § 58.
Effective date July 19, 2012.

60-388 Collection of taxes and fees required.

No county treasurer shall receive or accept an application or registration fee or issue any registration certificate for any motor vehicle or trailer without collection of the taxes and the fees imposed in sections 60-3,185, 60-3,190, and 77-2703 and any other applicable taxes and fees upon such motor vehicle or trailer. If applicable, the applicant shall furnish proof of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by the Internal Revenue Code, 26 U.S.C. 4481.

Source: Laws 2005, LB 274, § 88; Laws 2012, LB801, § 59.
Effective date July 19, 2012.

60-391 Combined certificate and receipt for fees; county treasurer; report; contents.

The county treasurer shall issue a combined certificate and receipt for all fees received for the registration of motor vehicles or trailers to the applicant for registration and forward an electronic copy of the combined application and receipt to the department in a form prescribed by the department. Each county treasurer shall make a report to the department of the number of original registrations of motor vehicles or trailers registered in the rural areas of the county and of the number of original registrations of motor vehicles or trailers registered in each incorporated city and village in the county during each month, on or before the twenty-fifth day of the succeeding month. The department shall prescribe the form of such report. When any county treasurer fails to file such report, the department shall notify the county board of such county and the Director of Administrative Services who shall immediately suspend any payments to such county for highway purposes until the required reports are submitted.

Source: Laws 2005, LB 274, § 91; Laws 2012, LB801, § 60.
Effective date July 19, 2012.

60-393 Multiple vehicle registration.

Any owner who has two or more motor vehicles or trailers required to be registered under the Motor Vehicle Registration Act may register all such motor vehicles or trailers on a calendar-year basis or on an annual basis for the same registration period beginning in a month chosen by the owner. When electing to establish the same registration period for all such motor vehicles or trailers, the owner shall pay the registration fee, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191 on each motor vehicle for the number of months necessary to extend its current registration period to the registration period under which all such motor vehicles or trailers will be registered. Credit shall be given for registration paid on each motor vehicle or trailer when the motor vehicle or trailer has a later expiration date than that chosen by the owner except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. Thereafter all such motor vehicles or trailers shall be registered on an annual basis starting in the month chosen by the owner.

Source: Laws 2005, LB 274, § 93; Laws 2007, LB570, § 4; Laws 2011, LB289, § 18.

60-395 Refund or credit of fees; when authorized.

(1) Except as otherwise provided in subsection (2) of this section and sections 60-3,121, 60-3,122.02, and 60-3,128, the registration shall expire and the registered owner or lessee may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals and by either making application on a form prescribed by the department to the county treasurer of the occurrence of an event described in subdivisions (a) through (e) of this subsection or, in the case of a change in situs, displaying to the county treasurer the registration certificate of such other state as evidence of a change in situs, receive a refund of that part of the unused fees and taxes on motor vehicles or trailers based on the number of unexpired months remaining in the registration period from the date of any of the following events:

(a) Upon transfer of ownership of any motor vehicle or trailer;

(b) In case of loss of possession because of fire, theft, dismantlement, or junking;

(c) When a salvage branded certificate of title is issued;

(d) Whenever a type or class of motor vehicle or trailer previously registered is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees, the motor vehicle tax imposed in section 60-3,185, the motor vehicle fee imposed in section 60-3,190, and the alternative fuel fee imposed in section 60-3,191;

(e) Upon a trade-in or surrender of a motor vehicle under a lease; or

(f) In case of a change in the situs of a motor vehicle or trailer to a location outside of this state.

(2) If the date of the event falls within the same calendar month in which the motor vehicle or trailer is acquired, no refund shall be allowed for such month.

(3) If the transferor or lessee acquires another motor vehicle at the time of the transfer, trade-in, or surrender, the transferor or lessee shall have the credit provided for in this section applied toward payment of the motor vehicle fees and taxes then owing. Otherwise, the transferor or lessee shall file a claim for refund with the county treasurer upon an application form prescribed by the department.

(4) The registered owner or lessee shall make a claim for refund or credit of the fees and taxes for the unexpired months in the registration period within sixty days after the date of the event or shall be deemed to have forfeited his or her right to such refund or credit.

(5) For purposes of this section, the date of the event shall be: (a) In the case of a transfer or loss, the date of the transfer or loss; (b) in the case of a change in the situs, the date of registration in another state; (c) in the case of a trade-in or surrender under a lease, the date of trade-in or surrender; (d) in the case of a legislative act, the effective date of the act; and (e) in the case of a court decision, the date the decision is rendered.

(6) Application for registration or for reassignment of license plates and, when appropriate, validation decals to another motor vehicle or trailer shall be made within thirty days of the date of purchase.

(7) If a motor vehicle or trailer was reported stolen under section 60-178, a refund under this section shall not be reduced for a lost plate charge and a credit under this section may be reduced for a lost plate charge but the applicant shall not be required to pay the plate fee for new plates.

(8) The county treasurer shall refund the motor vehicle fee and registration fee from the fees which have not been transferred to the State Treasurer. The county treasurer shall make payment to the claimant from the undistributed motor vehicle taxes of the taxing unit where the tax money was originally distributed. No refund of less than two dollars shall be paid.

Source: Laws 2005, LB 274, § 95; Laws 2007, LB286, § 35; Laws 2007, LB570, § 5; Laws 2009, LB175, § 1; Laws 2011, LB289, § 19; Laws 2012, LB801, § 61.
Effective date July 19, 2012.

60-396 Credit of fees; vehicle disabled or removed from service.

Whenever the registered owner files an application with the county treasurer showing that a motor vehicle or trailer is disabled and has been removed from service, the registered owner may, by returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of such registration certificate or certificates, license plates, or validation decals, then by making an affidavit to the county treasurer of such disablement and removal from service, receive a credit for a portion of the registration fee from the fee deposited with the State Treasurer at the time of registration based upon the number of unexpired months remaining in the registration year except as otherwise provided in sections 60-3,121, 60-3,122.02, and 60-3,128. The owner shall also receive a credit for the unused portion of the motor vehicle tax and fee based upon the number of unexpired months remaining in the registration year. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer shall forward the application and affidavit, if any, to the State Treasurer who shall determine the amount, if any, of the allowable credit for the registration fee and issue a credit certificate to the owner. For the motor vehicle tax and fee, the county treasurer shall determine the amount, if any, of the allowable credit and issue a credit certificate to the owner. When such motor vehicle or trailer is removed from service within the same month in which it was registered, no credits shall be allowed for such month. The credits may be applied against taxes and fees for new or replacement motor vehicles or trailers incurred within one year after cancellation of registration of the motor vehicle or trailer for which the credits were allowed. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 96; Laws 2007, LB570, § 6; Laws 2012, LB801, § 62.
Effective date July 19, 2012.

60-397 Refund or credit; salvage branded certificate of title.

If a motor vehicle or trailer has a salvage branded certificate of title issued as a result of an insurance company acquiring the motor vehicle or trailer through a total loss settlement, the prior owner of the motor vehicle or trailer who is a party to the settlement may receive a refund or credit of unused fees and taxes

by (1) filing an application with the county treasurer within sixty days after the date of the settlement stating that title to the motor vehicle or trailer was transferred as a result of the settlement and (2) returning the registration certificate, the license plates, and, when appropriate, the validation decals or, in the case of the unavailability of the registration certificate, license plates, or validation decals, filing an affidavit with the county treasurer regarding the transfer of title due to the settlement and the unavailability of the certificate, license plates, or validation decals. The owner may receive a refund or credit of the registration fees and motor vehicle taxes and fees for the unexpired months remaining in the registration year determined based on the date when the motor vehicle or trailer was damaged and became unavailable for service. When the owner registers a replacement motor vehicle or trailer at the time of filing such affidavit, the credit may be immediately applied against the registration fee and the motor vehicle tax and fee for the replacement motor vehicle or trailer. When no such replacement motor vehicle or trailer is so registered, the county treasurer shall refund the unused registration fees. If the motor vehicle or trailer was damaged and became unavailable for service during the same month in which it was registered, no refund or credit shall be allowed for such month. When any such motor vehicle or trailer is reregistered within the same registration year in which its registration has been canceled, the taxes and fees shall be that portion of the registration fee and the motor vehicle tax and fee for the remainder of the registration year.

Source: Laws 2005, LB 274, § 97; Laws 2007, LB286, § 36; Laws 2012, LB801, § 63.
Effective date July 19, 2012.

60-398 Nonresident; refund; when allowed.

A nonresident may, if he or she applies within ninety days from his or her original registration date and surrenders the registration certificate and license plates which were assigned to him or her, receive from the county treasurer, or the department if registration was pursuant to section 60-3,198, a refund in the amount of fifty percent of the original license fee, fifty percent of the motor vehicle tax imposed in section 60-3,185, and fifty percent of the motor vehicle fee imposed in section 60-3,190, except that no refunds shall be made on any license surrendered after the ninth month of the registration period for which the motor vehicle or trailer was registered.

Source: Laws 2005, LB 274, § 98; Laws 2012, LB801, § 64.
Effective date July 19, 2012.

60-3,100 License plates; issuance.

(1) The department shall issue to every person whose motor vehicle or trailer is registered fully reflectorized license plates upon which shall be displayed (a) the registration number consisting of letters and numerals assigned to such motor vehicle or trailer in figures not less than two and one-half inches nor more than three inches in height and (b) also the word Nebraska suitably lettered so as to be attractive. Two license plates shall be issued for every motor vehicle, except that one plate shall be issued for dealers, motorcycles, minitrucks, truck-tractors, trailers, buses, apportionable vehicles, and special interest motor vehicles that use the special interest motor vehicle license plate authorized by and issued under section 60-3,135.01. The license plates shall be

of a color designated by the director. The color of the plates shall be changed each time the license plates are changed. Each time the license plates are changed, the director shall secure competitive bids for materials pursuant to sections 81-145 to 81-162. Motorcycle, minitruck, low-speed vehicle, and trailer license plate letters and numerals may be one-half the size of those required in this section.

(2) When two license plates are issued, one shall be prominently displayed at all times on the front and one on the rear of the registered motor vehicle or trailer. When only one plate is issued, it shall be prominently displayed on the rear of the registered motor vehicle or trailer. When only one plate is issued for motor vehicles registered pursuant to section 60-3,198 and truck-tractors, it shall be prominently displayed on the front of the apportionable vehicle.

Source: Laws 2005, LB 274, § 100; Laws 2010, LB650, § 25; Laws 2011, LB289, § 20; Laws 2012, LB216, § 2.
Operative date January 1, 2013.

60-3,104 Types of license plates.

The department shall issue the following types of license plates:

(1) Amateur radio station license plates issued pursuant to section 60-3,126;

(2) Apportionable vehicle license plates issued pursuant to section 60-3,203;

(3) Boat dealer license plates issued pursuant to section 60-379;

(4) Bus license plates issued pursuant to section 60-3,144;

(5) Commercial motor vehicle license plates issued pursuant to section 60-3,147;

(6) Dealer or manufacturer license plates issued pursuant to sections 60-3,114 and 60-3,115;

(7) Disabled veteran license plates issued pursuant to section 60-3,124;

(8) Farm trailer license plates issued pursuant to section 60-3,151;

(9) Farm truck license plates issued pursuant to section 60-3,146;

(10) Farm trucks with a gross weight of over sixteen tons license plates issued pursuant to section 60-3,146;

(11) Fertilizer trailer license plates issued pursuant to section 60-3,151;

(12) Film vehicle license plates issued pursuant to section 60-383;

(13) Gold Star Family license plates issued pursuant to sections 60-3,122.01 and 60-3,122.02;

(14) Handicapped or disabled person license plates issued pursuant to section 60-3,113;

(15) Historical vehicle license plates issued pursuant to sections 60-3,130 to 60-3,134;

(16) Local truck license plates issued pursuant to section 60-3,145;

(17) Minitruck license plates issued pursuant to section 60-3,100;

(18) Motor vehicle license plates for motor vehicles owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,105;

(19) Motor vehicles exempt pursuant to section 60-3,107;

(20) Motorcycle license plates issued pursuant to section 60-3,100;

(21) Nebraska Cornhusker Spirit Plates issued pursuant to sections 60-3,127 to 60-3,129;

(22) Nonresident owner thirty-day license plates issued pursuant to section 60-382;

(23) Passenger car having a seating capacity of ten persons or less and not used for hire issued pursuant to section 60-3,143;

(24) Passenger car having a seating capacity of ten persons or less and used for hire issued pursuant to section 60-3,143;

(25) Pearl Harbor license plates issued pursuant to section 60-3,122;

(26) Personal-use dealer license plates issued pursuant to section 60-3,116;

(27) Personalized message license plates for motor vehicles and cabin trailers, except commercial motor vehicles registered for over ten tons gross weight, issued pursuant to sections 60-3,118 to 60-3,121;

(28) Prisoner-of-war license plates issued pursuant to section 60-3,123;

(29) Purple Heart license plates issued pursuant to section 60-3,125;

(30) Recreational vehicle license plates issued pursuant to section 60-3,151;

(31) Repossession license plates issued pursuant to section 60-375;

(32) Special interest motor vehicle license plates issued pursuant to section 60-3,135.01;

(33) Specialty license plates issued pursuant to sections 60-3,104.01 and 60-3,104.02;

(34) Trailer license plates issued for trailers owned or operated by the state, counties, municipalities, or school districts issued pursuant to section 60-3,106;

(35) Trailer license plates issued pursuant to section 60-3,100;

(36) Trailers exempt pursuant to section 60-3,108;

(37) Transporter license plates issued pursuant to section 60-378;

(38) Trucks or combinations of trucks, truck-tractors, or trailers which are not for hire and engaged in soil and water conservation work and used for the purpose of transporting pipe and equipment exclusively used by such contractors for soil and water conservation construction license plates issued pursuant to section 60-3,149;

(39) Utility trailer license plates issued pursuant to section 60-3,151; and

(40) Well-boring apparatus and well-servicing equipment license plates issued pursuant to section 60-3,109.

Source: Laws 2005, LB 274, § 104; Laws 2006, LB 663, § 23; Laws 2007, LB286, § 37; Laws 2007, LB570, § 7; Laws 2009, LB110, § 2; Laws 2010, LB650, § 26; Laws 2012, LB216, § 3.
Operative date January 1, 2013.

60-3,104.01 Specialty license plates; application; fee; delivery; transfer; credit allowed; fee.

(1) A person may apply for specialty license plates in lieu of regular license plates on an application prescribed and provided by the department pursuant to section 60-3,104.02 for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a specialty license plate for a farm truck with a gross

weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications. Each application for initial issuance or renewal of specialty license plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit fifteen percent of the fee for initial issuance and renewal of specialty license plates to the Department of Motor Vehicles Cash Fund and eighty-five percent of the fee to the Highway Trust Fund.

(2) When the department receives an application for specialty license plates, it shall deliver the plates to the county treasurer of the county in which the motor vehicle, trailer, semitrailer, or cabin trailer is registered. The county treasurer shall issue specialty license plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle, trailer, semitrailer, or cabin trailer. If specialty license plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle, trailer, semitrailer, or cabin trailer bearing specialty license plates may make application to the county treasurer to have such specialty license plates transferred to a motor vehicle, trailer, semitrailer, or cabin trailer other than the motor vehicle, trailer, semitrailer, or cabin trailer for which such plates were originally purchased if such motor vehicle, trailer, semitrailer, or cabin trailer is owned by the owner of the specialty license plates.

(b) The owner may have the unused portion of the specialty license plate fee credited to the other motor vehicle, trailer, semitrailer, or cabin trailer which will bear the specialty license plates at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2009, LB110, § 3; Laws 2012, LB801, § 65.
Effective date July 19, 2012.

60-3,109 Well-boring apparatus and well-servicing equipment license plates.

(1) Any owner of well-boring apparatus and well-servicing equipment may make application to the county treasurer for license plates.

(2) Well-boring apparatus and well-servicing equipment license plates shall display thereon, in addition to the license number, the words special equipment.

Source: Laws 2005, LB 274, § 109; Laws 2012, LB801, § 66.
Effective date July 19, 2012.

60-3,111 Farmers and ranchers; special permits; fee.

Special permits may be supplied by the department and issued by the county treasurer for truck-tractor and semitrailer combinations of farmers or ranchers used wholly and exclusively to carry their own supplies, farm equipment, and household goods to or from the owner's farm or ranch or used by the farmer or rancher to carry his or her own agricultural products to or from storage or

market. Such special permits shall be valid for periods of thirty days and shall be carried in the cab of the truck-tractor. The fee for such permit shall be equivalent to one-twelfth of the regular commercial registration fee as determined by gross vehicle weight and size limitations as defined in sections 60-6,288 to 60-6,294, but the fee shall be no less than twenty-five dollars. Such fee shall be collected and distributed in the same manner as other motor vehicle fees.

Source: Laws 2005, LB 274, § 111; Laws 2012, LB801, § 67.
Effective date July 19, 2012.

60-3,112 Nonresident licensed vehicle hauling grain or seasonally harvested products; permit; fee.

If a truck, truck-tractor, or trailer is lawfully licensed under the laws of another state or province and is engaged in hauling grain or other seasonally harvested products from the field where they are harvested to storage or market during the period from June 1 to December 15 of each year or under emergency conditions, the right to operate over the highways of this state for a period of ninety days shall be authorized by obtaining a permit therefor from the county treasurer or his or her agent of the county in which grain is first hauled. Such permit shall be issued electronically upon the payment of a fee of twenty dollars for a truck or one hundred fifty dollars for any combination of truck, truck-tractor, or trailer. The fees for such permits, when collected, shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

Source: Laws 2005, LB 274, § 112; Laws 2012, LB801, § 68.
Effective date July 19, 2012.

60-3,113 Handicapped or disabled person; plates; department; compile and maintain registry.

(1) The department shall, without the payment of any fee except the taxes and fees required by sections 60-3,102, 60-3,185, 60-3,190, and 60-3,191, issue license plates for one motor vehicle not used for hire and a license plate for one motorcycle not used for hire to:

(a) Any permanently handicapped or disabled person or his or her parent, legal guardian, foster parent, or agent upon application and proof of a permanent handicap or disability; or

(b) A trust which owns the motor vehicle or motorcycle if a designated beneficiary of the trust qualifies under subdivision (a) of this subsection.

An application and proof of disability in the form and with the information required by section 18-1738 or 60-3,113.02 shall be submitted before license plates are issued or reissued.

(2) The license plate or plates shall carry the internationally accepted wheelchair symbol, which symbol is a representation of a person seated in a wheelchair surrounded by a border six units wide by seven units high, and such other letters or numbers as the director prescribes. Such license plate or plates shall be used by such person in lieu of the usual license plate or plates.

(3) The department shall compile and maintain a registry of the names, addresses, and license numbers of all persons who obtain special license plates

pursuant to this section and all persons who obtain a handicapped or disabled parking permit.

Source: Laws 2005, LB 274, § 113; Laws 2011, LB163, § 22; Laws 2011, LB289, § 21.

60-3,113.01 Handicapped or disabled person; parking permits; electronic system; department; duties; designation of implementation date.

The department shall develop and implement an electronic system for accepting and processing applications for handicapped or disabled parking permits. The director shall designate an implementation date for such system, which date shall be on or before January 1, 2013.

Source: Laws 2011, LB163, § 23.

60-3,113.02 Handicapped or disabled person; parking permit; issuance; procedure; renewal; notice; identification card.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled person or temporarily handicapped or disabled person or his or her parent, legal guardian, foster parent, or certifying health care provider may apply for a handicapped or disabled parking permit to the department or through a health care provider using a secure online process developed by the department which will entitle the holder of a permit or a person driving a motor vehicle for the purpose of transporting such holder to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 when the holder of the permit will enter or exit the motor vehicle while it is parked in such spaces or access aisles. For purposes of this section, (a) the handicapped or disabled person or temporarily handicapped or disabled person is considered the holder of the permit and (b) certifying health care provider means the physician, physician assistant, or advanced practice registered nurse who makes the certification required in subsection (3) of this section or his or her designee.

(3) The application process for a handicapped or disabled parking permit or for the renewal of a permit under this section shall include presentation of proof of identity by the handicapped or disabled person or temporarily handicapped or disabled person and certification by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her certification act that the person who will be the holder meets the statutory criteria for qualification. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit. No applicant shall be required to provide his or her social security number. In the case of a temporarily handicapped or disabled person, the certifying physician, physician assistant, or advanced practice registered nurse shall indicate the estimated date of recovery or that the temporary handicap or disability will continue for a period of six months, whichever is less.

(4) The department, upon receipt of a completed application for a handicapped or disabled parking permit under this section, shall verify that the applicant qualifies for such permit and, if so, shall deliver the permit to the applicant. In issuing renewed permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be

issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. A person may hold up to two permits under this section. If a person holds a permit under this section, such person may not hold a permit under section 60-3,113.03.

(5) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used by the party to whom issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall show the expiration date of the permit and such identifying information with regard to the handicapped or disabled person or temporarily handicapped or disabled person to whom the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 24.

60-3,113.03 Handicapped or disabled person; parking permit; permit for specific motor vehicle; application; issuance; procedure; renewal; notice; identification card.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) The department shall take an application from any person for a handicapped or disabled parking permit that is issued for a specific motor vehicle and entitles the holder thereof or a person driving the motor vehicle for the purpose of transporting handicapped or disabled persons or temporarily handicapped or disabled persons to park in those spaces or access aisles provided for by sections 18-1736 and 18-1737 if the motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. Such permit shall be used only when the motor vehicle for which it was issued is being used for the transportation of a handicapped or disabled person or temporarily handicapped or disabled person and such person will enter or exit the motor vehicle while it is parked in such designated spaces or access aisles.

(3) A person applying for a handicapped or disabled parking permit or for the renewal of a permit pursuant to this section shall apply for a permit for each motor vehicle used for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons and shall include such information as is required by the department, including a demonstration to the department that each such motor vehicle is used primarily for the transportation of handicapped or disabled persons or temporarily handicapped or disabled persons. An application for the renewal of a permit under this section may be submitted within one hundred eighty days prior to the expiration of the permit.

(4) The department, upon receipt of a completed application, shall verify that the applicant qualifies for a handicapped or disabled parking permit under this section and, if so, shall deliver the permit to the applicant. In issuing renewed

permits, the department shall deliver each individual renewed permit to the applicant. The renewed permit shall not be issued sooner than ten days prior to the date of expiration, and the existing permit shall be invalid upon receipt of the renewed permit. No more than one such permit shall be issued for each motor vehicle under this section.

(5) In issuing any handicapped or disabled parking permit under this section, the department shall include a notice and an identification card to the registered owner of the motor vehicle or the applicant. The notice shall contain information listing the legal uses of the permit and that the permit is not transferable, is to be used for the motor vehicle for which it is issued, is not to be altered or reproduced, and is to be used only when a handicapped or disabled person or a temporarily handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated parking space or access aisle. The notice shall also indicate that those convicted of handicapped parking infractions shall be subject to suspension of the permit for six months. The identification card shall identify the motor vehicle for which the permit is issued as is necessary to the enforcement of sections 18-1736 to 18-1741.07 as determined by the department.

Source: Laws 2011, LB163, § 25.

60-3,113.04 Handicapped or disabled person; parking permit; contents; issuance; duplicate permit.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall be of a design, size, configuration, color, and construction and contain such information as specified in the regulations adopted by the United States Department of Transportation in the Uniform System for Parking for Persons with Disabilities, 23 C.F.R. part 1235, as such regulations existed on January 1, 2012.

(3) No handicapped or disabled parking permit shall be issued to any person or for any motor vehicle if any permit has been issued to such person or for such motor vehicle and such permit has been suspended pursuant to section 18-1741.02. At the expiration of such suspension, a permit may be renewed in the manner provided for renewal in sections 60-3,113.02, 60-3,113.03, and 60-3,113.05.

(4) A duplicate handicapped or disabled parking permit may be provided up to two times during any single permit period if a permit is destroyed, lost, or stolen. Such duplicate permit shall be issued as provided in section 60-3,113.02 or 60-3,113.03, whichever is applicable, except that a new certification by a physician, a physician assistant, or an advanced practice registered nurse need not be provided. A duplicate permit shall be valid for the remainder of the period for which the original permit was issued. If a person has been issued two duplicate permits under this subsection and needs another permit, such person shall reapply for a new permit under section 60-3,113.02 or 60-3,113.03, whichever is applicable.

Source: Laws 2011, LB163, § 26; Laws 2012, LB751, § 13.
Operative date April 7, 2012.

60-3,113.05 Handicapped or disabled persons; parking permit; expiration date; permit for temporarily handicapped or disabled person; period valid; renewal.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) Permanently issued handicapped or disabled parking permits issued prior to October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the third year after issuance and shall expire on that day. Permanently issued handicapped or disabled parking permits issued on or after October 1, 2011, shall be valid for a period ending on the last day of the month of the applicant's birthday in the sixth year after issuance and shall expire on that day.

(3) All handicapped or disabled parking permits for temporarily handicapped or disabled persons shall be issued for a period ending not more than six months after the date of issuance but may be renewed one time for a period not to exceed six months. For the renewal period, there shall be submitted an additional application with proof of a handicap or disability.

Source: Laws 2011, LB163, § 27.

60-3,113.06 Handicapped or disabled persons; parking permit; use; display; prohibited acts; violation; penalty.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) A handicapped or disabled parking permit shall not be transferable and shall be used only by the party to whom issued or for the motor vehicle for which issued and only for the purpose for which the permit is issued. A handicapped or disabled parking permit shall be displayed by hanging the permit from the motor vehicle's rearview mirror so as to be clearly visible through the front windshield. A handicapped or disabled parking permit shall be displayed on the dashboard only when there is no rearview mirror. No person shall alter or reproduce in any manner a handicapped or disabled parking permit. No person shall knowingly hold more than the allowed number of handicapped or disabled parking permits. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.02 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the holder of the permit will enter or exit the motor vehicle while it is parked in a designated space or access aisle. No person shall display a handicapped or disabled parking permit issued under section 60-3,113.03 and park in a space or access aisle designated for the exclusive use of a handicapped or disabled person unless the person displaying the permit is driving the motor vehicle for which the permit was issued and a handicapped or disabled person will enter or exit the motor vehicle while it is parked in a designated space or access aisle. Any violation of this subsection shall constitute a handicapped parking infraction as defined in section 18-1741.01 and shall be subject to the penalties and procedures set forth in sections 18-1741.01 to 18-1741.07.

Source: Laws 2011, LB163, § 28.

60-3,113.07 Handicapped or disabled persons; parking permit; prohibited acts; violation; penalty; powers of director.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) No person shall knowingly provide false information on an application for a handicapped or disabled parking permit. Any person who violates this subsection shall be guilty of a Class III misdemeanor.

(3) If the director discovers evidence of fraud in an application for a handicapped or disabled parking permit or a license plate issued under section 60-3,113, the director may summarily cancel such permit or license plate and send notice of cancellation to the applicant.

Source: Laws 2011, LB163, § 29.

60-3,113.08 Handicapped or disabled persons; parking permit; rules and regulations.

(1) This section applies beginning on the implementation date designated by the director under section 60-3,113.01.

(2) The department may adopt and promulgate rules and regulations necessary to fulfill any duties and obligations as provided in sections 60-3,113.01 to 60-3,113.08. All rules and regulations of the department adopted pursuant to section 18-1742 prior to the implementation date designated by the director under section 60-3,113.01 shall continue to be effective until revised, amended, repealed, or nullified pursuant to law.

Source: Laws 2011, LB163, § 30.

60-3,114 Dealer or manufacturer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of a fee of thirty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. One additional dealer license plate may be procured for the type of motor vehicle or trailer the dealer has sold during the last previous period of October 1 through September 30 for each twenty motor vehicles or trailers sold at retail during such period or one additional dealer license plate for each thirty motor vehicles or trailers sold at wholesale during such period, but not to exceed a total of five additional dealer license plates in the case of motor vehicles or trailers sold at wholesale, or, in the case of a manufacturer, for each ten motor vehicles or trailers actually manufactured or assembled within the state within the last previous period of October 1 through September 30 for a fee of fifteen dollars each.

(2) Dealer or manufacturer license plates shall display, in addition to the registration number, the letters DLR.

Source: Laws 2005, LB 274, § 114; Laws 2012, LB801, § 69.
Effective date July 19, 2012.

60-3,115 Additional dealer license plates; unauthorized use; hearing.

When an applicant applies for a license, the Nebraska Motor Vehicle Industry Licensing Board may authorize the county treasurer to issue additional dealer license plates when the dealer or manufacturer furnishes satisfactory proof for

a need of additional dealer license plates because of special condition or hardship. In the case of unauthorized use of dealer license plates by any licensed dealer, the Nebraska Motor Vehicle Industry Licensing Board may hold a hearing and after such hearing may determine that such dealer is not qualified for continued usage of such dealer license plates for a set period not to exceed one year.

Source: Laws 2005, LB 274, § 115; Laws 2012, LB801, § 70.
Effective date July 19, 2012.

60-3,116 Personal-use dealer license plates; fee.

(1) Any licensed dealer or manufacturer may, upon payment of an annual fee of two hundred fifty dollars, make an application, on a form approved by the Nebraska Motor Vehicle Industry Licensing Board, to the county treasurer of the county in which his or her place of business is located for a certificate and one personal-use dealer license plate for the type of motor vehicle or trailer the dealer has been authorized by the Nebraska Motor Vehicle Industry Licensing Board to sell and demonstrate. Additional personal-use dealer license plates may be procured upon payment of an annual fee of two hundred fifty dollars each, subject to the same limitations as provided in section 60-3,114 as to the number of additional dealer license plates. A personal-use dealer license plate may be displayed on a motor vehicle having a gross weight including any load of six thousand pounds or less belonging to the dealer, may be used in the same manner as a dealer license plate, and may be used for personal or private use of the dealer, the dealer's immediate family, or any bona fide employee of the dealer licensed pursuant to the Motor Vehicle Industry Regulation Act.

(2) Personal-use dealer license plates shall have the same design and shall be displayed as provided in sections 60-370 and 60-3,100.

Source: Laws 2005, LB 274, § 116; Laws 2010, LB816, § 11; Laws 2012, LB801, § 71.
Effective date July 19, 2012.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

60-3,119 Personalized message license plates; application; renewal; fee.

(1) Application for personalized message license plates shall be made to the department. The department shall make available through each county treasurer forms to be used for such applications.

(2) Each initial application shall be accompanied by a fee of forty dollars. The fees shall be remitted to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

(3) An application for renewal of a license plate previously approved and issued shall be accompanied by a fee of forty dollars. County treasurers collecting fees pursuant to this subsection shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee to the Highway Trust Fund and seventy-five percent of the fee to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 119; Laws 2009, LB110, § 5; Laws 2012, LB801, § 72.
Effective date July 19, 2012.

60-3,120 Personalized message license plates; delivery.

When the department approves an application for personalized message license plates, it shall notify the applicant and deliver the license plates to the county treasurer of the county in which the motor vehicle or cabin trailer is to be registered. The county treasurer shall deliver such plates to the applicant, in lieu of regular license plates, when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer.

Source: Laws 2005, LB 274, § 120; Laws 2012, LB801, § 73.
Effective date July 19, 2012.

60-3,121 Personalized message license plates; transfer; credit allowed; fee.

(1) The owner of a motor vehicle or cabin trailer bearing personalized message license plates may make application to the county treasurer to have such license plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such license plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the license plates.

(2) The owner may have the unused portion of the message plate fee credited to the other motor vehicle or cabin trailer which will bear the license plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(3) Application for such transfer shall be accompanied by a fee of three dollars. The fees shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 121; Laws 2012, LB801, § 74.
Effective date July 19, 2012.

60-3,122.02 Gold Star Family plates; fee.

(1) A person may apply to the department for Gold Star Family plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for a motor vehicle or trailer registered under section 60-3,198. An applicant receiving a Gold Star Family plate for a farm truck with a gross weight of over sixteen tons shall affix the appropriate tonnage decal to the plate. The department shall make forms available for such applications through the county treasurers. The license plates shall be issued upon payment of the license fee described in subsection (2) of this section and furnishing proof satisfactory to the department that the applicant is a surviving spouse, whether remarried or not, or an ancestor, including a stepparent, a descendant, including a stepchild, a foster parent or a person in loco parentis, or a sibling of a person who died while in good standing on active duty in the military service of the United States.

(2)(a) Each application for initial issuance of consecutively numbered Gold Star Family plates shall be accompanied by a fee of five dollars. An application for renewal of such plates shall be accompanied by a fee of five dollars. County treasurers collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit five dollars of the fee for initial issuance and renewal of such plates to the Nebraska Veteran Cemetery System Operation Fund.

(b) Each application for initial issuance of personalized message Gold Star Family plates shall be accompanied by a fee of forty dollars. An application for renewal of such plates shall be accompanied by a fee of forty dollars. County treasurers collecting fees for renewals pursuant to this subdivision shall remit them to the State Treasurer. The State Treasurer shall credit twenty-five percent of the fee for initial issuance and renewal of such plates to the Department of Motor Vehicles Cash Fund and seventy-five percent of the fee to the Nebraska Veteran Cemetery System Operation Fund.

(3) When the department receives an application for Gold Star Family plates, the department shall deliver the plates to the county treasurer of the county in which the motor vehicle or cabin trailer is registered. The county treasurer shall issue Gold Star Family plates in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the motor vehicle or cabin trailer. If Gold Star Family plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates upon request and without charge.

(4) The owner of a motor vehicle or cabin trailer bearing Gold Star Family plates may apply to the county treasurer to have such plates transferred to a motor vehicle other than the vehicle for which such plates were originally purchased if such vehicle is owned by the owner of the plates. The owner may have the unused portion of the fee for the plates credited to the other vehicle which will bear the plates at the rate of eight and one-third percent per month for each full month left in the registration period. Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) If the cost of manufacturing Gold Star Family plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Nebraska Veteran Cemetery System Operation Fund shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of Gold Star Family plates and the amount charged pursuant to section 60-3,102 with respect to such plates and the remainder shall be credited to the Nebraska Veteran Cemetery System Operation Fund.

Source: Laws 2007, LB570, § 3; Laws 2009, LB110, § 7; Laws 2009, LB331, § 2; Laws 2012, LB801, § 75.
Effective date July 19, 2012.

60-3,128 Nebraska Cornhusker Spirit Plates; application; fee; transfer; credit allowed.

(1) A person may apply to the department for Nebraska Cornhusker Spirit Plates in lieu of regular license plates on an application prescribed and provided by the department for any motor vehicle, trailer, semitrailer, or cabin trailer, except for motor vehicles or trailers registered under section 60-3,198. An applicant receiving a spirit plate for a farm truck with a gross weight of over sixteen tons or for a commercial motor vehicle registered for a gross weight of five tons or over shall affix the appropriate tonnage decal to the spirit plate. The department shall make forms available for such applications through the county treasurers. Each application for initial issuance or renewal of spirit plates shall be accompanied by a fee of seventy dollars. Fees collected pursuant

to this subsection shall be remitted to the State Treasurer. The State Treasurer shall credit forty-three percent of the fees for initial issuance and renewal of spirit plates to the Department of Motor Vehicles Cash Fund. The State Treasurer shall credit fifty-seven percent of the fees to the Spirit Plate Proceeds Fund until the fund has been credited five million dollars from such fees and thereafter to the Highway Trust Fund.

(2) When the department receives an application for spirit plates, it shall deliver the plates to the county treasurer of the county in which the motor vehicle or cabin trailer is registered. The county treasurer shall issue spirit plates in lieu of regular license plates when the applicant complies with the other provisions of law for registration of the motor vehicle or cabin trailer. If spirit plates are lost, stolen, or mutilated, the licensee shall be issued replacement license plates pursuant to section 60-3,157.

(3)(a) The owner of a motor vehicle or cabin trailer bearing spirit plates may make application to the county treasurer to have such spirit plates transferred to a motor vehicle or cabin trailer other than the motor vehicle or cabin trailer for which such plates were originally purchased if such motor vehicle or cabin trailer is owned by the owner of the spirit plates.

(b) The owner may have the unused portion of the spirit plate fee credited to the other motor vehicle or cabin trailer which will bear the spirit plate at the rate of eight and one-third percent per month for each full month left in the registration period.

(c) Application for such transfer shall be accompanied by a fee of three dollars. Fees collected pursuant to this subsection shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 2005, LB 274, § 128; Laws 2007, LB286, § 45; Laws 2009, LB110, § 11; Laws 2012, LB801, § 76.
Effective date July 19, 2012.

60-3,135.01 Special interest motor vehicle license plates; application; fee; special interest motor vehicle; restrictions on use; prohibited acts; penalty.

(1) The department shall either modify an existing plate design or design license plates to identify special interest motor vehicles, to be known as special interest motor vehicle license plates. The department, in designing such special interest motor vehicle license plates, shall include the words special interest and limit the manufacturing cost of each plate to an amount less than or equal to the amount charged for license plates pursuant to section 60-3,102. The department shall choose the design of the plate. The department shall make applications available for this type of plate when it is designed.

(2) One type of special interest motor vehicle license plate shall be alphanumeric plates. The department shall:

(a) Assign a designation up to seven characters; and

(b) Not use a county designation.

(3) One type of special interest motor vehicle license plate shall be personalized message plates. Such plates shall be issued subject to the same conditions specified for personalized message license plates in section 60-3,118.

(4) A person may apply to the department for a special interest motor vehicle license plate in lieu of regular license plates on an application prescribed and provided by the department for any special interest motor vehicle, except for a

motor vehicle registered under section 60-3,198, motorcycle, or trailer. The department shall make forms available for such applications through the county treasurers.

(5) The form shall contain a description of the special interest motor vehicle owned and sought to be registered, including the make, body type, model, serial number, and year of manufacture.

(6)(a) In addition to all other fees required to register a motor vehicle, each application for initial issuance or renewal of a special interest motor vehicle license plate shall be accompanied by a special interest motor vehicle license plate fee of fifty dollars. Twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund, and twenty-five dollars of the special interest motor vehicle license plate fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund.

(b) If a special interest motor vehicle license plate is lost, stolen, or mutilated, the owner shall be issued a replacement license plate pursuant to section 60-3,157.

(7) When the department receives an application for a special interest motor vehicle license plate, the department shall deliver the plate to the county treasurer of the county in which the special interest motor vehicle is registered. The county treasurer shall issue the special interest motor vehicle license plate in lieu of regular license plates when the applicant complies with the other provisions of the Motor Vehicle Registration Act for registration of the special interest motor vehicle.

(8) If the cost of manufacturing special interest motor vehicle license plates at any time exceeds the amount charged for license plates pursuant to section 60-3,102, any money to be credited to the Department of Motor Vehicles Cash Fund under this section shall instead be credited first to the Highway Trust Fund in an amount equal to the difference between the manufacturing costs of special interest motor vehicle license plates and the amount charged pursuant to section 60-3,102 with respect to such license plates and the remainder shall be credited to the Department of Motor Vehicles Cash Fund.

(9) The special interest motor vehicle license plate shall be affixed to the rear of the special interest motor vehicle.

(10) A special interest motor vehicle shall not be used for the same purposes and under the same conditions as other motor vehicles of the same type and shall not be used for business or occupation or regularly for transportation to and from work. A special interest motor vehicle may be driven on the public streets and roads only for occasional transportation, public displays, parades, and related pleasure or hobby activities.

(11) It shall be unlawful to own or operate a motor vehicle with special interest motor vehicle license plates in violation of this section. Upon conviction of a violation of any provision of this section, a person shall be guilty of a Class V misdemeanor.

(12) For purposes of this section, special interest motor vehicle means a motor vehicle of any age which is being collected, preserved, restored, or

maintained by the owner as a leisure pursuit and not used for general transportation of persons or cargo.

Source: Laws 2012, LB216, § 4.
Operative date January 1, 2013.

60-3,140 Registration fees; to whom payable.

All fees for the registration of motor vehicles or trailers, unless otherwise expressly provided, shall be paid to the county treasurer of the county in which the motor vehicle or trailer has situs. If registered pursuant to section 60-3,198, all fees shall be paid to the department.

Source: Laws 2005, LB 274, § 140; Laws 2012, LB801, § 77.
Effective date July 19, 2012.

60-3,141 Agents of department; fees; collection.

(1) The various county treasurers shall act as agents for the department in the collection of all motor vehicle taxes, motor vehicle fees, and registration fees.

(2) While acting as agents pursuant to subsection (1) of this section, the county treasurers shall in addition to the taxes and registration fees collect and retain for the county two dollars for each registration of a motor vehicle or trailer of a resident of the State of Nebraska and five dollars for each registration of a motor vehicle or trailer of a nonresident from the funds collected for the registration issued. The county treasurer shall credit the fees collected for the county to the county general fund.

(3) The county treasurers shall transmit all motor vehicle fees and registration fees collected to the State Treasurer on or before the twenty-fifth day of each month and at such other times as the State Treasurer requires for credit to the Motor Vehicle Fee Fund and the Highway Trust Fund, respectively, except as provided in section 60-3,156. Any county treasurer who fails to transfer to the State Treasurer the amount due the state at the times required in this section shall pay interest at the rate specified in section 45-104.02, as such rate may be adjusted from time to time, from the time the motor vehicle fees and registration fees become due until paid.

Source: Laws 2005, LB 274, § 141; Laws 2007, LB286, § 47; Laws 2012, LB801, § 78.
Effective date July 19, 2012.

60-3,142 Fees; retention by county.

The various county treasurers acting as agents for the department in collection of the fees shall retain five percent of each fee collected under section 60-3,112 for credit to the county general fund.

Source: Laws 2005, LB 274, § 142; Laws 2007, LB286, § 48; Laws 2012, LB801, § 79.
Effective date July 19, 2012.

60-3,144 Buses; registration fees.

(1) For buses used exclusively to carry children to and from school, and other school activities, the registration fee shall be ten dollars.

(2) For buses equipped to carry more than ten persons for hire, the fee shall be based on the weight of such bus. To ascertain the weight, the unladen weight in pounds shall be used. There shall be added to such weight in pounds the number of persons such bus is equipped to carry times two hundred, the sum thereof being the weight of such bus for license purposes. The unladen weight shall be ascertained by scale weighing of the bus fully equipped and as used upon the highways under the supervision of a member of the Nebraska State Patrol or a carrier enforcement officer and certified by such patrol member or carrier enforcement officer to the department or county treasurer. The fee therefor shall be as follows:

(a) If such bus weighs thirty-two thousand pounds and less than thirty-four thousand pounds, it shall be licensed as a twelve-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(b) If such bus weighs thirty thousand pounds and less than thirty-two thousand pounds, it shall be licensed as an eleven-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(c) If such bus weighs twenty-eight thousand pounds and less than thirty thousand pounds, it shall be licensed as a ten-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(d) If such bus weighs twenty-two thousand pounds and less than twenty-eight thousand pounds, it shall be licensed as a nine-ton truck as provided in section 60-3,147 and pay the same fee as therein provided;

(e) If such bus weighs sixteen thousand pounds and less than twenty-two thousand pounds, it shall be licensed as an eight-ton truck as provided in section 60-3,147 and pay the same fee as therein provided; and

(f) If such bus weighs less than sixteen thousand pounds, it shall be licensed as a five-ton truck as provided in section 60-3,147 and pay the same fee as therein provided, except that upon registration of buses equipped to carry ten passengers or more and engaged entirely in the transportation of passengers for hire within municipalities or in and within a radius of five miles thereof the fee shall be seventy-five dollars, and for buses equipped to carry more than ten passengers and not for hire the registration fee shall be thirty dollars.

(3) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

Source: Laws 2005, LB 274, § 144; Laws 2012, LB801, § 80.
Effective date July 19, 2012.

60-3,147 Commercial motor vehicles; registration fees.

(1) The registration fee on commercial motor vehicles, except those motor vehicles registered under section 60-3,198, shall be based upon the gross vehicle weight, not to exceed the maximum authorized by section 60-6,294.

(2) The registration fee on commercial motor vehicles, except for motor vehicles and trailers registered under section 60-3,198, shall be based on the gross vehicle weight on such commercial motor vehicles plus the gross vehicle weight of any trailer or combination with which it is operated, except that for the purpose of determining the registration fee, the gross vehicle weight of a commercial motor vehicle towing or hauling a disabled or wrecked motor vehicle properly registered for use on the highways shall be only the gross

vehicle weight of the towing commercial motor vehicle fully equipped and not including the weight of the motor vehicle being towed or hauled.

(3) Except as provided in subsection (4) of this section, the registration fee on such commercial motor vehicles shall be at the following rates:

(a) For a gross vehicle weight of three tons or less, eighteen dollars;

(b) For a gross vehicle weight exceeding three tons and not exceeding four tons, twenty-five dollars;

(c) For a gross vehicle weight exceeding four tons and not exceeding five tons, thirty-five dollars;

(d) For a gross vehicle weight exceeding five tons and not exceeding six tons, sixty dollars;

(e) For a gross vehicle weight exceeding six tons but not exceeding seven tons, eighty-five dollars; and

(f) For a gross vehicle weight in excess of seven tons, the fee shall be that for a commercial motor vehicle having a gross vehicle weight of seven tons and, in addition thereto, twenty-five dollars for each ton of gross vehicle weight over seven tons.

(4)(a) For fractional tons in excess of the twenty percent or the tolerance of one thousand pounds, as provided in section 60-6,300, the fee shall be computed on the basis of the next higher bracket.

(b) The fees provided by this section shall be reduced ten percent for motor vehicles used exclusively for the transportation of agricultural products.

(c) Fees for commercial motor vehicles with a gross vehicle weight in excess of thirty-six tons shall be increased by twenty percent for all such commercial motor vehicles operated on any highway not a part of the National System of Interstate and Defense Highways.

(5)(a) Such fee may be paid one-half at the time of registration and one-half on the first day of the seventh month of the registration period when the license fee exceeds two hundred ten dollars. When the second half is paid, the county treasurer shall furnish a registration certificate and license plates issued by the department which shall be displayed on such commercial motor vehicle in the manner provided by law. In addition to the registration fee, the department shall collect a sufficient fee to cover the cost of issuing the certificate and license plates.

(b) If such second half is not paid within thirty days following the first day of the seventh month, the registration of such commercial motor vehicle shall be canceled and the registration certificate and license plates shall be returned to the county treasurer.

(c) Such fee shall be paid prior to any subsequent registration or renewal of registration.

(6) License plates issued under this section shall be the same size and of the same basic design as regular license plates issued under section 60-3,100.

(7) A license plate or plates issued to a commercial motor vehicle with a gross weight of five tons or over shall display, in addition to the registration number, the weight that the commercial motor vehicle is licensed for, using a decal on the license plate or plates of the commercial motor vehicle in letters

and numerals of such size and design as shall be determined and issued by the department.

Source: Laws 2005, LB 274, § 147; Laws 2007, LB286, § 50; Laws 2012, LB801, § 81.
Effective date July 19, 2012.

60-3,148 Commercial motor vehicle; increase of gross vehicle weight; where allowed.

No owner of a commercial motor vehicle shall be permitted to increase the gross vehicle weight for which such commercial motor vehicle is registered except at the office of the county treasurer in the county where such commercial motor vehicle is currently registered unless the need for such increase occurs when such commercial motor vehicle is more than one hundred miles from the county seat of such county, unless authorized to do so by the Nebraska State Patrol or authorized state scale examiner as an emergency.

Source: Laws 2005, LB 274, § 148; Laws 2012, LB801, § 82.
Effective date July 19, 2012.

60-3,156 Additional fees.

In addition to the registration fees for motor vehicles and trailers, the county treasurer or his or her agent shall collect:

(1) One dollar and fifty cents for each certificate issued and shall remit one dollar and fifty cents of each additional fee collected to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund;

(2) Fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the Nebraska Emergency Medical System Operations Fund; and

(3) One dollar and fifty cents for each certificate issued and shall remit the fee to the State Treasurer for credit to the State Recreation Road Fund.

Source: Laws 2005, LB 274, § 156; Laws 2012, LB801, § 83.
Effective date July 19, 2012.

60-3,157 Lost or mutilated license plate or registration certificate; duplicate; fees.

If a license plate or registration certificate is lost or mutilated or has become illegible, the person to whom such license plate and registration certificate has been issued shall immediately apply to the county treasurer for a duplicate registration certificate or for new license plates, accompanying his or her application with a fee of one dollar for a duplicate registration certificate and a fee of two dollars and fifty cents for a duplicate or replacement license plate. No fee shall be required under this section if the vehicle or trailer was reported stolen under section 60-178.

Source: Laws 2005, LB 274, § 157; Laws 2009, LB175, § 2; Laws 2012, LB801, § 84.
Effective date July 19, 2012.

60-3,158 Methods of payment authorized.

A county treasurer or his or her agent may accept credit cards, charge cards, debit cards, or electronic funds transfers as a means of payment for registration pursuant to section 13-609.

Source: Laws 2005, LB 274, § 158; Laws 2012, LB801, § 85.
Effective date July 19, 2012.

60-3,159 Registration fees; fees for previous years.

Upon application to register any motor vehicle or trailer, no registration fee shall be required to be paid thereon for any previous registration period during which such motor vehicle or trailer was not at any time driven or used upon any highway within this state, and the person desiring to register such motor vehicle or trailer without payment of fees for previous registration periods shall file with the county treasurer an affidavit showing where, when, and for how long such motor vehicle or trailer was stored and that the same was not used in this state during such registration period or periods, and upon receipt thereof the county treasurer shall issue a registration certificate.

Source: Laws 2005, LB 274, § 159; Laws 2012, LB801, § 86.
Effective date July 19, 2012.

60-3,161 Registration; records; copy or extract provided; electronic access; fee.

(1) The department shall keep a record of each motor vehicle and trailer registered, alphabetically by name of the owner, with cross reference in each instance to the registration number assigned to such motor vehicle and trailer. The record may be destroyed by any public officer having custody of it after three years from the date of its issuance.

(2) The department shall issue a copy of the record of a registered or titled motor vehicle or trailer to any person after receiving from the person the name on the registration, the license plate number, the vehicle identification number, or the title number of a motor vehicle or trailer, if the person provides to the department verification of identity and purpose pursuant to section 60-2906 or 60-2907. A fee of one dollar shall be charged for the copy. An extract of the entire file of motor vehicles and trailers registered or titled in the state or updates to the entire file may be provided to a person upon payment of a fee of eighteen dollars per thousand records. Any fee received by the department pursuant to this subsection shall be deposited into the Department of Motor Vehicles Cash Fund.

(3) The record of each motor vehicle or trailer registration or title maintained by the department pursuant to this section may be made available electronically through the portal established under section 84-1204 so long as the Uniform Motor Vehicle Records Disclosure Act is not violated. There shall be a fee of one dollar per record for individual records. For batch requests for multiple motor vehicle or trailer title and registration records selected on the basis of criteria of the individual making the request, there shall be a fee of fifty dollars for every request under two thousand records and a fee of eighteen dollars per one thousand records for any number of records over two thousand, plus a reasonable programming fee not to exceed five hundred twenty dollars. All fees collected pursuant to this subsection for electronic access to records through the portal shall be deposited in the Records Management Cash Fund and shall

be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 2005, LB 274, § 161; Laws 2008, LB756, § 13; Laws 2012, LB719, § 4.
Effective date July 19, 2012.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-3,163 Repealed. Laws 2012, LB 751, § 57.

Operative date July 19, 2012.

60-3,166 Law enforcement officers; arrest violators; violations; penalty; payment of taxes and fees.

It shall be the duty of all law enforcement officers to arrest all violators of any of the provisions of sections 60-373, 60-374, 60-375, 60-376, 60-378, 60-379, and 60-3,114 to 60-3,116. Any person, firm, or corporation, including any motor vehicle, trailer, or boat dealer or manufacturer, who fails to comply with such provisions shall be guilty of a Class V misdemeanor and, in addition thereto, shall pay the county treasurer any and all motor vehicle taxes and fees imposed in sections 60-3,185 and 60-3,190, registration fees, or certification fees due had the motor vehicle or trailer been properly registered or certified according to law.

Source: Laws 2005, LB 274, § 166; Laws 2012, LB801, § 88.
Effective date July 19, 2012.

60-3,186 Motor vehicle tax; notice; taxes and fees; payment; proceeds; disposition.

(1) The county treasurer shall annually determine the motor vehicle tax on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to section 60-3,187 and cause a notice of the amount of the tax to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department and shall be mailed on or before the first day of the last month of the registration period.

(2)(a) The motor vehicle tax, motor vehicle fee, registration fee, sales tax, and any other applicable taxes and fees shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. If the motor vehicle being registered has been transferred as a gift or for a nominal amount, any sales tax owed by the transferor on the purchase of the motor vehicle shall have been paid or be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period.

(b) After retaining one percent of the motor vehicle tax proceeds collected for costs, the remaining motor vehicle tax proceeds shall be allocated to each county, local school system, school district, city, and village in the tax district in which the motor vehicle has situs.

(c)(i) Twenty-two percent of the remaining motor vehicle tax proceeds shall be allocated to the county, (ii) sixty percent shall be allocated to the local school system or school district, and (iii) eighteen percent shall be allocated to the city or village, except that (A) if the tax district is not in a city or village, forty

percent shall be allocated to the county, and (B) in counties containing a city of the metropolitan class, eighteen percent shall be allocated to the county and twenty-two percent shall be allocated to the city or village.

(d) The amount allocated to a local school system shall be distributed to school districts in the same manner as property taxes.

(3) Proceeds from the motor vehicle tax shall be treated as property tax revenue for purposes of expenditure limitations, matching of state or federal funds, and other purposes.

Source: Laws 2005, LB 274, § 186; Laws 2006, LB 248, § 1; Laws 2007, LB286, § 53; Laws 2012, LB801, § 89.
Effective date July 19, 2012.

60-3,187 Motor vehicle tax schedules; calculation of tax.

(1) The motor vehicle tax schedules are set out in this section.

(2) The motor vehicle tax shall be calculated by multiplying the base tax times the fraction which corresponds to the age category of the vehicle as shown in the following table:

YEAR	FRACTION
First	1.00
Second	0.90
Third	0.80
Fourth	0.70
Fifth	0.60
Sixth	0.51
Seventh	0.42
Eighth	0.33
Ninth	0.24
Tenth and Eleventh	0.15
Twelfth and Thirteenth	0.07
Fourteenth and older	0.00

(3) The base tax shall be:

(a) Automobiles and motorcycles - An amount determined using the following table:

Value when new	Base tax
Up to $3,999	$ 25
$4,000 to $5,999	35
$6,000 to $7,999	45
$8,000 to $9,999	60
$10,000 to $11,999	100
$12,000 to $13,999	140
$14,000 to $15,999	180
$16,000 to $17,999	220
$18,000 to $19,999	260
$20,000 to $21,999	300
$22,000 to $23,999	340
$24,000 to $25,999	380
$26,000 to $27,999	420
$28,000 to $29,999	460
$30,000 to $31,999	500
$32,000 to $33,999	540

$34,000 to $35,999	580
$36,000 to $37,999	620
$38,000 to $39,999	660
$40,000 to $41,999	700
$42,000 to $43,999	740
$44,000 to $45,999	780
$46,000 to $47,999	820
$48,000 to $49,999	860
$50,000 to $51,999	900
$52,000 to $53,999	940
$54,000 to $55,999	980
$56,000 to $57,999	1,020
$58,000 to $59,999	1,060
$60,000 to $61,999	1,100
$62,000 to $63,999	1,140
$64,000 to $65,999	1,180
$66,000 to $67,999	1,220
$68,000 to $69,999	1,260
$70,000 to $71,999	1,300
$72,000 to $73,999	1,340
$74,000 to $75,999	1,380
$76,000 to $77,999	1,420
$78,000 to $79,999	1,460
$80,000 to $81,999	1,500
$82,000 to $83,999	1,540
$84,000 to $85,999	1,580
$86,000 to $87,999	1,620
$88,000 to $89,999	1,660
$90,000 to $91,999	1,700
$92,000 to $93,999	1,740
$94,000 to $95,999	1,780
$96,000 to $97,999	1,820
$98,000 to $99,999	1,860
$100,000 and over	1,900

(b) Assembled automobiles — $60

(c) Assembled motorcycles — $25

(d) Cabin trailers, up to one thousand pounds — $10

(e) Cabin trailers, one thousand pounds and over and less than two thousand pounds — $25

(f) Cabin trailers, two thousand pounds and over — $40

(g) Recreational vehicles, less than eight thousand pounds — $160

(h) Recreational vehicles, eight thousand pounds and over and less than twelve thousand pounds — $410

(i) Recreational vehicles, twelve thousand pounds and over — $860

(j) Assembled recreational vehicles and buses shall follow the schedules for body type and registered weight

(k) Trucks - Over seven tons and less than ten tons — $360

(l) Trucks - Ten tons and over and less than thirteen tons — $560

(m) Trucks - Thirteen tons and over and less than sixteen tons — $760

(n) Trucks - Sixteen tons and over and less than twenty-five tons — $960

(o) Trucks - Twenty-five tons and over — $1,160

(p) Buses — $360

(q) Trailers other than semitrailers — $10

(r) Semitrailers — $110

(s) Minitrucks — $50

(t) Low-speed vehicles — $50

(4) For purposes of subsection (3) of this section, truck means all trucks and combinations of trucks except those trucks, trailers, or combinations thereof registered under section 60-3,198, and the tax is based on the gross vehicle weight rating as reported by the manufacturer.

(5) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(6) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle tax in the first registration period and ninety-five percent of the initial motor vehicle tax in the second registration period.

(7) Assembled cabin trailers, assembled recreational vehicles, and assembled buses shall be designated as sixth-year motor vehicles in their first year of registration for purposes of the schedules.

(8) When a motor vehicle is registered which is required to have a title branded as previous salvage pursuant to section 60-175, the motor vehicle tax shall be reduced by twenty-five percent.

Source: Laws 2005, LB 274, § 187; Laws 2006, LB 248, § 2; Laws 2006, LB 765, § 7; Laws 2010, LB650, § 28; Laws 2011, LB289, § 22.

60-3,189 Tax exemption; procedure; appeal.

(1) A veteran of the United States Armed Forces who qualifies for an exemption from the motor vehicle tax under subdivision (2) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall approve or deny the application and notify the applicant of his or her decision within twenty days after the filing of the application. An applicant may appeal the denial of an application to the county board of equalization within twenty days after the date the notice was mailed.

(2) An organization which qualifies for an exemption from the motor vehicle tax under subdivision (6) of section 60-3,185 shall apply for the exemption to the county treasurer not more than fifteen days before and not later than thirty days after the registration date for the motor vehicle. For a newly acquired motor vehicle, an application for exemption must be made within thirty days after the purchase date. A renewal application shall be made annually not sooner than the first day of the last month of the registration period or later than the last day of the registration period. The county treasurer shall examine the application and recommend either exempt or nonexempt status to the county board of equalization within twenty days after receipt of the application. The county board of equalization, after a hearing on ten days' notice to the

applicant and after considering the recommendation of the county treasurer and any other information it may obtain, shall approve or deny the exemption on the basis of law and of rules and regulations adopted and promulgated by the Tax Commissioner within thirty days after the hearing. The county board of equalization shall mail or deliver its final decision to the applicant and the county treasurer within seven days after the date of decision. The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission in accordance with the Tax Equalization and Review Commission Act within thirty days after the final decision.

Source: Laws 2005, LB 274, § 189; Laws 2007, LB334, § 10; Laws 2012, LB801, § 90.
Effective date July 19, 2012.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

60-3,190 Motor vehicle fee; fee schedules; Motor Vehicle Fee Fund; created; use; investment.

(1) A motor vehicle fee is imposed on all motor vehicles registered for operation in this state. An owner of a motor vehicle which is exempt from the imposition of a motor vehicle tax pursuant to section 60-3,185 shall also be exempt from the imposition of the motor vehicle fee imposed pursuant to this section.

(2) The county treasurer shall annually determine the motor vehicle fee on each motor vehicle registered in the county based on the age of the motor vehicle pursuant to this section and cause a notice of the amount of the fee to be mailed to the registrant at the address shown upon his or her registration certificate. The notice shall be printed on a form prescribed by the department, shall be combined with the notice of the motor vehicle tax, and shall be mailed on or before the first day of the last month of the registration period.

(3) The motor vehicle fee schedules are set out in this subsection and subsection (4) of this section. Except for automobiles with a value when new of less than $20,000, and for assembled automobiles, the fee shall be calculated by multiplying the base fee times the fraction which corresponds to the age category of the automobile as shown in the following table:

YEAR	FRACTION
First through fifth	1.00
Sixth through tenth	.70
Eleventh and over	.35

(4) The base fee shall be:

(a) Automobiles, with a value when new of less than $20,000, and assembled automobiles — $5

(b) Automobiles, with a value when new of $20,000 through $39,999 — $20

(c) Automobiles, with a value when new of $40,000 or more — $30

(d) Motorcycles — $10

(e) Recreational vehicles and cabin trailers — $10

(f) Trucks over seven tons and buses — $30

(g) Trailers other than semitrailers — $10

(h) Semitrailers — $30

(i) Minitrucks — $10

(j) Low-speed vehicles — $10.

(5) The motor vehicle tax, motor vehicle fee, and registration fee shall be paid to the county treasurer prior to the registration of the motor vehicle for the following registration period. After retaining one percent of the motor vehicle fee collected for costs, the remaining proceeds shall be remitted to the State Treasurer for credit to the Motor Vehicle Fee Fund. The State Treasurer shall return funds from the Motor Vehicle Fee Fund remitted by a county treasurer which are needed for refunds or credits authorized by law.

(6)(a) The Motor Vehicle Fee Fund is created. On or before the last day of each calendar quarter, the State Treasurer shall distribute all funds in the Motor Vehicle Fee Fund as follows: (i) Fifty percent to the county treasurer of each county, amounts in the same proportion as the most recent allocation received by each county from the Highway Allocation Fund; and (ii) fifty percent to the treasurer of each municipality, amounts in the same proportion as the most recent allocation received by each municipality from the Highway Allocation 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.

(b) Funds from the Motor Vehicle Fee Fund shall be considered local revenue available for matching state sources.

(c) All receipts by counties and municipalities from the Motor Vehicle Fee Fund shall be used for road, bridge, and street purposes.

(7) For purposes of subdivisions (4)(a), (b), (c), and (f) of this section, automobiles or trucks includes all trucks and combinations of trucks or truck-tractors, except those trucks, trailers, or semitrailers registered under section 60-3,198, and the fee is based on the gross vehicle weight rating as reported by the manufacturer.

(8) Current model year vehicles are designated as first-year motor vehicles for purposes of the schedules.

(9) When a motor vehicle is registered which is newer than the current model year by the manufacturer's designation, the motor vehicle is subject to the initial motor vehicle fee for six registration periods.

(10) Assembled vehicles other than assembled automobiles shall follow the schedules for the motor vehicle body type.

Source: Laws 2005, LB 274, § 190; Laws 2007, LB286, § 55; Laws 2010, LB650, § 29; Laws 2011, LB289, § 23; Laws 2012, LB801, § 91. Effective date July 19, 2012.

Cross References

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

60-3,191 Alternative fuel; fee.

In addition to any other fee required under the Motor Vehicle Registration Act, a fee for registration of each motor vehicle powered by an alternative fuel shall be charged. The fee shall be seventy-five dollars. The fee shall be collected

by the county treasurer and remitted to the State Treasurer for credit to the Highway Trust Fund.

Source: Laws 2011, LB289, § 24.

60-3,193.01 International Registration Plan; adopted.

For purposes of the Motor Vehicle Registration Act, the International Registration Plan is adopted and incorporated by reference as the plan existed on January 1, 2012.

Source: Laws 2008, LB756, § 10; Laws 2009, LB331, § 4; Laws 2010, LB805, § 2; Laws 2011, LB212, § 3; Laws 2012, LB751, § 14. Operative date April 7, 2012.

60-3,198 Fleet of vehicles in interjurisdiction commerce; registration; exception; application; fees; temporary authority; evidence of registration; proportional registration; removal from fleet; effect; unladen-weight registration; trip permit; fee.

(1) Any owner engaged in operating a fleet of apportionable vehicles in this state in interjurisdiction commerce may, in lieu of registration of such apportionable vehicles under the general provisions of the Motor Vehicle Registration Act, register and license such fleet for operation in this state by filing a statement and the application required by section 60-3,203 with the Division of Motor Carrier Services of the department. The statement shall be in such form and contain such information as the division requires, declaring the total mileage operated by such vehicles in all jurisdictions and in this state during the preceding year and describing and identifying each such apportionable vehicle to be operated in this state during the ensuing license year. Upon receipt of such statement and application, the division shall determine the total fee payment, which shall be equal to the amount of fees due pursuant to section 60-3,203 and the amount obtained by applying the formula provided in section 60-3,204 to a fee of thirty-two dollars per ton based upon gross vehicle weight of the empty weights of a truck or truck-tractor and the empty weights of any trailer or combination thereof with which it is to be operated in combination at any one time plus the weight of the maximum load to be carried thereon at any one time, and shall notify the applicant of the amount of payment required to be made. Mileage operated in noncontracting reciprocity jurisdictions by apportionable vehicles based in Nebraska shall be applied to the portion of the formula for determining the Nebraska injurisdiction fleet distance.

Temporary authority which permits the operation of a fleet or an addition to a fleet in this state while the application is being processed may be issued upon application to the division if necessary to complete processing of the application.

Upon completion of such processing and receipt of the appropriate fees, the division shall issue to the applicant a sufficient number of distinctive registration certificates which provide a list of the jurisdictions in which the apportionable vehicle has been apportioned, the weight for which registered, and such other evidence of registration for display on the apportionable vehicle as the division determines appropriate for each of the apportionable vehicles of his or her fleet, identifying it as a part of an interjurisdiction fleet proportionately registered. All fees received as provided in this section shall be remitted to the

State Treasurer for credit to the Motor Carrier Services Division Distributive Fund.

The apportionable vehicles so registered shall be exempt from all further registration and license fees under the Motor Vehicle Registration Act for movement or operation in the State of Nebraska except as provided in section 60-3,203. The proportional registration and licensing provision of this section shall apply to apportionable vehicles added to such fleets and operated in this state during the license year except with regard to permanent license plates issued under section 60-3,203.

The right of applicants to proportional registration under this section shall be subject to the terms and conditions of any reciprocity agreement, contract, or consent made by the division.

When a nonresident fleet owner has registered his or her apportionable vehicles, his or her apportionable vehicles shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce when the jurisdiction of base registration for such fleet accords the same consideration for fleets with a base registration in Nebraska. Each apportionable vehicle of a fleet registered by a resident of Nebraska shall be considered as fully registered for both interjurisdiction and intrajurisdiction commerce.

(2) Mileage proportions for interjurisdiction fleets not operated in this state during the preceding year shall be determined by the division upon the application of the applicant on forms to be supplied by the division which shall show the operations of the preceding year in other jurisdictions and estimated operations in Nebraska or, if no operations were conducted the previous year, a full statement of the proposed method of operation.

(3) Any owner complying with and being granted proportional registration shall preserve the records on which the application is made for a period of three years following the current registration year. Upon request of the division, the owner shall make such records available to the division at its office for audit as to accuracy of computation and payments or pay the costs of an audit at the home office of the owner by a duly appointed representative of the division if the office where the records are maintained is not within the State of Nebraska. The division may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of any such owner. All payments received to cover the costs of an audit shall be remitted by the division to the State Treasurer for credit to the Motor Carrier Division Cash Fund. No deficiency shall be assessed and no claim for credit shall be allowed for any license registration year for which records on which the application was made are no longer required to be maintained.

(4) If the division claims that a greater amount of fee is due under this section than was paid, the division shall notify the owner of the additional amount claimed to be due. The owner may accept such claim and pay the amount due, or he or she may dispute the claim and submit to the division any information which he or she may have in support of his or her position. If the dispute cannot otherwise be resolved within the division, the owner may petition for an appeal of the matter. The director shall appoint a hearing officer who shall hear the dispute and issue a written decision. Any appeal shall be in accordance with the Administrative Procedure Act. Upon expiration of the time for perfecting an appeal if no appeal is taken or upon final judicial determination if an appeal is taken, the division shall deny the owner the right to further registration for a

fleet license until the amount finally determined to be due, together with any costs assessed against the owner, has been paid.

(5) Every applicant who licenses any apportionable vehicles under this section and section 60-3,203 shall have his or her registration certificates issued only after all fees under such sections are paid and, if applicable, proof has been furnished of payment, in the form prescribed by the director as directed by the United States Secretary of the Treasury, of the federal heavy vehicle use tax imposed by 26 U.S.C. 4481 of the Internal Revenue Code as defined in section 49-801.01.

(6)(a) In the event of the transfer of ownership of any registered apportionable vehicle, (b) in the case of loss of possession because of fire, theft, or wrecking, junking, or dismantling of any registered apportionable vehicle, (c) when a salvage branded certificate of title is issued for any registered apportionable vehicle, (d) whenever a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) upon trade-in or surrender of a registered apportionable vehicle under a lease, or (f) in case of a change in the situs of a registered apportionable vehicle to a location outside of this state, its registration shall expire, except that if the registered owner or lessee applies to the division after such transfer or loss of possession and accompanies the application with a fee of one dollar and fifty cents, he or she may have any remaining credit of vehicle fees and taxes from the previously registered apportionable vehicle applied toward payment of any vehicle fees and taxes due and owing on another registered apportionable vehicle. If such registered apportionable vehicle has a greater gross vehicle weight than that of the previously registered apportionable vehicle, the registered owner or lessee of the registered apportionable vehicle shall additionally pay only the registration fee for the increased gross vehicle weight for the remaining months of the registration year based on the factors determined by the division in the original fleet application.

(7) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles (a) because of a transfer of ownership of the registered apportionable vehicle, (b) because of loss of possession due to fire, theft, or wrecking, junking, or dismantling of the registered apportionable vehicle, (c) because a salvage branded certificate of title is issued for the registered apportionable vehicle, (d) because a type or class of registered apportioned vehicle is subsequently declared by legislative act or court decision to be illegal or ineligible to be operated or towed on the public roads and no longer subject to registration fees and taxes, (e) because of a trade-in or surrender of the registered apportionable vehicle under a lease, or (f) because of a change in the situs of the registered apportionable vehicle to a location outside of this state, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, if such certificate or certificates or such other evidence of registration is unavailable, then by making an affidavit to the division of such transfer or loss, receive a refund of that portion of the unused registration fee based upon the number of unexpired months remaining in the registration year from the date of transfer or loss. No refund shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is transferred or lost within the same month as acquired, no refund shall be allowed for such month. Such refund may be in

the form of a credit against any registration fees that have been incurred or are, at the time of the refund, being incurred by the registered apportionable vehicle owner. The Nebraska-based fleet owner shall make a claim for a refund under this subsection within the registration period or shall be deemed to have forfeited his or her right to the refund.

(8) Whenever a Nebraska-based fleet owner files an application with the division to delete a registered apportionable vehicle from a fleet of registered apportionable vehicles because the apportionable vehicle is disabled and has been removed from service, the registered owner may, by returning the registration certificate or certificates and such other evidence of registration used by the division or, in the case of the unavailability of such certificate or certificates or such other evidence of registration, then by making an affidavit to the division of such disablement and removal from service, receive a credit for that portion of the unused registration fee deposited in the Highway Trust Fund based upon the number of unexpired months remaining in the registration year. No credit shall be allowed for any fees paid under section 60-3,203. When such apportionable vehicle is removed from service within the same month in which it was registered, no credit shall be allowed for such month. Such credit may be applied against registration fees for new or replacement vehicles incurred within one year after cancellation of registration of the apportionable vehicle for which the credit was allowed. When any such apportionable vehicle is reregistered within the same registration year in which its registration has been canceled, the fee shall be that portion of the registration fee provided to be deposited in the Highway Trust Fund for the remainder of the registration year. The Nebraska-based fleet owner shall make a claim for a credit under this subsection within the registration period or shall be deemed to have forfeited his or her right to the credit.

(9) In case of addition to the registered fleet during the registration year, the owner engaged in operating the fleet shall pay the proportionate registration fee from the date the vehicle was placed into service or, if the vehicle was previously registered, the date the prior registration expired or the date Nebraska became the base jurisdiction for the fleet, whichever is first, for the remaining balance of the registration year. The fee for any permanent license plate issued for such addition pursuant to section 60-3,203 shall be the full fee required by such section, regardless of the number of months remaining in the license year.

(10) In lieu of registration under subsections (1) through (9) of this section, the title holder of record may apply to the division for special registration, to be known as an unladen-weight registration, for any commercial motor vehicle or combination of vehicles. Such registration shall be valid only for a period of thirty days and shall give no authority to operate the vehicle except when empty. The fee for such registration shall be twenty dollars for each vehicle, which fee shall be remitted to the State Treasurer for credit to the Highway Trust Fund. The issuance of such permits shall be governed by section 60-3,179.

(11) Any person may, in lieu of registration under subsections (1) through (9) of this section or for other jurisdictions as approved by the director, purchase a trip permit for any nonresident truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit shall be valid for a period of seventy-two hours. The fee for such permit shall be twenty-five dollars for each truck, truck-tractor, bus, or truck or truck-tractor combination. Such permit 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. The carrier enforcement division shall act as an agent for the Division of Motor Carrier Services in collecting such fees and shall remit all such fees collected to the State Treasurer for credit to the Highway Cash Fund. 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 subsection as reimbursement for the clerical work of issuing the permits.

Source: Laws 2005, LB 274, § 198; Laws 2008, LB756, § 15; Laws 2009, LB331, § 5; Laws 2012, LB751, § 15.
Operative date July 19, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

60-3,202 Registration fees; collection and distribution; procedure; Motor Vehicle Tax Fund; created; use; investment.

(1) As registration fees are received by the Division of Motor Carrier Services of the department pursuant to section 60-3,198, the division shall remit the fees to the State Treasurer, less a collection fee of three percent of thirty percent of the registration fees collected. The collection fee shall be credited to the Department of Revenue Property Assessment Division Cash Fund. The State Treasurer shall credit the remainder of the thirty percent of the fees collected to the Motor Vehicle Tax Fund and the remaining seventy percent of the fees collected to the Highway Trust Fund.

(2) On or before the last day of each quarter of the calendar year, the State Treasurer shall distribute all funds in the Motor Vehicle Tax Fund to the county treasurer of each county in the same proportion as the number of original apportionable vehicle registrations in each county bears to the total of all original registrations within the state in the registration year immediately preceding.

(3) Upon receipt of motor vehicle tax funds from the State Treasurer, the county treasurer shall distribute such funds to taxing agencies within the county in the same proportion that the levy of each such taxing agency bears to the total of such levies of all taxing agencies in the county.

(4) In the event any taxing district has been annexed, merged, dissolved, or in any way absorbed into another taxing district, any apportionment of motor vehicle tax funds to which such taxing district would have been entitled shall be apportioned to the successor taxing district which has assumed the functions of the annexed, merged, dissolved, or absorbed taxing district.

(5) On or before March 1 of each year, the department shall furnish to the State Treasurer a tabulation showing the total number of original apportionable vehicle registrations in each county for the immediately preceding calendar year, which shall be the basis for computing the distribution of motor vehicle tax funds as provided in subsection (2) of this section.

(6) The Motor Vehicle Tax 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.

Source: Laws 2005, LB 274, § 202; Laws 2007, LB334, § 11; Laws 2012, LB801, § 92.
Effective date July 19, 2012.

Cross References

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

60-3,205 Registration certificate; disciplinary actions; director; powers; procedure.

(1)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act:

(i) If the applicant or certificate holder has had his or her license issued under the International Fuel Tax Agreement Act revoked or the director refused to issue or refused to renew such license; or

(ii) If the applicant or certificate holder is in violation of sections 75-392 to 75-399.

(b) Prior to taking action under this section, the director shall notify and advise the applicant or certificate holder of the proposed action and the reasons for such action in writing, by regular United States mail, to his or her last-known business address as shown on the application for the certificate or renewal. The notice shall also include an advisement of the procedures in subdivision (c) of this subsection.

(c) The applicant or certificate holder may, within thirty days after the date of the mailing of the notice, petition the director 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. 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 certificate holder may show cause why the proposed action should not be taken. The director shall give the applicant or certificate holder reasonable notice of the time and place of the hearing. If the director's decision is adverse to the applicant or certificate holder, the applicant or certificate holder may appeal the decision in accordance with the Administrative Procedure Act.

(d) Except as provided in subsections (2) and (3) 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.

(e) Except as provided in subsections (2) and (3) 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.

(f) If, in the judgment of the director, the applicant or certificate holder has complied with or is no longer in violation of the provisions for which the director took action under this subsection, the director may reinstate the registration certificate without delay.

(2)(a) The director may suspend, revoke, cancel, or refuse to issue or renew a registration certificate under the International Registration Plan Act or a license under the International Fuel Tax Agreement Act if the applicant, licensee, or certificate holder has issued to the department a check or draft which has been returned because of insufficient funds, no funds, or a stop-payment order. The director may take such action no sooner than seven days after the written notice required in subdivision (1)(b) of this section has been provided. Any petition to contest such action filed pursuant to subdivision (1)(c) of this section shall not stay such action of the director.

(b) If the director takes an action pursuant to this subsection, the director shall reinstate the registration certificate or license without delay upon the payment of certified funds by the applicant, licensee, or certificate holder for any fees due and reasonable administrative costs, not to exceed twenty-five dollars, incurred in taking such action.

(c) The rules, regulations, and orders of the director and the department that pertain to hearings commenced in accordance with this section and that are in effect prior to March 17, 2006, shall remain in effect, unless changed or eliminated by the director or the department, except for those portions involving a stay upon the filing of a petition to contest any action taken pursuant to this subsection, in which case this subsection shall supersede those provisions.

(3) Any person who receives notice from the director of action taken pursuant to subsection (1) or (2) of this section shall, within three business days, return such registration certificate and license plates to the department as provided in this section. 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 2005, LB 274, § 205; Laws 2006, LB 853, § 5; Laws 2007, LB358, § 10; Laws 2009, LB331, § 6; Laws 2012, LB751, § 16. Operative date July 19, 2012.

Cross References

Administrative Procedure Act, see section 84-920.
International Fuel Tax Agreement Act, see section 66-1401.

60-3,209 Snowmobiles; registration; application.

Application for registration shall be made to the county treasurer in such form as the director prescribes and shall state the name and address of the applicant, state a description of the snowmobile, including color, manufacturer, and identification number, and be signed by at least one owner. Application forms shall be made available through the county treasurer's office of each county in this state. Upon receipt of the application and the appropriate fee as provided in section 60-3,210, the snowmobile shall be registered by the county treasurer and a validation decal shall be provided which shall be affixed to the upper half of the snowmobile in such manner as the director prescribes. Snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be exempt from affixing validation decals to the snowmobile but are required to carry a valid validation decal with the snowmobile at all times. Application for registration shall be made within fifteen days after the date of purchase.

Source: Laws 2005, LB 274, § 209; Laws 2012, LB801, § 93. Effective date July 19, 2012.

60-3,217 Snowmobiles; fees; disposition.

(1) The county treasurers shall act as agents for the department in the collection of snowmobile registration fees. Twenty-five cents from the funds collected for each such registration shall be retained by the county.

(2) The remaining amount of the fees from registration of snowmobiles shall be remitted to the State Treasurer who shall credit twenty-five percent to the

General Fund and seventy-five percent to the Nebraska Snowmobile Trail Cash Fund.

Source: Laws 2005, LB 274, § 217; Laws 2012, LB801, § 94.
Effective date July 19, 2012.

60-3,221 Towing of trailers; restrictions; section; how construed.

(1) Except as otherwise provided in the Motor Vehicle Registration Act:

(a) A cabin trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck;

(iv) Local truck;

(v) Minitruck;

(vi) Recreational vehicle; or

(vii) Bus;

(b) A utility trailer shall only be towed by:

(i) A properly registered passenger car;

(ii) A properly registered commercial motor vehicle or apportionable vehicle;

(iii) A properly registered farm truck;

(iv) A properly registered local truck;

(v) A properly registered minitruck;

(vi) A properly registered recreational vehicle;

(vii) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(viii) A properly registered well-boring apparatus;

(ix) A dealer-plated vehicle;

(x) A personal-use dealer-plated vehicle; or

(xi) A properly registered bus;

(c) A farm trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle;

(iii) Farm truck; or

(iv) Minitruck;

(d) A commercial trailer shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck;

(e) A fertilizer trailer shall only be towed by a properly registered:

(i) Passenger car;

(ii) Commercial motor vehicle or apportionable vehicle;

(iii) Farm truck; or

(iv) Local truck;

(f) A pole and cable reel trailer shall only be towed by a properly registered:

(i) Commercial motor vehicle or apportionable vehicle; or

(ii) Local truck;

(g) A dealer-plated trailer shall only be towed by:

(i) A dealer-plated vehicle;

(ii) A properly registered passenger car;

(iii) A properly registered commercial motor vehicle or apportionable vehicle;

(iv) A properly registered farm truck;

(v) A properly registered minitruck; or

(vi) A personal-use dealer-plated vehicle; and

(h) Trailers registered pursuant to section 60-3,198 as part of an apportioned fleet shall only be towed by:

(i) A properly registered motor vehicle which is engaged in soil and water conservation pursuant to section 60-3,149;

(ii) A properly registered local truck;

(iii) A properly registered well-boring apparatus;

(iv) A properly registered commercial motor vehicle or apportionable vehicle;

(v) A dealer-plated vehicle;

(vi) A personal-use dealer-plated vehicle;

(vii) A properly registered bus; or

(viii) A properly registered farm truck.

(2) Nothing in this section shall be construed to waive compliance with the Nebraska Rules of the Road or Chapter 75.

(3) Nothing in this section shall be construed to prohibit any motor vehicle or trailer from displaying dealer license plates or In Transit stickers authorized by section 60-376.

Source: Laws 2007, LB349, § 2; Laws 2011, LB212, § 4.

Cross References

Nebraska Rules of the Road, see section 60-601.

ARTICLE 4

MOTOR VEHICLE OPERATORS' LICENSES

(e) GENERAL PROVISIONS

Section

(e) GENERAL PROVISIONS

60-462 Act, how cited.

Sections 60-462 to 60-4,188 shall be known and may be cited as the Motor Vehicle Operator's License Act.

Source: Laws 1937, c. 141, § 31, p. 523; C.S.Supp.,1941, § 60-434; R.S.1943, § 60-402; R.S.1943, (1988), § 60-402; Laws 1989, LB 284, § 2; Laws 1989, LB 285, § 12; Laws 1990, LB 980, § 6; Laws 1991, LB 44, § 1; Laws 1993, LB 105, § 4; Laws 1993, LB 370, § 65; Laws 1993, LB 420, § 1; Laws 1994, LB 211, § 1; Laws 1995, LB 467, § 6; Laws 1996, LB 323, § 1; Laws 1997, LB 210, § 2; Laws 1997, LB 256, § 4; Laws 1998, LB 320, § 1; Laws 2001, LB 38, § 5; Laws 2001, LB 574, § 1; Laws 2003, LB 209, § 1; Laws 2003, LB 562, § 2; Laws 2005, LB 76, § 2; Laws 2006, LB 853, § 6; Laws 2007, LB415, § 1; Laws 2008, LB911, § 1; Laws 2011, LB158, § 1; Laws 2011, LB178, § 2; Laws 2011, LB215, § 1.

60-462.01 Federal regulations; adopted.

For purposes of the Motor Vehicle Operator's License Act, the following federal regulations are adopted as Nebraska law as they existed on January 1, 2012:

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicle Operator's License Act.

Source: Laws 2003, LB 562, § 20; Laws 2004, LB 560, § 36; Laws 2005, LB 76, § 3; Laws 2006, LB 853, § 7; Laws 2006, LB 1007, § 4; Laws 2007, LB239, § 4; Laws 2008, LB756, § 16; Laws 2009, LB331, § 7; Laws 2010, LB805, § 3; Laws 2011, LB178, § 3; Laws 2011, LB212, § 5; Laws 2012, LB751, § 17.
Operative date April 7, 2012.

60-462.02 Legislative intent; director; department; powers and duties.

It is the intent of the Legislature that the department develop, implement, and maintain processes for the issuance of operators' licenses and state identification cards designed to protect the identity of applicants for and holders of such licenses and cards and reduce identity theft, fraud, forgery, and counterfeiting to the maximum extent possible with respect to such licenses and cards. The department shall adopt security and technology practices to enhance the enrollment, production, data storage, and credentialing system of such licenses and cards in order to maximize the integrity of the process.

Source: Laws 2008, LB911, § 2; Laws 2009, LB331, § 8; Laws 2011, LB215, § 2.

60-471 Motor vehicle, defined.

Motor vehicle means all vehicles propelled by any power other than muscular power. Motor vehicle does not include (1) self-propelled chairs used by persons

who are disabled, (2) farm tractors, (3) farm tractors used occasionally outside general farm usage, (4) road rollers, (5) vehicles which run only on rails or tracks, (6) electric personal assistive mobility devices as defined in section 60-618.02, and (7) off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawn mowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663.

Source: Laws 1989, LB 285, § 21; Laws 1993, LB 370, § 68; Laws 2002, LB 1105, § 445; Laws 2010, LB650, § 30; Laws 2011, LB289, § 25; Laws 2012, LB1155, § 12.
Operative date January 1, 2013.

(f) PROVISIONS APPLICABLE TO ALL OPERATORS' LICENSES

60-479 Sections; applicability.

Sections 60-479.01 to 60-4,111.01 and 60-4,182 to 60-4,188 shall apply to any operator's license subject to the Motor Vehicle Operator's License Act.

Source: Laws 1989, LB 285, § 29; Laws 1993, LB 370, § 72; Laws 1995, LB 467, § 7; Laws 1997, LB 210, § 3; Laws 1997, LB 256, § 5; Laws 2001, LB 38, § 10; Laws 2001, LB 574, § 2; Laws 2003, LB 209, § 2; Laws 2008, LB911, § 7; Laws 2011, LB215, § 3.

60-479.01 Fraudulent document recognition training; criminal history record information check; lawful status check; cost.

(1) All persons handling source documents or engaged in the issuance of new, renewed, or reissued operators' licenses or state identification cards shall have periodic fraudulent document recognition training.

(2) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. All persons and agents of the department involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or who have the ability to affect information on such licenses or cards shall be subject to a criminal history record information check, including a check of prior employment references, and a lawful status check as required by 6 C.F.R. part 37, as such part existed on January 1, 2012. Such persons and agents shall provide fingerprints which shall be submitted to the Federal Bureau of Investigation. The bureau shall use its records for the criminal history record information check.

(3) Upon receipt of a request pursuant to subsection (2) of this section, the Nebraska State Patrol shall undertake a search for criminal history record information relating to such applicant, including transmittal of the applicant's fingerprints to the Federal Bureau of Investigation for a national criminal history record information check. The criminal history record information check shall include information concerning the applicant 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 to the employing public agency that shall include the criminal history record informa-

tion concerning the applicant. The cost of any background check shall be borne by the employer of the person or agent.

(4) Any person convicted of any disqualifying offense as provided in 6 C.F.R. part 37, as such part existed on January 1, 2012, shall not be involved in the recording of verified application information or verified operator's license and state identification card information, involved in the manufacture or production of licenses or cards, or involved in any capacity in which such person would have the ability to affect information on such licenses or cards. Any employee or prospective employee of the department shall be provided notice that he or she will undergo such criminal history record information check prior to employment or prior to any involvement with the issuance of operators' licenses or state identification cards.

Source: Laws 2008, LB911, § 8; Laws 2011, LB215, § 4; Laws 2012, LB751, § 18.
Operative date April 7, 2012.

60-484 Operator's license required, when; state identification card; application.

(1)(a) This subsection applies until the implementation date designated by the director on or before January 1, 2014. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant (i) shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (1)(f) of this subsection, and a brief physical description of himself or herself, (ii) may complete the voter registration portion pursuant to section 32-308, (iii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iv) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness .... yes .... no

(II) experienced vertigo or multiple episodes of dizziness or fainting .... yes .... no

(III) experienced disorientation .... yes .... no

(IV) experienced seizures .... yes .... no

(V) experienced impairment of memory, memory loss .... yes .... no

Please explain: .....

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(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) . . . . yes . . . . no

Please explain: . . . . . .
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(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? . . . . yes . . . . no

Please explain, including how the above affects your ability to drive:

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. . . . . , and (v) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the

information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall include, but not be limited to, any valid Nebraska operator's license or Nebraska state identification card, a valid operator's license or identification card from another state or jurisdiction of the United States, a certified birth certificate, a valid United States passport, or any other United States-based identification as approved by the director.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (1)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(2)(a) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. Except as otherwise provided in the Motor Vehicle Operator's License Act, no resident of the State of Nebraska shall operate a motor vehicle upon the alleys or highways of this state until the person has obtained an operator's license for that purpose.

(b) Application for an operator's license or a state identification card shall be made in a manner prescribed by the department. Such application may be made to department personnel in any county. Department personnel shall conduct the examination of the applicant and deliver to each successful applicant an issuance certificate containing the statements made pursuant to subdivision (c) of this subsection.

(c) The applicant shall provide his or her full legal name, date of birth, mailing address, gender, race or ethnicity, and social security number, two forms of proof of address of his or her principal residence unless the applicant is a program participant under the Address Confidentiality Act, evidence of identity as required by subdivision (2)(f) of this subsection, and a brief physical

description of himself or herself. The applicant (i) may also complete the voter registration portion pursuant to section 32-308, (ii) shall be provided the advisement language required by subsection (5) of section 60-6,197, (iii) shall answer the following:

(A) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(I) lost voluntary control or consciousness .... yes .... no

(II) experienced vertigo or multiple episodes of dizziness or fainting .... yes .... no

(III) experienced disorientation .... yes .... no

(IV) experienced seizures .... yes .... no

(V) experienced impairment of memory, memory loss .... yes .... no

Please explain: .....

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(B) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) .... yes .... no

Please explain: .....

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(C) Since the issuance of your last driver's license/permit, has your health or medical condition changed or worsened? .... yes .... no

Please explain, including how the above affects your ability to drive:

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. . . . . , and (iv) may answer the following:

(A) Do you wish to register to vote as part of this application process?

OPTIONAL - YOU ARE NOT REQUIRED TO ANSWER ANY OF THE FOLLOWING QUESTIONS:

(B) Do you wish to be an organ and tissue donor?

(C) Do you wish to receive any additional specific information regarding organ and tissue donation and the Donor Registry of Nebraska?

(D) Do you wish to donate $1 to promote the Organ and Tissue Donor Awareness and Education Fund?

(d) Application for an operator's license or state identification card shall include a signed oath, affirmation, or declaration of the applicant that the information provided on the application for the license or card is true and correct.

(e) The social security number shall not be printed on the operator's license or state identification card and shall be used only (i) to furnish information to the United States Selective Service System under section 60-483, (ii) with the permission of the director in connection with the verification of the status of an individual's driving record in this state or any other state, (iii) for purposes of child support enforcement pursuant to section 42-358.08 or 43-512.06, (iv) to furnish information regarding an applicant for or holder of a commercial driver's license with a hazardous materials endorsement to the Transportation Security Administration of the United States Department of Homeland Security or its agent, or (v) to furnish information to the Department of Revenue under section 77-362.02.

(f)(i) Each individual applying for an operator's license or a state identification card shall furnish proof of date of birth and identity with documents containing a photograph or with nonphoto identity documents which include his or her full legal name and date of birth. Such documents shall be those provided in subsection (2) of section 60-484.04.

(ii) Any individual under the age of eighteen years applying for an operator's license or a state identification card shall provide a certified copy of his or her birth certificate or, if such individual is unable to provide a certified copy of his or her birth certificate, other reliable proof of his or her identity and age, as required in subdivision (2)(f)(i) of this section, accompanied by a certification signed by a parent or guardian explaining the inability to produce a copy of such birth certificate. The applicant also may be required to furnish proof to department personnel that the parent or guardian signing the certification is in fact the parent or guardian of such applicant.

(iii) An applicant may present other documents as proof of identification and age designated by the director. Any documents accepted shall be recorded according to a written exceptions process established by the director.

(g) No person shall be a holder of an operator's license and a state identification card at the same time.

Source: Laws 1929, c. 148, § 1, p. 512; C.S.1929, § 60-401; Laws 1937, c. 141, § 11, p. 510; C.S.Supp.,1941, § 60-401; R.S.1943, § 60-403; Laws 1945, c. 141, § 1, p. 446; Laws 1947, c. 207, § 1, p. 675;

Laws 1957, c. 366, § 35, p. 1269; Laws 1961, c. 315, § 2, p. 998; Laws 1961, c. 316, § 2, p. 1007; Laws 1984, LB 811, § 2; Laws 1986, LB 153, § 9; Laws 1986, LB 878, § 1; Laws 1987, LB 300, § 1; R.S.1943, (1988), § 60-403; Laws 1989, LB 285, § 35; Laws 1991, LB 457, § 44; Laws 1992, LB 1178, § 1; Laws 1994, LB 76, § 571; Laws 1994, LB 211, § 2; Laws 1995, LB 467, § 10; Laws 1996, LB 939, § 1; Laws 1996, LB 1073, § 1; Laws 1997, LB 635, § 20; Laws 1999, LB 147, § 1; Laws 1999, LB 704, § 5; Laws 2000, LB 1317, § 7; Laws 2001, LB 34, § 1; Laws 2001, LB 387, § 4; Laws 2001, LB 574, § 5; Laws 2003, LB 228, § 12; Laws 2004, LB 208, § 4; Laws 2004, LB 559, § 1; Laws 2005, LB 1, § 1; Laws 2005, LB 76, § 5; Laws 2008, LB911, § 9; Laws 2010, LB879, § 3; Laws 2011, LB215, § 5.

Cross References

Address Confidentiality Act, see section 42-1201.

60-484.03 Operators' licenses; state identification cards; department; retain copies of source documents.

This section applies beginning on an implementation date designated by the director on or before January 1, 2014. The department shall retain copies of source documents presented by all individuals applying for or holding operators' licenses or state identification cards. Copies retained by the department shall be held in secured storage and managed to meet the requirements of the Uniform Motor Vehicle Records Disclosure Act and sections 60-484 and 60-484.02.

Source: Laws 2011, LB215, § 6.

Cross References

Uniform Motor Vehicle Records Disclosure Act, see section 60-2901.

60-484.04 Operators' licenses; state identification cards; applicant present evidence of lawful status.

(1) This section applies beginning on an implementation date designated by the director on or before January 1, 2014.

(2) Before being issued any type of operator's license or a state identification card under the Motor Vehicle Operator's License Act, the department shall require an applicant to present valid documentary evidence that he or she has lawful status in the United States. Lawful status may be shown by:

(a) A valid, unexpired United States passport;

(b) A certified copy of a birth certificate filed with a state office of vital statistics or equivalent agency in the individual's state of birth;

(c) A Consular Report of Birth Abroad (CRBA) issued by the United States Department of State, Form FS-240, DS-1350, or FS-545;

(d) A valid, unexpired Permanent Resident Card (Form I-551) issued by the United States Department of Homeland Security or Bureau of United States Citizenship and Immigration Services;

(e) An unexpired employment authorization document (EAD) issued by the United States Department of Homeland Security, Form I-766 or Form I-688B;

(f) An unexpired foreign passport with a valid, unexpired United States visa affixed accompanied by the approved I-94 form documenting the applicant's most recent admittance into the United States;

(g) A Certificate of Naturalization issued by the United States Department of Homeland Security, Form N-550 or Form N-570;

(h) A Certificate of Citizenship, Form N-560 or Form N-561, issued by the United States Department of Homeland Security;

(i) A driver's license or identification card issued in compliance with the standards established by the REAL ID Act of 2005, Public Law 109-13, division B, section 1, 119 Stat. 302; or

(j) Such other documents as the director may approve.

(3)(a) If an applicant presents one of the documents listed under subdivision (2)(a), (b), (c), (d), (g), or (h) of this section, the verification of the applicant's identity in the manner prescribed in section 60-484 will also provide satisfactory evidence of lawful status.

(b) If the applicant presents one of the identity documents listed under subdivision (2)(e), (f), or (i) of this section, the verification of the identity documents does not provide satisfactory evidence of lawful status. The applicant must also present a second document from subsection (2) of this section or documentation issued by the United States Department of Homeland Security or other federal agencies demonstrating lawful status as determined by the Bureau of United States Citizenship and Immigration Services.

(4) An applicant may present other documents as designated by the director as proof of lawful status. Any documents accepted shall be recorded according to a written exceptions process established by the director.

Source: Laws 2011, LB215, § 7.

60-484.05 Operators' licenses; state identification cards; temporary; when issued; period valid; special notation; renewal.

(1) The department shall only issue an operator's license or a state identification card that is temporary to any applicant who presents documentation under section 60-484 and subsection (2) of section 60-484.04 that shows his or her lawful presence in the United States is temporary. An operator's license or a state identification card that is temporary shall be valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(2) An operator's license or state identification card that is temporary shall clearly indicate that it is temporary with a special notation on the front of the license or card and shall state the date on which it expires.

(3) An operator's license or state identification card that is temporary may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the operator's license or state identification card that is temporary has been extended by the United States Department of Homeland Security.

Source: Laws 2011, LB215, § 8.

60-484.06 Operators' licenses; state identification cards; department; power to verify documents.

This section applies beginning on an implementation date designated by the director on or before January 1, 2014. Before issuing any operator's license or state identification card under the Motor Vehicle Operator's License Act, the department may verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by a person pursuant to sections 60-484 and 60-484.04.

Source: Laws 2011, LB215, § 9.

60-485 Repealed. Laws 2012, LB 751, § 57.

Operative date July 19, 2012.

60-486 Operator's license; license suspended or revoked; effect; appeal.

(1) No person shall be licensed to operate a motor vehicle by the State of Nebraska if such person has an operator's license currently under suspension or revocation in this state or any other state or jurisdiction in the United States.

(2) If a license is issued to a person while his or her operator's license was suspended or revoked in this state or any other state or jurisdiction, the Department of Motor Vehicles may cancel the license upon forty-five days' written notice by regular United States mail to the licensee's last-known address. The cancellation may be appealed as provided in section 60-4,105.

(3) When such a person presents to the department an official notice from the state or jurisdiction that suspended or revoked his or her motor vehicle operator's license that such suspension or revocation has been terminated, he or she may then be licensed to operate a motor vehicle by the State of Nebraska.

Source: Laws 1986, LB 153, § 7; R.S.1943, (1988), § 60-403.05; Laws 1989, LB 285, § 37; Laws 1999, LB 704, § 6; Laws 2001, LB 38, § 13; Laws 2012, LB751, § 19.
Operative date July 19, 2012.

60-487 Cancellation of operator's license or commercial driver's license; when.

(1) If any magistrate or judge finds in his or her judgment of conviction that the application or issuance certificate pursuant to which the director has issued an operator's license under the Motor Vehicle Operator's License Act contains any false or fraudulent statement deliberately and knowingly made to any officer as to any matter material to the issuance of such license or does not contain required or correct information or that the person to whom the license was issued was not eligible to receive such license, then the license shall be absolutely void from the date of issue and such motor vehicle operator shall be deemed to be not licensed to operate a motor vehicle. Such license shall be at once canceled of record in his or her office by the director upon receipt of a copy of such judgment of conviction. The director may, upon his or her own motion, summarily cancel any license for any of the reasons set forth in this section if such reason or reasons affirmatively appear on his or her official records.

(2) If the director determines, in a check of an applicant's license status and record prior to issuing a commercial driver's license, or at any time after the

commercial driver's license is issued, that the applicant falsified information contained in the application, the director may summarily cancel the person's commercial driver's license or his or her pending application as provided in subsection (1) of this section and disqualify the person from operating a commercial motor vehicle for sixty days.

Source: Laws 1929, c. 148, § 10, p. 517; C.S.1929, § 60-410; Laws 1937, c. 141, § 20, p. 517; Laws 1941, c. 124, § 1, p. 469; C.S.Supp.,1941, § 60-410; R.S.1943, § 60-416; R.S.1943, (1988), § 60-416; Laws 1989, LB 285, § 38; Laws 1991, LB 420, § 7; Laws 1999, LB 704, § 7; Laws 2001, LB 38, § 14; Laws 2003, LB 562, § 4; Laws 2011, LB215, § 10.

60-497.01 Conviction and probation records; abstract of court record; transmission to director; duties.

(1) An abstract of the court record of every case in which a person is convicted of violating any provision of the Motor Vehicle Operator's License Act, the Motor Vehicle Safety Responsibility Act, the Nebraska Rules of the Road, or section 28-524, as from time to time amended by the Legislature, or any traffic regulations in city or village ordinances shall be transmitted within thirty days of sentencing or other disposition by the court to the director. Any abstract received by the director more than thirty days after the date of sentencing or other disposition shall be reported by the director to the State Court Administrator.

(2) Any person violating section 28-306, 28-394, 28-1254, 60-696, 60-697, 60-6,196, 60-6,197, 60-6,213, or 60-6,214 who is placed on probation shall be assessed the same points under section 60-4,182 as if such person were not placed on probation unless a court has ordered that such person must obtain an ignition interlock permit in order to operate a motor vehicle with an ignition interlock device pursuant to section 60-6,211.05 and sufficient evidence is presented to the department that such a device is installed. For any other violation, the director shall not assess such person with any points under section 60-4,182 for such violation when the person is placed on probation until the director is advised by the court that such person previously placed on probation has violated the terms of his or her probation and such probation has been revoked. Upon receiving notice of revocation of probation, the director shall assess to such person the points which such person would have been assessed had the person not been placed on probation. When a person fails to successfully complete probation, the court shall notify the director immediately.

Source: Laws 1931, c. 110, § 58, p. 326; Laws 1941, c. 124, § 9, p. 476; C.S.Supp.,1941, § 39-1189; R.S.1943, § 39-794; Laws 1953, c. 219, § 7, p. 771; Laws 1957, c. 164, § 1, p. 579; Laws 1957, c. 165, § 1, p. 582; Laws 1957, c. 366, § 15, p. 1255; Laws 1972, LB 1032, § 247; Laws 1972, LB 1058, § 2; Laws 1973, LB 226, § 25; Laws 1973, LB 317, § 1; R.S.Supp.,1973, § 39-794; Laws 1975, LB 379, § 1; Laws 1987, LB 79, § 1; Laws 1991, LB 420, § 2; R.S.Supp.,1992, § 39-669.22; Laws 1993, LB 370, § 75; Laws 1993, LB 564, § 13; Laws 1993, LB 575, § 15; Laws 2001, LB 38, § 18; Laws 2006, LB 925, § 2; Laws 2008, LB736, § 2; Laws 2009, LB63, § 32; Laws 2011, LB667, § 23.

Cross References

Motor Vehicle Safety Responsibility Act, see section 60-569.
Nebraska Rules of the Road, see section 60-601.

60-498.01 Driving under influence of alcohol; operator's license; confiscation and revocation; application for ignition interlock permit; procedures; appeal; restrictions relating to ignition interlock permit; prohibited acts relating to ignition interlock devices; additional revocation period.

(1) Because persons who drive while under the influence of alcohol present a hazard to the health and safety of all persons using the highways, a procedure is needed for the swift and certain revocation of the operator's license of any person who has shown himself or herself to be a health and safety hazard (a) by driving with an excessive concentration of alcohol in his or her body or (b) by driving while under the influence of alcohol.

(2) If a person arrested as described in subsection (2) of section 60-6,197 refuses to submit to the chemical test of blood, breath, or urine required by section 60-6,197, the test shall not be given except as provided in section 60-6,210 for the purpose of medical treatment and the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person refused to submit to the required test. The director may accept a sworn report submitted electronically.

(3) If a person arrested as described in subsection (2) of section 60-6,197 submits to the chemical test of blood or breath required by section 60-6,197, the test discloses the presence of alcohol in any of the concentrations specified in section 60-6,196, and the test results are available to the arresting peace officer while the arrested person is still in custody, the arresting peace officer, as agent for the director, shall verbally serve notice to the arrested person of the intention to immediately confiscate and revoke the operator's license of such person and that the revocation will be automatic fifteen days after the date of arrest. The arresting peace officer shall within ten days forward to the director a sworn report stating (a) that the person was arrested as described in subsection (2) of section 60-6,197 and the reasons for such arrest, (b) that the person was requested to submit to the required test, and (c) that the person submitted to a test, the type of test to which he or she submitted, and that such test revealed the presence of alcohol in a concentration specified in section 60-6,196. The director may accept a sworn report submitted electronically.

(4) On behalf of the director, the arresting peace officer submitting a sworn report under subsection (2) or (3) of this section shall serve notice of the revocation on the arrested person, and the revocation shall be effective fifteen days after the date of arrest. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The peace officer shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing or apply for an ignition interlock permit from the department. A petition for an administrative license revocation hearing

must be completed and delivered to the department or postmarked within ten days after the person's arrest or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the information form, the application for an ignition interlock permit, and the notice of revocation and shall provide them to law enforcement agencies.

If the person has an operator's license, the arresting peace officer shall take possession of the license and issue a temporary operator's license valid for fifteen days. The arresting peace officer shall forward the operator's license to the department along with the sworn report made under subsection (2) or (3) of this section.

(5)(a) If the results of a chemical test indicate the presence of alcohol in a concentration specified in section 60-6,196, the results are not available to the arresting peace officer while the arrested person is in custody, and the notice of revocation has not been served as required by subsection (4) of this section, the peace officer shall forward to the director a sworn report containing the information prescribed by subsection (3) of this section within ten days after receipt of the results of the chemical test. If the sworn report is not received within ten days, the revocation shall not take effect. The director may accept a sworn report submitted electronically.

(b) Upon receipt of the report, the director shall serve the notice of revocation on the arrested person by mail to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses. The notice of revocation shall contain a statement explaining the operation of the administrative license revocation procedure. The director shall also provide to the arrested person information prepared and approved by the director describing how to request an administrative license revocation hearing and an application for an ignition interlock permit. A petition for an administrative license revocation hearing must be completed and delivered to the department or postmarked within ten days after the mailing of the notice of revocation or the person's right to an administrative license revocation hearing to contest the revocation will be foreclosed. The director shall prepare and approve the ignition interlock permit application and the notice of revocation. The revocation shall be effective fifteen days after the date of mailing.

(c) If the records of the director indicate that the arrested person possesses an operator's license, the director shall include with the notice of revocation a temporary operator's license which expires fifteen days after the date of mailing. Any arrested person who desires an administrative license revocation hearing and has been served a notice of revocation pursuant to this subsection shall return his or her operator's license with the petition requesting the hearing. If the operator's license is not included with the petition requesting the hearing, the director shall deny the petition.

(6)(a) An arrested person's operator's license confiscated pursuant to subsection (4) of this section shall be automatically revoked upon the expiration of fifteen days after the date of arrest, and the petition requesting the hearing shall be completed and delivered to the department or postmarked within ten days after the person's arrest. An arrested person's operator's license confiscated pursuant to subsection (5) of this section shall be automatically revoked upon the expiration of fifteen days after the date of mailing of the notice of revocation

by the director, and the arrested person shall postmark or return to the director a petition within ten days after the mailing of the notice of revocation if the arrested person desires an administrative license revocation hearing. The petition shall be in writing and shall state the grounds on which the person is relying to prevent the revocation from becoming effective. The hearing and any prehearing conference may be conducted in person or by telephone, television, or other electronic means at the discretion of the director, and all parties may participate by such means at the discretion of the director.

(b) The director shall conduct the hearing within twenty days after a petition is received by the director. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by mail postmarked at least seven days prior to the hearing date. The filing of the petition shall not prevent the automatic revocation of the petitioner's operator's license at the expiration of the fifteen-day period. A continuance of the hearing to a date beyond the expiration of the temporary operator's license shall stay the expiration of the temporary license when the request for continuance is made by the director.

(c) At hearing the issues under dispute shall be limited to:

(i) In the case of a refusal to submit to a chemical test of blood, breath, or urine:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Did the person refuse to submit to or fail to complete a chemical test after being requested to do so by the peace officer; or

(ii) If the chemical test discloses the presence of alcohol in a concentration specified in section 60-6,196:

(A) Did the peace officer have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; and

(B) Was the person operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of subsection (1) of section 60-6,196.

(7)(a) Any arrested person who submits an application for an ignition interlock permit in lieu of a petition for an administrative license revocation hearing regarding the revocation of his or her operator's license pursuant to this section shall complete the application for an ignition interlock permit in which such person acknowledges that he or she understands that he or she will have his or her license administratively revoked pursuant to this section, that he or she waives his or her right to a hearing to contest the revocation, and that he or she understands that he or she is required to have an ignition interlock permit in order to operate a motor vehicle for the period of the revocation and shall include sufficient evidence that an ignition interlock device is installed on one or more vehicles that will be operated by the arrested person. Upon the arrested person's completion of the ignition interlock permit application process, the department shall issue the person an ignition interlock permit, subject

to any applicable requirements and any applicable no-drive period if the person is otherwise eligible.

(b) An arrested person who is issued an ignition interlock permit pursuant to this section shall receive day-for-day credit for the period he or she has a valid ignition interlock permit against the license revocation period imposed by the court arising from the same incident.

(c) If a person files a completed application for an ignition interlock permit, the person waives his or her right to contest the revocation of his or her operator's license.

(8) Any person who has not petitioned for an administrative license revocation hearing and is subject to an administrative license revocation may immediately apply for an ignition interlock permit to use during the applicable period of revocation set forth in section 60-498.02, subject to the following additional restrictions:

(a) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has no prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be immediately available fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(b) If such person submitted to a chemical test which disclosed the presence of a concentration of alcohol in violation of section 60-6,196 and has one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, the ignition interlock permit will be available beginning fifteen days after the date of arrest or the date notice of revocation was provided to the arrested person plus forty-five additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit;

(c) If such person refused to submit to a chemical test of blood, breath, or urine as required by section 60-6,197, the ignition interlock permit will be available beginning fifteen days after the date of arrest plus ninety additional days of no driving, as long as he or she is otherwise eligible for an ignition interlock permit, upon completion of an application process for an ignition interlock permit; and

(d) Any person who petitions for an administrative license revocation hearing shall not be eligible for an ignition interlock permit unless ordered by the court at the time of sentencing for the related criminal proceeding.

(9) The director shall adopt and promulgate rules and regulations to govern the conduct of the administrative license revocation hearing and insure that the hearing will proceed in an orderly manner. The director may appoint a hearing officer to preside at the hearing, administer oaths, examine witnesses, take testimony, and report to the director. Any motion for discovery filed by the petitioner shall entitle the prosecutor to receive full statutory discovery from the petitioner upon a prosecutor's request to the relevant court pursuant to section 29-1912 in any criminal proceeding arising from the same arrest. A

copy of the motion for discovery shall be filed with the department and a copy provided to the prosecutor in the jurisdiction in which the petitioner was arrested. Incomplete discovery shall not stay the hearing unless the petitioner requests a continuance. All proceedings before the hearing officer shall be recorded. Upon receipt of the arresting peace officer's sworn report, the director's order of revocation has prima facie validity and it becomes the petitioner's burden to establish by a preponderance of the evidence grounds upon which the operator's license revocation should not take effect. The director shall make a determination of the issue within seven days after the conclusion of the hearing. A person whose operator's license is revoked following a hearing requested pursuant to this section may appeal the order of revocation as provided in section 60-498.04.

(10) Any person who tampers with or circumvents an ignition interlock device installed pursuant to sections 60-498.01 to 60-498.04 or who operates a motor vehicle not equipped with a functioning ignition interlock device required pursuant to such sections or otherwise is in violation of the purposes for operation indicated on the ignition interlock permit under such sections shall, in addition to any possible criminal charges, have his or her revocation period and ignition interlock permit extended for six months beyond the end of the original revocation period.

(11) A person under the age of eighteen years who holds any license or permit issued under the Motor Vehicle Operator's License Act and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1972, LB 1095, § 5; C.S.Supp.,1972, § 39-727.16; Laws 1992, LB 872, § 4; Laws 1992, LB 291, § 9; R.S.Supp.,1992, § 39-669.15; Laws 1993, LB 370, § 300; Laws 1996, LB 939, § 3; Laws 1998, LB 309, § 15; Laws 2001, LB 38, § 51; R.S.Supp.,2002, § 60-6,205; Laws 2003, LB 209, § 4; Laws 2004, LB 208, § 5; Laws 2011, LB667, § 24; Laws 2012, LB751, § 20. Operative date July 19, 2012.

60-498.02 Driving under influence of alcohol; revocation of operator's license; reinstatement; procedure; ignition interlock permit; restrictions on operation of motor vehicle.

(1) At the expiration of fifteen days after the date of arrest as described in subsection (2) of section 60-6,197 or if after a hearing pursuant to section 60-498.01 the director finds that the operator's license should be revoked, the director shall (a) revoke the operator's license of a person arrested for refusal to submit to a chemical test of blood, breath, or urine as required by section 60-6,197 for a period of one year and (b) revoke the operator's license of a person who submits to a chemical test pursuant to such section which discloses the presence of a concentration of alcohol specified in section 60-6,196 for a period of one hundred eighty days unless the person's driving record abstract maintained in the department's computerized records shows one or more prior administrative license revocations on which final orders have been issued during the immediately preceding fifteen-year period at the time the order of revocation is issued, in which case the period of revocation shall be one year. Except as otherwise provided in section 60-6,211.05, a new operator's license

shall not be issued to such person until the period of revocation has elapsed. If the person subject to the revocation is a nonresident of this state, the director shall revoke only the nonresident's operating privilege as defined in section 60-474 of such person and shall immediately forward the operator's license and a statement of the order of revocation to the person's state of residence.

(2) A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 who has no previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation shall only operate the motor vehicle to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her parole or probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility. A person operating a motor vehicle under an ignition interlock permit issued pursuant to sections 60-498.01 to 60-498.04 who has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative license revocation shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence, his or her place of employment, his or her school, a substance abuse treatment program, or an ignition interlock service facility. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(3) A person may have his or her eligibility for a license reinstated upon payment of a reinstatement fee as required by section 60-694.01.

(4)(a) A person whose operator's license is subject to revocation pursuant to subsection (3) of section 60-498.01 shall have all proceedings dismissed or his or her operator's license immediately reinstated without payment of the reinstatement fee upon receipt of suitable evidence by the director that:

(i) The prosecuting attorney responsible for the matter declined to file a complaint alleging a violation of section 60-6,196;

(ii) The defendant, after trial, was found not guilty of violating section 60-6,196 or such charge was dismissed on the merits by the court; or

(iii) In the criminal action on the charge of a violation of section 60-6,196 arising from the same incident, the court held one of the following:

(A) The peace officer did not have probable cause to believe the person was operating or in the actual physical control of a motor vehicle in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section; or

(B) The person was not operating or in the actual physical control of a motor vehicle while having an alcohol concentration in violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

(b) The director shall adopt and promulgate rules and regulations establishing standards for the presentation of suitable evidence of compliance with subdivision (a) of this subsection.

(c) If a criminal charge is filed or refiled for a violation of section 60-6,196 pursuant to an arrest for which all administrative license revocation proceedings were dismissed under this subsection, the director, upon notification or

discovery, may reinstate an administrative license revocation under this section as of the date that the director receives notification of the filing or refiling of the charge, except that a revocation shall not be reinstated if it was dismissed pursuant to section 60-498.01.

Source: Laws 1972, LB 1095, § 6; C.S.Supp.,1972, § 39-727.17; Laws 1974, LB 679, § 3; Laws 1982, LB 568, § 7; Laws 1986, LB 153, § 8; Laws 1988, LB 377, § 3; Laws 1992, LB 291, § 11; R.S.Supp.,1992, § 39-669.16; Laws 1993, LB 370, § 301; Laws 1993, LB 491, § 1; Laws 1993, LB 564, § 12; Laws 1998, LB 309, § 16; Laws 2001, LB 38, § 52; R.S.Supp.,2002, § 60-6,206; Laws 2003, LB 209, § 5; Laws 2004, LB 208, § 6; Laws 2008, LB736, § 3; Laws 2009, LB497, § 2; Laws 2010, LB924, § 1; Laws 2011, LB667, § 25; Laws 2011, LB675, § 2; Laws 2012, LB751, § 21. Operative date April 7, 2012.

60-498.03 Operator's license revocation decision; notice; contents.

(1) The director shall reduce the decision revoking an operator's license under sections 60-498.01 to 60-498.04 to writing, and the director shall notify the person in writing of the revocation. The notice shall set forth the period of revocation and be served by mailing it to such person to the address provided to the director at the administrative license revocation hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not revoke the operator's license, the director shall immediately notify the person in writing of the decision. The notice shall set forth the time and place the person may obtain his or her license. The notice shall be mailed as provided in subsection (1) of this section. No reinstatement fee shall be charged for return of the confiscated operator's license pursuant to this subsection.

Source: Laws 1972, LB 1095, § 7; C.S.Supp.,1972, § 39-727.18; Laws 1992, LB 291, § 12; R.S.Supp.,1992, § 39-669.17; Laws 1993, LB 370, § 302; Laws 2001, LB 38, § 53; R.S.Supp.,2002, § 60-6,207; Laws 2003, LB 209, § 6; Laws 2011, LB667, § 26.

60-498.04 License revocation; appeal; notice of judgment.

Any person who feels himself or herself aggrieved because of the revocation of his or her operator's license under sections 60-498.01 to 60-498.04 may appeal therefrom to the district court of the county where the alleged events occurred for which he or she was arrested, and the appeal shall be in accordance with section 84-917. The district court shall allow any party to an appeal to appear by telephone at any proceeding before the court for purposes of the appeal. Such appeal shall not suspend the order of revocation. The court shall provide notice of the final judgment to the department.

Source: Laws 1972, LB 1095, § 8; C.S.Supp.,1972, § 39-727.19; Laws 1988, LB 352, § 31; R.S.1943, (1988), § 39-669.18; Laws 1993, LB 370, § 303; Laws 1998, LB 309, § 17; R.S.1943, (1998), § 60-6,208; Laws 2003, LB 209, § 7; Laws 2011, LB667, § 27.

60-4,100 Suspension; when authorized.

(1) The director shall suspend the operator's license of any resident of this state:

(a) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction outside this state pursuant to the Nonresident Violator Compact of 1977 until satisfactory evidence of compliance with the terms of the citation has been furnished to the director; or

(b) Who has violated a promise to comply with the terms of a traffic citation issued by a law enforcement officer for a moving violation in any jurisdiction inside this state until satisfactory evidence of compliance with the terms of the citation has been furnished to the director.

(2) The court having jurisdiction over the offense for which the citation has been issued shall notify the director of a violation of a promise to comply with the terms of the citation only after twenty working days have elapsed from the date of the failure to comply.

(3) Upon notice to the director that a resident has violated a promise to comply with the terms of a traffic citation as provided in this section, the director shall not suspend such resident's license until he or she has sent written notice to such resident by regular United States mail to the person's last-known mailing address or, if such address is unknown, to the last-known residence address of such person as shown by the records of the Department of Motor Vehicles. Such notice shall state that such resident has twenty working days after the date of the notice to show the director that the resident has complied with the terms of such traffic citation. No suspension shall be entered by the director if the resident complies with the terms of a citation during such twenty working days. If the resident fails to comply on or before twenty working days after the date of notice, the director shall summarily suspend the operator's license and issue an order. The order shall be sent by regular United States mail to the person's last-known mailing address as shown by the records of the department.

(4) The reinstatement fee required under section 60-4,100.01 shall be waived if five years have passed since issuance of the license suspension order under this section.

Source: Laws 1937, c. 141, § 23, p. 518; Laws 1941, c. 124, § 4, p. 472; C.S.Supp.,1941, § 60-428; R.S.1943, § 60-426; Laws 1981, LB 344, § 2; Laws 1986, LB 153, § 10; R.S.1943, (1988), § 60-426; Laws 1989, LB 285, § 50; Laws 1991, LB 420, § 10; Laws 1993, LB 491, § 11; Laws 1997, LB 10, § 1; Laws 2001, LB 38, § 21; Laws 2012, LB751, § 22.
Operative date July 19, 2012.

Cross References

Nonresident Violator Compact of 1977, see section 1-119, Vol. 2A, Appendix.

60-4,108 Operating motor vehicle during period of suspension, revocation, or impoundment; penalties; juvenile; violation; handled in juvenile court.

(1) It shall be unlawful for any person to operate a motor vehicle during any period that he or she is subject to a court order not to operate any motor vehicle for any purpose or during any period that his or her operator's license has been revoked or impounded pursuant to conviction or convictions for

violation of any law or laws of this state, by an order of any court, or by an administrative order of the director. Except as otherwise provided by subsection (3) of this section or by other law, any person so offending shall (a) for a first such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, (b) for a second or third such offense, be guilty of a Class II misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period, and (c) for a fourth or subsequent such offense, be guilty of a Class I misdemeanor, and the court shall, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of two years from the date ordered by the court and also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(2) It shall be unlawful for any person to operate a motor vehicle (a) during any period that his or her operator's license has been suspended, (b) after a period of revocation but before issuance of a new license, or (c) after a period of impoundment but before the return of the license. Except as provided in subsection (3) of this section, any person so offending shall be guilty of a Class III misdemeanor, and the court may, as a part of the judgment of conviction, order such person not to operate any motor vehicle for any purpose for a period of one year from the date ordered by the court, except that if the person at the time of sentencing shows proof of reinstatement of his or her suspended operator's license, proof of issuance of a new license, or proof of return of the impounded license, the person shall only be fined in an amount not to exceed one hundred dollars. If the court orders the person not to operate a motor vehicle for a period of one year from the date ordered by the court, the court shall also order the operator's license of such person to be revoked for a like period. Such orders of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

(3) If a juvenile whose operator's license or permit has been impounded by a juvenile court operates a motor vehicle during any period that he or she is subject to the court order not to operate any motor vehicle or after a period of impoundment but before return of the license or permit, such violation shall be handled in the juvenile court and not as a violation of this section.

Source: Laws 1957, c. 275, § 2, p. 1002; Laws 1959, c. 293, § 3, p. 1099; Laws 1977, LB 39, § 81; Laws 1979, LB 149, § 1; Laws 1985, LB 356, § 1; Laws 1986, LB 153, § 12; R.S.1943, (1988), § 60-430.01; Laws 1989, LB 285, § 58; Laws 1997, LB 772, § 4; Laws 2001, LB 38, § 25; Laws 2010, LB800, § 34; Laws 2012, LB1155, § 13.
Operative date July 19, 2012.

60-4,110 Operating motor vehicle during period of suspension, revocation, or impoundment; impounding of motor vehicle; release, when authorized; restitution authorized.

(1) Every motor vehicle, regardless of the registered owner of the motor vehicle, being operated by a person whose operator's license has been suspended, revoked, or impounded pursuant to a conviction or convictions for violation of section 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02 or by an order of any court or an administrative order of the director is hereby declared a public nuisance. The motor vehicle may be seized upon the arrest of the operator of the motor vehicle and impounded at the expense of the owner of the motor vehicle. If such operator's license is suspended, revoked, or impounded pursuant to subdivision (1)(c) of section 60-4,108 or section 60-498.01, 60-498.02, 60-6,196, 60-6,197, 60-6,211.01, or 60-6,211.02, the motor vehicle shall be impounded for not less than ten days nor more than thirty days. No motor vehicle impounded under this section shall be impounded for a period of time exceeding thirty days except as provided in subsection (3) of this section.

(2) Any motor vehicle impounded shall be released:

(a) To the holder of a bona fide lien on the motor vehicle executed prior to such impoundment when possession of the motor vehicle is requested as provided by law by such lienholder for purposes of foreclosing and satisfying his or her lien on the motor vehicle;

(b) To the titled owner of the motor vehicle when the titled owner is a lessor. Upon learning the address or telephone number of the rental or leasing company which owns the motor vehicle, the impounding law enforcement agency shall immediately contact the company and inform it that the motor vehicle is available for the company to take possession; or

(c) To the registered owner, a registered co-owner, or a spouse of the owner upon good cause shown by an affidavit or otherwise to the court before which the complaint is pending against the operator that the impounded motor vehicle is essential to the livelihood of the owner, co-owner, or spouse or the dependents of such owner, co-owner, or spouse.

(3) Any person who, at the direction of a peace officer, tows and stores a motor vehicle pursuant to this section shall have a lien upon such motor vehicle while in his or her possession for reasonable towing and storage charges and shall have a right to retain such motor vehicle until such charges are paid.

(4) If the registered owner of a motor vehicle was not the operator of the motor vehicle whose actions caused the motor vehicle to be impounded, the registered owner of the motor vehicle may recover civilly from the operator of the motor vehicle all expenses incurred by reason of the impoundment. In the case of a criminal action, the court may order such operator of the motor vehicle to pay restitution to the registered owner in an amount equal to any expenses incurred with respect to impoundment.

Source: Laws 1961, c. 321, § 1, p. 1024; Laws 1961, c. 322, § 1, p. 1025; R.S.1943, (1988), § 60-430.06; Laws 1989, LB 285, § 60; Laws 1998, LB 309, § 4; Laws 2003, LB 209, § 8; Laws 2012, LB1155, § 14.
Operative date July 19, 2012.

60-4,111.01 Storage or compilation of information; retailer; seller; authorized acts; sign posted; use of stored information; approval of negotiable instrument or certain payments; authorized acts; violations; penalty.

(1) The Department of Motor Vehicles, the courts, or law enforcement agencies may store or compile information acquired from an operator's license or a state identification card for their statutorily authorized purposes.

(2) Except as otherwise provided in subsection (3) or (4) of this section, no person having use of or access to machine-readable information encoded on an operator's license or a state identification card shall compile, store, preserve, trade, sell, or share such information. Any person who trades, sells, or shares such information shall be guilty of a Class IV felony. Any person who compiles, stores, or preserves such information except as authorized in subsection (3) or (4) of this section shall be guilty of a Class IV felony.

(3)(a) For purposes of compliance with and enforcement of restrictions on the purchase of alcohol, lottery tickets, and tobacco products, a retailer who sells any of such items pursuant to a license issued or a contract under the applicable statutory provision may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The retailer may store only the following information obtained from the license or card: Age and license or card identification number. The retailer shall post a sign at the point of sale of any of such items stating that the license or card will be scanned and that the age and identification number will be stored. The stored information may only be used by a law enforcement agency for purposes of enforcement of the restrictions on the purchase of alcohol, lottery tickets, and tobacco products and may not be shared with any other person or entity.

(b) For purposes of compliance with the provisions of sections 28-458 to 28-462, a seller who sells methamphetamine precursors pursuant to such sections may scan machine-readable information encoded on an operator's license or a state identification card presented for the purpose of such a sale. The seller may store only the following information obtained from the license or card: Name, age, address, type of identification presented by the customer, the governmental entity that issued the identification, and the number on the identification. The seller shall post a sign at the point of sale stating that the license or card will be scanned and stating what information will be stored. The stored information may only be used by law enforcement agencies, regulatory agencies, and the exchange for purposes of enforcement of the restrictions on the sale or purchase of methamphetamine precursors pursuant to sections 28-458 to 28-462 and may not be shared with any other person or entity. For purposes of this subsection, the terms exchange, methamphetamine precursor, and seller have the same meanings as in section 28-458.

(c) The retailer or seller shall utilize software that stores only the information allowed by this subsection. A programmer for computer software designed to store such information shall certify to the retailer that the software stores only the information allowed by this subsection. Intentional or grossly negligent programming by the programmer which allows for the storage of more than the age and identification number or wrongfully certifying the software shall be a Class IV felony.

(d) A retailer or seller who knowingly stores more information than authorized under this subsection from the operator's license or state identification card shall be guilty of a Class IV felony.

(e) Information scanned, compiled, stored, or preserved pursuant to subdivision (a) of this subsection may not be retained longer than eighteen months unless required by state or federal law.

(4) In order to approve a negotiable instrument, an electronic funds transfer, or a similar method of payment, a person having use of or access to machine-readable information encoded on an operator's license or a state identification card may:

(a) Scan, compile, store, or preserve such information in order to provide the information to a check services company subject to and in compliance with the federal Fair Credit Reporting Act, 15 U.S.C. 1681, as such act existed on January 1, 2010, for the purpose of effecting, administering, or enforcing a transaction requested by the holder of the license or card or preventing fraud or other criminal activity; or

(b) Scan and store such information only as necessary to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability or to resolve a dispute or inquiry by the holder of the license or card.

(5) Except as provided in subdivision (4)(a) of this section, information scanned, compiled, stored, or preserved pursuant to this section may not be traded or sold to or shared with a third party; used for any marketing or sales purpose by any person, including the retailer who obtained the information; or, unless pursuant to a court order, reported to or shared with any third party. A person who violates this subsection shall be guilty of a Class IV felony.

Source: Laws 2001, LB 574, § 30; Laws 2010, LB261, § 1; Laws 2011, LB20, § 9.

(g) PROVISIONS APPLICABLE TO OPERATION OF MOTOR VEHICLES OTHER THAN COMMERCIAL

60-4,112 Sections; applicability.

Sections 60-4,114, 60-4,114.01, 60-4,116, and 60-4,118 to 60-4,130.05 shall apply to the operation of any motor vehicle except a commercial motor vehicle.

Source: Laws 1989, LB 285, § 62; Laws 1991, LB 44, § 2; Laws 1993, LB 105, § 8; Laws 1994, LB 211, § 4; Laws 1998, LB 320, § 4; Laws 2001, LB 38, § 27; Laws 2003, LB 562, § 5; Laws 2008, LB911, § 10; Laws 2011, LB158, § 2.

60-4,113 Examining personnel; appointment; duties; examinations; issuance of certificate; license; state identification card; county treasurer; duties; delivery of license or card.

(1) In and for each county in the State of Nebraska, the director shall appoint as his or her agents one or more department personnel who shall examine all applicants for a state identification card or an operator's license as provided in section 60-4,114 except as otherwise provided in subsection (8) of section 60-4,122. The same department personnel may be assigned to one or more counties by the director. Each county shall furnish office space for the administration of the operator's license examination. The department personnel shall

conduct the examination of applicants and deliver to each successful applicant an issuance certificate. The certificate may be presented to the county treasurer of any county within ninety days after issuance, and the county treasurer shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt which is valid for up to thirty days. If an operator's license is being issued, the receipt shall also authorize driving privileges for such thirty-day period. If the department personnel refuse to issue an issuance certificate for cause, the department personnel shall state such cause in writing and deliver such written cause to the applicant.

(2) The department may provide for the central production and issuance of operators' licenses and state identification cards. Production shall take place at a secure production facility designated by the director. The licenses and cards shall be of such a design and produced in such a way as to discourage, to the maximum extent possible, fraud in applicant enrollment, identity theft, and the forgery and counterfeiting of such licenses and cards. Delivery of an operator's license or state identification card shall be to the mailing address provided by the applicant at the time of application.

Source: Laws 1929, c. 148, § 2, p. 513; C.S.1929, § 60-402; Laws 1937, c. 141, § 12, p. 511; C.S.Supp.,1941, § 60-402; R.S.1943, § 60-404; Laws 1945, c. 141, § 2, p. 447; Laws 1945, c. 142, § 1, p. 454; Laws 1957, c. 366, § 36, p. 1270; Laws 1961, c. 307, § 4, p. 972; Laws 1961, c. 315, § 3, p. 999; Laws 1961, c. 316, § 3, p. 1009; Laws 1961, c. 317, § 1, p. 1016; Laws 1967, c. 389, § 1, p. 1212; Laws 1976, LB 329, § 1; Laws 1977, LB 90, § 3; R.S.1943, (1988), § 60-404; Laws 1989, LB 285, § 64; Laws 1999, LB 704, § 15; Laws 2001, LB 574, § 9; Laws 2008, LB911, § 11; Laws 2011, LB215, § 11.

60-4,114 County treasurer; personnel; examination of applicant; denial or refusal of certificate; appeal; medical opinion.

(1) The county treasurer may employ such additional clerical help as may be necessary to assist him or her in the performance of the ministerial duties required of him or her under the Motor Vehicle Operator's License Act and, for such additional expense, shall be reimbursed as set out in section 60-4,115.

(2) The director may, in his or her discretion, appoint department personnel to examine all applicants who apply for an initial license or whose licenses have been revoked or canceled to ascertain such person's ability to operate a motor vehicle properly and safely.

(3) Except as otherwise provided in section 60-4,122, the application process, in addition to the other requisites of the act, shall include the following:

(a) An inquiry into the medical condition and visual ability of the applicant to operate a motor vehicle;

(b) An inquiry into the applicant's ability to drive and maneuver a motor vehicle; and

(c) An inquiry touching upon the applicant's knowledge of the motor vehicle laws of this state, which shall include sufficient questions to indicate familiarity with the provisions thereof.

(4) If an applicant is denied or refused a certificate for license, such applicant shall have the right to an immediate appeal to the director from the decision. It

shall be the duty of the director to review the appeal and issue a final order, to be made not later than ten days after the receipt of the appeal by the director, except that if the director requests the advice of the Health Advisory Board on the matter, the director shall have up to forty-five days after the day a medical or vision problem is referred to him or her to consult with members of the board to obtain the medical opinion necessary to make a decision and shall issue a final order not later than ten days following receipt of the medical opinion. After consideration of the advice of the board, the director shall make a determination of the applicant's physical or mental ability to operate a motor vehicle and shall issue a final order. The order shall be in writing, shall be accompanied by findings of fact and conclusions of law, and shall be sent by regular United States mail to the applicant's last-known address. The order may be appealed as provided in section 60-4,105.

Source: Laws 1929, c. 148, § 6, p. 514; C.S.1929, § 60-406; Laws 1931, c. 101, § 1, p. 272; Laws 1937, c. 141, § 16, p. 514; C.S.Supp.,1941, § 60-406; R.S.1943, § 60-408; Laws 1945, c. 141, § 5, p. 450; Laws 1947, c. 207, § 2, p. 676; Laws 1957, c. 366, § 38, p. 1272; Laws 1961, c. 307, § 5, p. 972; Laws 1961, c. 315, § 6, p. 1003; Laws 1961, c. 316, § 6, p. 1013; Laws 1972, LB 1439, § 1; Laws 1981, LB 76, § 2; R.S.1943, (1988), § 60-408; Laws 1989, LB 285, § 63; Laws 1994, LB 211, § 9; Laws 1999, LB 704, § 16; Laws 2001, LB 38, § 28; Laws 2001, LB 574, § 10; Laws 2011, LB215, § 12; Laws 2012, LB751, § 23.
Operative date July 19, 2012.

60-4,114.01 Applicant for Class O or Class M license; issuance of LPD-learner's permit; restriction on reapplication for license.

An applicant for a Class O or Class M license that fails three successive tests of his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 may be issued an LPD-learner's permit. The applicant shall not be eligible to reapply for the Class O or Class M license and retake such test until he or she presents proof of successful completion of a department-approved driver training school or until he or she has held an LPD-learner's permit for at least ninety days.

Source: Laws 2011, LB158, § 3.

60-4,115 Fees; allocation; identity security surcharge.

(1) Fees for operators' licenses and state identification cards shall be collected and distributed according to the table in subsection (2) of this section, except for the ignition interlock permit and associated fees as outlined in subsection (4) of this section. County officials shall remit the county portion of the fees collected to the county treasurer for placement in the county general fund. All other fees collected shall be remitted to the State Treasurer for credit to the appropriate fund.

(2) The fees provided in this subsection in the following dollar amounts apply for operators' licenses and state identification cards.

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
State identification card:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for more than 4 years for person under 21	24.00	2.75	10.25	11.00
Valid for 5 years	24.00	3.50	10.25	10.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Class O or M operator's license:				
Valid for 1 year or less	5.00	2.75	1.25	1.00
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Valid for more than 2 years but not more than 3 years	14.00	2.75	5.25	6.00
Valid for more than 3 years but not more than 4 years	19.00	2.75	8.00	8.25
Valid for 5 years	24.00	3.50	10.25	10.25
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	10.00	2.75	4.00	3.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Provisional operator's permit:				
Original	15.00	2.75	12.25	0
Bioptic or telescopic lens restriction:				
Valid for 1 year or less	5.00	0	5.00	0
Valid for more than 1 year but not more than 2 years	15.00	2.75	12.25	0
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPD-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
LPE-learner's permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
School permit:				
Original	8.00	.25	5.00	2.75
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Farm permit:				
Original or renewal	5.00	.25	0	4.75
Duplicate or replacement	5.00	.25	0	4.75
Temporary	5.00	.25	0	4.75

Document	Total Fee	County General Fund	Department of Motor Vehicles Cash Fund	State General Fund
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Driving permits:				
Employment	45.00	0	5.00	40.00
Medical hardship	45.00	0	5.00	40.00
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0
Commercial driver's license:				
Valid for 1 year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Valid for more than 2 years but not more than 3 years	33.00	1.75	5.00	26.25
Valid for more than 3 years but not more than 4 years	44.00	1.75	5.00	37.25
Valid for 5 years	55.00	1.75	5.00	48.25
Bioptic or telescopic lens restriction:				
Valid for one year or less	11.00	1.75	5.00	4.25
Valid for more than 1 year but not more than 2 years	22.00	1.75	5.00	15.25
Duplicate or replacement	11.00	2.75	6.00	2.25
Add, change, or remove class, endorsement, or restriction	10.00	1.75	5.00	3.25
LPC-learner's permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
Seasonal permit:				
Original or renewal	10.00	.25	5.00	4.75
Duplicate or replacement	10.00	.25	5.00	4.75
Add, change, or remove class, endorsement, or restriction	10.00	.25	5.00	4.75
School bus permit:				
Original or renewal	5.00	0	5.00	0
Duplicate or replacement	5.00	0	5.00	0
Add, change, or remove class, endorsement, or restriction	5.00	0	5.00	0

(3) If the department issues an operator's license or a state identification card, the department shall remit the county portion of the fees to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(4)(a) The fee for an ignition interlock permit shall be forty-five dollars. Five dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Forty dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Ignition Interlock Fund.

(b) The fee for a duplicate or replacement ignition interlock permit shall be eleven dollars. Two dollars and seventy-five cents of the fee shall be remitted to the county treasurer for credit to the county general fund. Six dollars of the fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Two dollars and twenty-five cents of the fee shall be remitted to the State Treasurer for credit to the General Fund.

(c) The fee for adding, changing, or removing a class, endorsement, or restriction on an ignition interlock permit shall be five dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

(5) The department and its agents may collect an identity security surcharge to cover the cost of security and technology practices used to protect the identity of applicants for and holders of operators' licenses and state identification cards and to reduce identity theft, fraud, and forgery and counterfeiting of such licenses and cards to the maximum extent possible. The surcharge shall be in addition to all other required fees for operators' licenses and state identification cards. The amount of the surcharge shall be determined by the department. The surcharge shall not exceed eight dollars. The surcharge shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund.

Source: Laws 1929, c. 148, § 7, p. 515; C.S.1929, § 60-407; Laws 1931, c. 101, § 2, p. 272; Laws 1937, c. 148, § 17, p. 515; Laws 1941, c. 128, § 1, p. 483; Laws 1941, c. 176, § 1, p. 687; C.S.Supp.,1941, § 60-407; R.S.1943, § 60-409; Laws 1945, c. 141, § 6, p. 452; Laws 1947, c. 207, § 3, p. 677; Laws 1949, c. 181, § 3, p. 525; Laws 1951, c. 195, § 12, p. 742; Laws 1955, c. 242, § 1, p. 757; Laws 1957, c. 366, § 39, p. 1273; Laws 1961, c. 315, § 7, p. 1004; Laws 1961, c. 316, § 7, p. 1014; Laws 1963, c. 359, § 2, p. 1151; Laws 1967, c. 234, § 3, p. 624; Laws 1976, LB 329, § 2; Laws 1977, LB 90, § 5; Laws 1981, LB 207, § 1; Laws 1985, Second Spec. Sess., LB 5, § 1; R.S.1943, (1988), § 60-409; Laws 1989, LB 285, § 65; Laws 1992, LB 319, § 4; Laws 1993, LB 491, § 12; Laws 1995, LB 467, § 11; Laws 1998, LB 309, § 5; Laws 1998, LB 320, § 5; Laws 1999, LB 704, § 17; Laws 2001, LB 574, § 11; Laws 2005, LB 1, § 5; Laws 2006, LB 1008, § 2; Laws 2008, LB736, § 4; Laws 2008, LB911, § 12; Laws 2009, LB497, § 3; Laws 2011, LB170, § 2; Laws 2011, LB215, § 13; Laws 2011, LB667, § 28.

60-4,116 Applicant; department; duties.

Prior to the issuance of any original or renewal operator's license, the issuance of a replacement or duplicate operator's license, or the reissuance of any such license with a change of any classification, endorsement, or restriction, the department shall:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled, (c) is not eligible, or (d) is deceased.

Source: Laws 2003, LB 562, § 6; Laws 2011, LB178, § 4; Laws 2012, LB751, § 24.
Operative date May 1, 2012.

60-4,117 Operator's license or state identification card; form; county treasurer; duties.

(1) Upon presentation of an issuance certificate for an operator's license or state identification card issued by department personnel to the applicant, the county treasurer shall collect the applicable fee and surcharge as prescribed in section 60-4,115 and issue a receipt which is valid for up to thirty days. If there is cause for an operator's license to be issued, the receipt shall also authorize driving privileges for such thirty-day period. The license or card shall be delivered as provided in section 60-4,113.

(2) The operator's license and state identification card shall be in a form prescribed by the department. The license and card may include security features prescribed by the department. The license and card shall be conspicuously marked Nebraska Operator's License or Nebraska Identification Card, shall be, to the maximum extent practicable, tamper and forgery proof, and shall include the following information:

(a) The full legal name and principal residence address of the holder;

(b) The holder's full facial digital image;

(c) A physical description of the holder, including gender, height, weight, and eye and hair colors;

(d) The holder's date of birth;

(e) The holder's signature;

(f) The class of motor vehicle which the holder is authorized to operate and any applicable endorsements or restrictions;

(g) The issuance and expiration date of the license or card;

(h) The organ and tissue donation information specified in section 60-494; and

(i) Such other marks and information as the director may determine.

(3) Each operator's license and state identification card shall contain the following encoded, machine-readable information: The holder's full legal name; date of birth; gender; race or ethnicity; document issue date; document expiration date; principal residence address; unique identification number; revision date; inventory control number; and state of issuance.

Source: Laws 1929, c. 148, § 4, p. 513; C.S.1929, § 60-404; Laws 1937, c. 141, § 14, p. 512; C.S.Supp.,1941, § 60-404; R.S.1943, § 60-406; Laws 1959, c. 286, § 2, p. 1082; Laws 1961, c. 315, § 4, p. 1000; Laws 1961, c. 316, § 4, p. 1008; Laws 1977, LB 90, § 4; R.S. 1943, (1988), § 60-406; Laws 1989, LB 285, § 67; Laws 2001, LB 34, § 4; Laws 2001, LB 38, § 29; Laws 2001, LB 574, § 12; Laws 2008, LB911, § 13; Laws 2011, LB215, § 14.

60-4,118.06 Ignition interlock permit; issued; when; operation restrictions; revocation of permit by director; when.

(1) Upon receipt by the director of (a) a certified copy of a court order issued pursuant to section 60-6,211.05, a certified copy of an order for installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to section 60-6,197.03, or a copy of an order from the Board of Pardons pursuant to section 83-1,127.02, (b) sufficient evidence that the person has surrendered his or her operator's license to the department and installed an

approved ignition interlock device in accordance with such order, and (c) payment of the fee provided in section 60-4,115, such person may apply for an ignition interlock permit. A person subject to administrative license revocation under sections 60-498.01 to 60-498.04 shall be eligible for an ignition interlock permit as provided in such sections. The director shall issue an ignition interlock permit for the operation of a motor vehicle equipped with an ignition interlock device. Any person issued an ignition interlock permit pursuant to a court order who has no previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her parole or probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility. Any person issued an ignition interlock permit pursuant to a court order who has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative license revocation shall only operate the motor vehicle equipped with an ignition interlock device to and from his or her residence, his or her place of employment, his or her school, a substance abuse treatment program, or an ignition interlock service facility. The permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this subsection shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(2) Upon expiration of the revocation period or upon expiration of an order issued by the Board of Pardons pursuant to section 83-1,127.02, a person may apply to the department in writing for issuance of an operator's license. Regardless of whether the license surrendered by such person under subsection (1) of this section has expired, the person shall apply for a new operator's license pursuant to the Motor Vehicle Operator's License Act.

(3)(a) An ignition interlock permit shall not be issued under this section or sections 60-498.01 to 60-498.04 to any person except in cases of a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06.

(b) An ignition interlock permit shall only be available to a holder of a Class M or O operator's license.

(4) The director shall revoke a person's ignition interlock permit issued under this section or sections 60-498.01 to 60-498.04 upon receipt of an (a) abstract of conviction indicating that the person had his or her operating privileges revoked or canceled or (b) administrative order revoking or canceling the person's operating privileges, if such conviction or order resulted from an incident other than the incident which resulted in the application for the ignition interlock permit.

Source: Laws 2001, LB 38, § 32; Laws 2003, LB 209, § 9; Laws 2008, LB736, § 5; Laws 2009, LB497, § 4; Laws 2010, LB924, § 2; Laws 2011, LB667, § 29; Laws 2012, LB751, § 25.
Operative date April 7, 2012.

60-4,120 Operator's license; state identification card; duplicate or replacement.

(1) Except as provided in subsection (4) of this section for persons temporarily out of the state, any person duly licensed or holding a valid state identification card issued under the Motor Vehicle Operator's License Act who loses his or her operator's license or card may make application to the department reporting such loss and furnishing proof of identification in accordance with section 60-484. The department shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate license or card. Upon the issuance of any duplicate or replacement license or card, the license or card from which the duplicate or replacement is issued shall be void.

(2) If any person changes his or her name because of marriage or divorce or by court order or a common-law name change, he or she shall apply to the department for a replacement operator's license or state identification card and furnish proof of identification in accordance with section 60-484. If any person changes his or her address, the person shall apply to the department for a replacement operator's license or state identification card and furnish satisfactory evidence of such change. The application shall be made within sixty days after the change of name or address. The license or card shall be issued upon payment of the fee prescribed in section 60-4,115.

(3) In the event a mutilated and unreadable operator's license is held by any person duly licensed under the act or a mutilated and unreadable state identification card which was issued under the act is held by a person, such person may obtain a replacement license or card upon showing the original mutilated or unreadable license or card to the department. A replacement license or card may be issued, without a photograph, to any person who is out of the state at the time of application for the replacement license or card. Such license or card shall state on its face that it shall become invalid thirty days after such person resumes residence in the state. If the department is satisfied that the license or card is mutilated or unreadable, the department shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a replacement license or card.

(4) If any person duly licensed under the act loses his or her operator's license or if any holder of a state identification card loses his or her card while temporarily out of the state, he or she may make application to the department for a duplicate operator's license or card without a photograph by applying to the department and reporting such loss. Upon receipt of a correctly completed application, the department shall cause to be issued, upon the payment of the fee prescribed in section 60-4,115, a duplicate operator's license or card without a photograph. Upon the issuance of the duplicate, the original license or card shall be void.

(5) Any person holding a valid operator's license or state identification card without a photograph shall surrender such license or card to the department within thirty days after resuming residency in this state. After the thirty-day period, such license or card shall be considered invalid. Upon the timely surrender of the license or card and payment of the fee prescribed in section 60-4,115, such person shall be issued an operator's license or card with a color photograph or digital image of the licensee included.

(6) An application form for a replacement or duplicate operator's license or state identification card shall include a voter registration portion pursuant to section 32-308 and the following specific question: Do you wish to register to vote as part of this application process?

(7) An applicant may obtain a replacement or duplicate operator's license or state identification card pursuant to subsection (1), (3), or (4) of this section by electronic means in a manner prescribed by the department. If the applicant has a digital image and digital signature preserved in the digital system, the replacement or duplicate shall be issued with the preserved digital image and digital signature.

Source: Laws 1929, c. 148, § 9, p. 517; C.S.1929, § 60-409; Laws 1937, c. 141, § 19, p. 517; Laws 1941, c. 176, § 2, p. 689; C.S.Supp.,1941, § 60-409; R.S.1943, § 60-415; Laws 1945, c. 141, § 8, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 10, p. 1005; Laws 1961, c. 316, § 10, p. 1015; Laws 1967, c. 234, § 7, p. 626; Laws 1969, c. 506, § 2, p. 2083; Laws 1971, LB 134, § 1; Laws 1971, LB 371, § 1; Laws 1972, LB 1296, § 2; Laws 1977, LB 90, § 6; Laws 1978, LB 606, § 1; Laws 1981, LB 46, § 3; Laws 1984, LB 811, § 6; Laws 1986, LB 575, § 2; Laws 1989, LB 284, § 9; R.S.1943, (1988), § 60-415; Laws 1989, LB 285, § 70; Laws 1993, LB 126, § 1; Laws 1993, LB 201, § 2; Laws 1994, LB 76, § 572; Laws 1998, LB 309, § 7; Laws 2001, LB 574, § 14; Laws 2005, LB 1, § 7; Laws 2011, LB215, § 15; Laws 2012, LB751, § 26. Operative date May 1, 2012.

60-4,120.02 Provisional operator's permit; violations; revocation; not eligible for ignition interlock permit.

(1) Any person convicted of violating a provisional operator's permit issued pursuant to section 60-4,120.01 by operating a motor vehicle in violation of subsection (3) of such section shall be guilty of an infraction and may have his or her provisional operator's permit revoked by the court pursuant to section 60-496 for a time period specified by the court. Before such person applies for another provisional operator's permit, he or she shall pay a reinstatement fee as provided in section 60-499.01 after the period of revocation has expired.

(2) A copy of an abstract of the court's conviction, including an adjudication, shall be transmitted to the director pursuant to sections 60-497.01 to 60-497.04.

(3) Any person who holds a provisional operator's permit and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

(4) For purposes of this section, conviction includes any adjudication of a juvenile.

Source: Laws 1998, LB 320, § 8; Laws 1999, LB 704, § 21; Laws 2001, LB 38, § 33; Laws 2012, LB751, § 27.
Operative date July 19, 2012.

60-4,121 Military service; renewal of operator's license; period valid.

(1) The operator's license of any person serving on active duty, other than members of the National Guard or reserves activated for training purposes only, outside the State of Nebraska as a member of the United States Armed Forces, or the spouse of any such person or a dependent of such member of the armed forces, shall be valid during such person's period of active duty and for not more than sixty days immediately following such person's date of separation from service.

(2) Each individual who is applying for renewal of his or her operator's license shall submit his or her previous license to the department personnel or, when the previous license is unavailable, furnish proof of identification in accordance with section 60-484.

Source: Laws 1929, c. 148, § 8, p. 516; C.S.1929, § 60-408; Laws 1937, c. 141, § 18, p. 515; C.S.Supp.,1941, § 60-408; R.S.1943, § 60-411; Laws 1945, c. 141, § 7, p. 453; Laws 1947, c. 207, § 4, p. 678; Laws 1961, c. 315, § 8, p. 1004; Laws 1961, c. 316, § 8, p. 1014; Laws 1967, c. 389, § 2, p. 1213; Laws 1967, c. 234, § 5, p. 625; Laws 1971, LB 244, § 1; Laws 1982, LB 877, § 2; Laws 1984, LB 811, § 5; Laws 1985, LB 240, § 1; Laws 1989, LB 284, § 7; R.S.1943, (1988), § 60-411; Laws 1989, LB 285, § 71; Laws 1996, LB 974, § 2; Laws 1997, LB 22, § 1; Laws 1999, LB 704, § 22; Laws 2011, LB215, § 16.

60-4,122 Operator's license; state identification card; renewal procedure; law examination; exceptions; department; powers.

(1) Except as otherwise provided in subsections (2), (3), and (8) of this section, no original or renewal operator's license shall be issued to any person until such person has demonstrated his or her ability to operate a motor vehicle safely as provided in section 60-4,114.

(2) Except as otherwise provided in this section and section 60-4,127, any person who renews his or her Class O or Class M license shall demonstrate his or her ability to drive and maneuver a motor vehicle safely as provided in subdivision (3)(b) of section 60-4,114 only at the discretion of department personnel, except that a person required to use bioptic or telescopic lenses shall be required to demonstrate his or her ability to drive and maneuver a motor vehicle safely each time he or she renews his or her license.

(3) Any person who renews his or her Class O or Class M license prior to or within one year after its expiration may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state as provided in subdivision (3)(c) of section 60-4,114 if his or her driving record abstract maintained in the computerized records of the department shows that such person's license is not impounded, suspended, revoked, or canceled.

(4) Except for operators' licenses issued to persons required to use bioptic or telescopic lenses, any person who renews his or her operator's license which has been valid for fifteen months or less shall not be required to take any examination required under section 60-4,114.

(5) Any person who renews a state identification card shall appear before department personnel and present his or her current state identification card or shall follow the procedure for electronic renewal in subsection (9) of this section. Proof of identification shall be required as prescribed in sections 60-484 and 60-4,181 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04.

(6) A nonresident who applies for an initial operator's license in this state and who holds a valid operator's license from another state which is his or her state of residence may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she surrenders to the department his or her valid out-of-state operator's license.

(7) An applicant for an original operator's license may not be required to demonstrate his or her knowledge of the motor vehicle laws of this state if he or she has been issued a Nebraska LPD-learner's permit that is valid or has been expired for no more than one year. The written examination shall not be waived if the original operator's license being applied for contains a class or endorsement which is different from the class or endorsement of the Nebraska LPD-learner's permit.

(8)(a) A qualified licensee as determined by the department who is twenty-one years of age or older, whose license expires prior to his or her seventy-second birthday, and who has a digital image and digital signature preserved in the digital system may renew his or her Class O or Class M license once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature without taking any examination required under section 60-4,114 if such renewal is prior to or within one year after the expiration of the license, if his or her driving record abstract maintained in the records of the department shows that such person's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible. Every licensee must apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(b) In order to allow for an orderly progression through the various types of operators' licenses issued to persons under twenty-one years of age, a qualified holder of an operator's license who is under twenty-one years of age and who has a digital image and digital signature preserved in the digital system may apply for an operator's license by electronic means in a manner prescribed by the department using the preserved digital image and digital signature if the applicant has passed any required examinations prior to application, if his or her driving record abstract maintained in the records of the department shows that such person's operator's license is not impounded, suspended, revoked, or canceled, and if his or her driving record indicates that he or she is otherwise eligible.

(9) Any person who is twenty-one years of age or older and who has been issued a state identification card with a digital image and digital signature may electronically renew his or her state identification card once by electronic means in a manner prescribed by the department using the preserved digital image and digital signature. Every holder of a state identification card shall apply for renewal in person at least once every ten years and have a new digital image and digital signature taken.

(10) In addition to services available at driver license offices, the department may develop requirements for using electronic means for online issuance of operators' licenses and state identification cards to qualified holders as determined by the department.

Source: Laws 1967, c. 234, § 6, p. 625; Laws 1984, LB 694, § 1; Laws 1989, LB 284, § 8; R.S.1943, (1988), § 60-411.01; Laws 1989, LB 285, § 72; Laws 1990, LB 369, § 16; Laws 1990, LB 742, § 4; Laws 1990, LB 980, § 10; Laws 1993, LB 370, § 87; Laws 1998, LB 320, § 9; Laws 1999, LB 704, § 23; Laws 2001, LB 387, § 7; Laws 2001, LB 574, § 16; Laws 2008, LB911, § 16; Laws 2011, LB158, § 4; Laws 2011, LB215, § 17.

60-4,124 School permit; LPE-learner's permit; issuance; operation restrictions; violations; penalty; not eligible for ignition interlock permit.

(1) A person who is younger than sixteen years and three months of age but is older than fourteen years and two months of age may be issued a school permit if such person lives a distance of one and one-half miles or more from the school he or she attends and either resides outside a city of the metropolitan, primary, or first class or attends a school which is outside a city of the metropolitan, primary, or first class and if such person has held an LPE-learner's permit for two months. A school permit shall not be issued until such person has demonstrated that he or she is capable of successfully operating a motor vehicle, moped, or motorcycle and has in his or her possession an issuance certificate authorizing the county treasurer to issue a school permit. In order to obtain an issuance certificate, the applicant shall present (a) proof of successful completion of a department-approved driver safety course which includes behind-the-wheel driving specifically emphasizing (i) the effects of the consumption of alcohol on a person operating a motor vehicle, (ii) occupant protection systems, (iii) risk assessment, and (iv) railroad crossing safety and (b)(i) proof of successful completion of a written examination and driving test administered by a driver safety course instructor or (ii) a certificate in a form prescribed by the department, signed by a parent, guardian, or licensed driver at least twenty-one years of age, verifying that the applicant has completed fifty hours of lawful motor vehicle operation, under conditions that reflect department-approved driver safety course curriculum, with a parent, guardian, or adult at least twenty-one years of age, who has a current Nebraska operator's license or who is licensed in another state. The department may waive the written examination if the applicant has been issued an LPE-learner's permit or LPD-learner's permit and if such permit is valid or has expired no more than one year prior to application. The written examination shall not be waived if the permit being applied for contains a class or endorsement which is different from the class or endorsement of the LPE-learner's permit.

(2) A person holding a school permit may operate a motor vehicle, moped, or motorcycle:

(a) To and from where he or she attends school and between schools of enrollment over the most direct and accessible route by the nearest highway from his or her place of residence to transport such person or any family member who resides with such person to attend duly scheduled courses of instruction and extracurricular or school-related activities at the school he or she attends; or

(b) Under the personal supervision of a licensed operator. Such licensed operator shall be at least twenty-one years of age and licensed by this state or another state and shall actually occupy the seat beside the permitholder or, in the case of a motorcycle or moped, if the permitholder is within visual contact of and under the supervision of, in the case of a motorcycle, a licensed motorcycle operator or, in the case of a moped, a licensed motor vehicle operator.

(3) The holder of a school permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subsection shall be accomplished only as a secondary action when the holder of the school permit has been cited or charged with a violation of some other law.

(4) A person who is younger than sixteen years of age but is over fourteen years of age may be issued an LPE-learner's permit, which permit shall be valid for a period of three months. An LPE-learner's permit shall not be issued until such person successfully completes a written examination prescribed by the department and demonstrates that he or she has sufficient powers of eyesight to safely operate a motor vehicle, moped, or motorcycle.

(5)(a) While holding the LPE-learner's permit, the person may operate a motor vehicle on the highways of this state if he or she has seated next to him or her a person who is a licensed operator or, in the case of a motorcycle or moped, if he or she is within visual contact of and is under the supervision of a person who, in the case of a motorcycle, is a licensed motorcycle operator or, in the case of a moped, is a licensed motor vehicle operator. Such licensed motor vehicle or motorcycle operator shall be at least twenty-one years of age and licensed by this state or another state.

(b) The holder of an LPE-learner's permit shall not use any type of interactive wireless communication device while operating a motor vehicle on the highways of this state. Enforcement of this subdivision shall be accomplished only as a secondary action when the holder of the LPE-learner's permit has been cited or charged with a violation of some other law.

(6) The county treasurer shall collect the fee and surcharge prescribed in section 60-4,115 from each successful applicant for a school or LPE-learner's permit. All school permits shall be subject to impoundment or revocation under the terms of section 60-496. Any person who violates the terms of a school permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(7) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1989, LB 285, § 74; Laws 1998, LB 320, § 11; Laws 2001, LB 387, § 8; Laws 2001, LB 574, § 18; Laws 2005, LB 675, § 4; Laws 2006, LB 853, § 9; Laws 2007, LB415, § 6; Laws 2008, LB911, § 18; Laws 2012, LB751, § 28.
Operative date July 19, 2012.

60-4,125 LPD-learner's permit; LPE-learner's permit; violations; impoundment or revocation of permit; effect on eligibility for operator's license; not eligible for ignition interlock permit.

(1) For any minor convicted or adjudicated of violating the terms of an LPD-learner's permit issued pursuant to section 60-4,123 or an LPE-learner's permit issued pursuant to section 60-4,124, the court shall, in addition to any other penalty or disposition, order the impoundment or revocation of such learner's permit and order that such minor shall not be eligible for another operator's license or school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds an LPD-learner's permit issued pursuant to section 60-4,123 and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

(3) A copy of the court's abstract or adjudication shall be transmitted to the director who shall place in an impound status or revoke the LPD-learner's or LPE-learner's permit of such minor in accordance with the order of the court and not again issue another operator's license or school, farm, LPD-learner's, or LPE-learner's permit to such minor until such minor has attained the age of sixteen years.

Source: Laws 1963, c. 359, § 7, p. 1153; R.S.1943, (1988), § 60-409.05; Laws 1989, LB 285, § 75; Laws 1991, LB 420, § 13; Laws 1998, LB 320, § 12; Laws 2001, LB 38, § 34; Laws 2004, LB 353, § 1; Laws 2012, LB751, § 29.
Operative date July 19, 2012.

60-4,126 Farm permit; issuance; violations; penalty; not eligible for ignition interlock permit.

(1) Any person who is younger than sixteen years of age but is over thirteen years of age and resides upon a farm in this state or is fourteen years of age or older and is employed for compensation upon a farm in this state may obtain a farm permit authorizing the operation of farm tractors, minitrucks, and other motorized implements of farm husbandry upon the highways of this state if the applicant for such farm permit furnishes satisfactory proof of age and satisfactorily demonstrates that he or she has knowledge of the operation of such equipment and of the rules of the road and laws respecting the operation of motor vehicles upon the highways of this state. Any person under sixteen years of age but not less than thirteen years of age may obtain a temporary permit to operate such equipment for a six-month period after presentation to the department of a request for the temporary permit signed by the person's parent or guardian and payment of the fee and surcharge prescribed in section 60-4,115. After the expiration of the six-month period, it shall be unlawful for such person to operate such equipment upon the highways of this state unless he or she has been issued a farm permit under this section. The fee for an original, renewal, or duplicate farm permit shall be the fee and surcharge prescribed in section 60-4,115. All farm permits shall be subject to revocation under the terms of section 60-496. Any person who violates the terms of a farm permit shall be guilty of an infraction and shall not be eligible for another school, farm, LPD-learner's, or LPE-learner's permit until he or she has attained the age of sixteen years.

(2) Any person who holds a permit issued under this section and has violated subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,197.06 shall not be eligible for an ignition interlock permit.

Source: Laws 1989, LB 285, § 76; Laws 1993, LB 491, § 13; Laws 1998, LB 320, § 13; Laws 2001, LB 574, § 19; Laws 2008, LB911, § 19; Laws 2010, LB650, § 31; Laws 2012, LB751, § 30.
Operative date July 19, 2012.

60-4,127 Motorcycle operation; Class M license required; issuance; examination.

(1) No person shall operate a motorcycle on the alleys or highways of the State of Nebraska until such person has obtained a Class M license. No such license shall be issued until the applicant has (a) met the vision and physical

requirements established under section 60-4,118 for operation of a motor vehicle and (b) successfully completed an examination, including the actual operation of a motorcycle, prescribed by the director, except that the required examination may be waived, including the actual operation of a motorcycle, if the applicant presents proof of successful completion of a motorcycle safety course under the Motorcycle Safety Education Act within the immediately preceding twenty-four months.

(2) Upon presentation of an issuance certificate, the county treasurer shall collect the fee and surcharge for a Class M license as prescribed by section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The license shall be delivered as provided in section 60-4,113. If the applicant is the holder of an operator's license, the county treasurer shall, upon receipt of the issuance certificate, have endorsed on the license the authorization to operate a motorcycle. Fees for Class M licenses shall be as provided by section 60-4,115.

Source: Laws 1967, c. 234, § 8, p. 626; Laws 1971, LB 962, § 1; Laws 1974, LB 328, § 2; Laws 1974, LB 821, § 13; Laws 1977, LB 90, § 2; Laws 1981, LB 22, § 15; Laws 1986, LB 1004, § 1; R.S. 1943, (1988), § 60-403.01; Laws 1989, LB 285, § 77; Laws 1990, LB 369, § 17; Laws 1993, LB 201, § 3; Laws 1993, LB 370, § 88; Laws 1999, LB 704, § 25; Laws 2001, LB 574, § 20; Laws 2008, LB911, § 20; Laws 2011, LB170, § 3; Laws 2011, LB215, § 18.

Cross References

Motorcycle Safety Education Act, see section 60-2120.

60-4,129 Employment driving permit; issuance; conditions; violations; penalty; revocation.

(1) Any person whose operator's license is revoked under section 60-4,183 or 60-4,186 or suspended under section 43-3318 shall be eligible to operate any motor vehicle, except a commercial motor vehicle, in this state under an employment driving permit. An employment driving permit issued due to a revocation under section 60-4,183 or 60-4,186 is valid for the period of revocation. An employment driving permit issued due to a suspension of an operator's license under section 43-3318 is valid for no more than three months and cannot be renewed.

(2) Any person whose operator's license has been suspended or revoked pursuant to any law of this state, except section 43-3318, 60-4,183, or 60-4,186, shall not be eligible to receive an employment driving permit during the period of such suspension or revocation.

(3) A person who is issued an employment driving permit may operate any motor vehicle, except a commercial motor vehicle, (a) from his or her residence to his or her place of employment and return and (b) during the normal course of employment if the use of a motor vehicle is necessary in the course of such employment. Such permit shall indicate for which purposes the permit may be used. All permits issued pursuant to this section shall indicate that the permit is not valid for the operation of any commercial motor vehicle.

(4) The operation of a motor vehicle by the holder of an employment driving permit, except as provided in this section, shall be unlawful. Any person who violates this section shall be guilty of a Class IV misdemeanor.

(5) The director shall revoke a person's employment driving permit upon receipt of an abstract of conviction, other than a conviction which is based upon actions which resulted in the application for such employment driving permit, indicating that the person committed an offense for which points are assessed pursuant to section 60-4,182. If the permit is revoked in this manner, the person shall not be eligible to receive an employment driving permit for the remainder of the period of suspension or revocation of his or her operator's license.

Source: Laws 1975, LB 259, § 5; Laws 1977, LB 41, § 15; Laws 1982, LB 568, § 8; Laws 1986, LB 779, § 1; R.S.1943, (1988), § 39-669.34; Laws 1989, LB 285, § 79; Laws 1992, LB 291, § 16; Laws 1993, LB 370, § 89; Laws 1997, LB 752, § 140; Laws 2003, LB 209, § 10; Laws 2010, LB805, § 6; Laws 2011, LB667, § 30; Laws 2011, LB675, § 3.

60-4,130.03 Operator less than twenty-one years of age; driver improvement course; suspension; reinstatement.

(1) Any person less than twenty-one years of age who holds an operator's license or a provisional operator's permit and who has accumulated, within any twelve-month period, a total of six or more points on his or her driving record pursuant to section 60-4,182 shall be notified by the Department of Motor Vehicles of that fact and ordered to attend and successfully complete a driver improvement course consisting of at least eight hours of department-approved instruction. Notice shall be sent by regular United States mail to the last-known address as shown in the records of the department. If such person fails to complete the driver improvement course within three months after the date of notification, he or she shall have his or her operator's license suspended by the department.

(2) The director shall issue an order summarily suspending an operator's license until the licensee turns twenty-one years of age. Such order shall be sent by regular United States mail to the last-known address as shown in the records of the department. Such person shall not have his or her operator's license reinstated until he or she (a) has successfully completed the driver improvement course or has attained the age of twenty-one years and (b) has complied with section 60-4,100.01.

Source: Laws 1998, LB 320, § 14; Laws 2001, LB 38, § 35; Laws 2012, LB751, § 31.
Operative date July 19, 2012.

(h) PROVISIONS APPLICABLE TO OPERATION OF COMMERCIAL MOTOR VEHICLES

60-4,131 Sections; applicability; terms, defined.

(1) Sections 60-462.01 and 60-4,132 to 60-4,172 shall apply to the operation of any commercial motor vehicle.

(2) For purposes of such sections:

(a) Disqualification means:

(i) The suspension, revocation, cancellation, or any other withdrawal by a state of a person's privilege to drive a commercial motor vehicle;

(ii) A determination by the Federal Motor Carrier Safety Administration, under the rules of practice for motor carrier safety contained in 49 C.F.R. part 386, that a person is no longer qualified to operate a commercial motor vehicle under 49 C.F.R. part 391; or

(iii) The loss of qualification which automatically follows conviction of an offense listed in 49 C.F.R. 383.51;

(b) Downgrade means the state:

(i) Allows the driver of a commercial motor vehicle to change his or her self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 C.F.R. part 391, as provided in 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3;

(ii) Allows the driver of a commercial motor vehicle to change his or her self-certification to intrastate only, if the driver qualifies under a state's physical qualification requirements for intrastate only;

(iii) Allows the driver of a commercial motor vehicle to change his or her certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of a state driver qualification requirement; or

(iv) Removes the commercial driver's license privilege from the operator's license;

(c) Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; and leased drivers and independent, owner-operator contractors, while in the course of operating a commercial motor vehicle, who are either directly employed by or under lease to an employer;

(d) Employer means any person, including the United States, a state, the District of Columbia, or a political subdivision of a state, that owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle;

(e) Endorsement means an authorization to an individual's commercial driver's license required to permit the individual to operate certain types of commercial motor vehicles;

(f) Medical examiner's certificate means a form meeting the requirements of 49 C.F.R. 391.43 issued by a medical examiner in compliance with such regulation;

(g) Medical variance means the Federal Motor Carrier Safety Administration has provided a driver with either an exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 381, subpart C, or 49 C.F.R. 391.64 or a Skill Performance Evaluation Certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. 391.49;

(h) Representative vehicle means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate;

(i) State means a state of the United States and the District of Columbia;

(j) State of domicile means that state where a person has his or her true, fixed, and permanent home and principal residence and to which he or she has the intention of returning whenever he or she is absent;

(k) Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicle

includes, but is not limited to, a cargo tank and a portable tank, as defined in 49 C.F.R. part 171. However, this definition does not include a portable tank that has a rated capacity under one thousand gallons;

(l) United States means the fifty states and the District of Columbia; and

(m) Vehicle group means a class or type of vehicle with certain operating characteristics.

Source: Laws 1989, LB 285, § 81; Laws 1990, LB 980, § 11; Laws 1993, LB 420, § 5; Laws 1996, LB 323, § 2; Laws 2003, LB 562, § 7; Laws 2005, LB 76, § 7; Laws 2011, LB178, § 5.

60-4,131.01 Individuals operating commercial motor vehicles for military purposes; applicability of sections.

Sections 60-462.01 and 60-4,132 to 60-4,172 shall not apply to individuals who operate commercial motor vehicles for military purposes, including and limited to:

(1) Active duty military personnel;

(2) Members of the military reserves, other than military technicians;

(3) Active duty United States Coast Guard personnel; and

(4) Members of the National Guard on active duty, including:

(a) Personnel on full-time National Guard duty;

(b) Personnel on part-time National Guard training; and

(c) National Guard military technicians required to wear military uniforms.

Such individuals must have a valid military driver's license unless such individual is operating the vehicle under written orders from a commanding officer in an emergency declared by the federal government or by the State of Nebraska.

Source: Laws 2006, LB 853, § 13; Laws 2011, LB178, § 6.

60-4,132 Purposes of sections.

The purposes of sections 60-462.01 and 60-4,137 to 60-4,172 are to implement the requirements mandated by the federal Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31100 et seq., the federal Motor Carrier Safety Improvement Act of 1999, Public Law 106-159, section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, and federal regulations and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by: (1) Permitting drivers to hold only one operator's license; (2) disqualifying drivers for specified offenses and serious traffic violations; and (3) strengthening licensing and testing standards.

Source: Laws 1989, LB 285, § 82; Laws 1993, LB 7, § 2; Laws 1993, LB 420, § 6; Laws 2002, LB 499, § 1; Laws 2003, LB 562, § 8; Laws 2005, LB 76, § 8; Laws 2011, LB178, § 7.

60-4,137 Operation of commercial motor vehicle; commercial driver's license or LPC-learner's permit required.

Any resident of this state operating a commercial motor vehicle on the highways of this state shall possess a commercial driver's license or LPC-

learner's permit issued pursuant to sections 60-462.01 and 60-4,138 to 60-4,172.

Source: Laws 1989, LB 285, § 87; Laws 1993, LB 7, § 3; Laws 1993, LB 420, § 7; Laws 2001, LB 108, § 1; Laws 2003, LB 562, § 9; Laws 2005, LB 76, § 9; Laws 2011, LB178, § 8.

60-4,138 Commercial drivers' licenses and restricted commercial drivers' licenses; classification.

(1) Commercial drivers' licenses and restricted commercial drivers' licenses shall be issued by the department in compliance with 49 C.F.R. parts 383 and 391, shall be classified as provided in subsection (2) of this section, and shall bear such endorsements and restrictions as are provided in subsections (3) and (4) of this section.

(2) Commercial motor vehicle classifications for purposes of commercial drivers' licenses shall be as follows:

(a) Class A Combination Vehicle — Any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand pounds;

(b) Class B Heavy Straight Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds; and

(c) Class C Small Vehicle — Any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand pounds comprising:

(i) Motor vehicles designed to transport sixteen or more passengers, including the driver; and

(ii) Motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to section 75-364.

(3) The endorsements to a commercial driver's license shall be as follows:

(a) T — Double/triple trailers;

(b) P — Passenger;

(c) N — Tank vehicle;

(d) H — Hazardous materials;

(e) X — Combination tank vehicle and hazardous materials; and

(f) S — School bus.

(4) The restrictions to a commercial driver's license shall be as follows:

(a) I — Operation of a commercial motor vehicle only in intrastate commerce due to an exemption from 49 C.F.R. part 391 pursuant to subsection (4) of section 75-363;

(b) K — Operation of a commercial motor vehicle only in intrastate commerce;

(c) L — Operation of only a commercial motor vehicle which is not equipped with air brakes;

(d) M — Operation of a commercial motor vehicle which is not a Class A bus;

(e) N — Operation of a commercial motor vehicle which is not a Class A or Class B bus;

(f) O — Operation of a commercial motor vehicle which is not a tractor-trailer combination; and

(g) V — Operation of a commercial motor vehicle for drivers with medical variance documentation. The documentation shall be required to be carried on the driver's person while operating a commercial motor vehicle.

Source: Laws 1989, LB 285, § 88; Laws 1990, LB 980, § 14; Laws 1993, LB 420, § 8; Laws 1996, LB 938, § 1; Laws 2003, LB 562, § 10; Laws 2006, LB 1007, § 6; Laws 2011, LB178, § 9.

60-4,139 Commercial motor vehicle; nonresident; operating privilege.

Any nonresident may operate a commercial motor vehicle upon the highways of this state if (1) such nonresident has in his or her immediate possession a valid commercial driver's license or LPC-learner's permit issued by his or her state of residence or by a jurisdiction with standards that are in accord with 49 C.F.R. parts 383 and 391, (2) the license or permit is not suspended, revoked, or canceled, (3) such nonresident is not disqualified from operating a commercial motor vehicle, and (4) the commercial motor vehicle is not operated in violation of any downgrade.

Source: Laws 1989, LB 285, § 89; Laws 2001, LB 108, § 2; Laws 2006, LB 853, § 10; Laws 2011, LB178, § 10.

60-4,142 LPC-learner's permit; issuance.

Any resident may obtain an LPC-learner's permit from the department by making application to an examiner of the department. An applicant shall present proof to the examiner that he or she holds a valid Class O license or commercial driver's license or shall successfully complete the requirements for the Class O license before an LPC-learner's permit is issued. An applicant shall also successfully complete the commercial driver's license general knowledge examination under section 60-4,155. Upon application, the examination may be waived if the applicant presents a Nebraska commercial driver's license which is valid or has been expired for less than one year, presents a valid commercial driver's license from another state, or is renewing an LPC-learner's permit. The LPC-learner's permit shall be valid for a period of six months and shall be renewed only once within any two-year period. The county treasurer shall charge the fee prescribed in section 60-4,115 for the issuance or renewal of an LPC-learner's permit.

Source: Laws 1989, LB 285, § 92; Laws 1990, LB 980, § 17; Laws 1998, LB 320, § 17; Laws 2001, LB 108, § 3; Laws 2001, LB 574, § 23; Laws 2003, LB 562, § 13; Laws 2006, LB 853, § 11; Laws 2012, LB751, § 32.
Operative date May 1, 2012.

60-4,143 Commercial driver's license; LPC-learner's permit; issuance; restriction; surrender of other licenses.

(1) No commercial driver's license or LPC-learner's permit shall, under any circumstances, be issued to any person who has not attained the age of eighteen years.

(2) A commercial driver's license or LPC-learner's permit shall not be issued to any person during the period the person is subject to a disqualification in this or any other state, while the person's operator's license is suspended, revoked, or canceled in this or any other state, or when the Commercial Driver License Information System indicates ''not-certified''.

(3) The department shall not issue any commercial driver's license to any person unless the person applying for a commercial driver's license first surrenders to the department all operators' licenses issued to such person by this or any other state. Any operator's license issued by another state which is surrendered to the department shall be returned to that state by the director for cancellation.

Source: Laws 1989, LB 285, § 93; Laws 2005, LB 76, § 11; Laws 2011, LB178, § 11.

60-4,144 Commercial drivers' licenses; applications; contents; application; demonstration of knowledge and skills; information and documentation required.

(1) An applicant for any original or renewal commercial driver's license or an applicant for a change of class of commercial motor vehicle, endorsement, or restriction shall demonstrate his or her knowledge and skills for operating a commercial motor vehicle as prescribed in the Motor Vehicle Operator's License Act. An applicant for a commercial driver's license shall provide the information and documentation required by this section and sections 60-484 and 60-4,144.01 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04. Such information and documentation shall include any additional information required by 49 C.F.R. parts 383 and 391 and also include:

(a) Certification that the commercial motor vehicle in which the applicant takes any driving skills examination is representative of the class of commercial motor vehicle that the applicant operates or expects to operate; and

(b) The names of all states where the applicant has been licensed to operate any type of motor vehicle in the ten years prior to the date of application.

(2) Any person applying for any commercial driver's license on or before December 31, 2011, must present the certification required pursuant to section 60-4,145 or 60-4,146.

(3) Any person applying for any commercial driver's license on or after January 1, 2012, must make one of the certifications in section 60-4,144.01 and any certification required under section 60-4,146 and must provide such certifications to the department in order to be issued a commercial driver's license.

(4) On or after January 1, 2012, but no later than January 30, 2014, every person who holds any commercial driver's license must provide to the department medical certification as required by section 60-4,144.01. The department may provide notice and prescribe medical certification compliance requirements for all holders of commercial driver's licenses. Holders of commercial

driver's licenses who fail to meet the prescribed medical certification compliance requirements may be subject to downgrade.

Source: Laws 1989, LB 285, § 94; Laws 1992, LB 1178, § 4; Laws 1994, LB 76, § 575; Laws 1997, LB 635, § 21; Laws 1999, LB 147, § 3; Laws 1999, LB 704, § 29; Laws 2000, LB 1317, § 8; Laws 2001, LB 34, § 5; Laws 2003, LB 228, § 13; Laws 2003, LB 562, § 14; Laws 2004, LB 208, § 7; Laws 2004, LB 559, § 4; Laws 2005, LB 76, § 12; Laws 2008, LB911, § 21; Laws 2011, LB178, § 12; Laws 2011, LB215, § 19; Laws 2012, LB751, § 33.
Operative date April 7, 2012.

60-4,144.01 Commercial drivers' licenses; certification required; medical examiner's certificate.

(1) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. part 391, and is required to obtain a medical examiner's certificate by 49 C.F.R. 391.45. Any nonexcepted holder of a commercial driver's license on or after January 1, 2012, who certifies that he or she will operate a commercial motor vehicle in nonexcepted, interstate commerce must maintain a current medical examiner's certificate and provide a copy of it to the department in order to maintain his or her medical certification status;

(2) A person must certify that he or she operates or expects to operate a commercial motor vehicle in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. 390.3(f), 391.2, 391.68, or 398.3 from all or part of the qualification requirements of 49 C.F.R. part 391, and is therefor not required to obtain a medical examiner's certificate by 49 C.F.R. 391.45;

(3) A person must certify that he or she operates a commercial motor vehicle only in intrastate commerce and therefor is subject to state driver qualification requirements as provided in section 75-363; or

(4) A person must certify that he or she operates a commercial motor vehicle in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

Source: Laws 2011, LB178, § 13.

60-4,144.02 Commercial drivers' licenses; medical examiner's certificate; department; duties; failure of driver to comply; department; duties.

(1) Beginning January 1, 2012, for each operator of a commercial motor vehicle required to have a commercial driver's license, the department, in compliance with 49 C.F.R. 383.73, shall:

(a) Post the driver's self-certification of type of driving under 49 C.F.R. 383.71(a)(1)(ii);

(b) Retain the medical examiner's certificate of any driver required to provide documentation of physical qualification for three years beyond the date the certificate was issued; and

(c) Post the information from the medical examiner's certificate within ten calendar days to the Commercial Driver License Information System driver record, including:

(i) The medical examiner's name;

(ii) The medical examiner's telephone number;

(iii) The date of the medical examiner's certificate issuance;

(iv) The medical examiner's license number and the state that issued it;

(v) The medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(vi) The indicator of the medical certification status, either ''certified'' or ''not-certified'';

(vii) The expiration date of the medical examiner's certificate;

(viii) The existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(ix) Any restrictions, for example, corrective lenses, hearing aid, or required to have possession of an exemption letter or Skill Performance Evaluation certificate while on duty; and

(x) The date the medical examiner's certificate information was posted to the Commercial Driver License Information System driver record.

(2) Beginning January 1, 2012, the department shall, within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as ''not-certified''.

(3) Beginning January 1, 2012, within ten calendar days of receiving information from the Federal Motor Carrier Safety Administration regarding issuance or renewal of a medical variance for a driver, the department shall update the Commercial Driver License Information System driver record to include the medical variance information provided by the Federal Motor Carrier Safety Administration.

(4)(a) Beginning January 1, 2012, if a driver's medical certification or medical variance expires, or the Federal Motor Carrier Safety Administration notifies the department that a medical variance was removed or rescinded, the department shall:

(i) Notify the commercial driver's license holder of his or her commercial driver's license ''not-certified'' medical certification status and that the commercial driver's license privilege will be removed from the driver's license unless the driver submits a current medical certificate or medical variance or changes his or her self-certification to driving only in excepted or intrastate commerce, if permitted by the department; and

(ii) Initiate established department procedures for downgrading the license. The commercial driver's license downgrade shall be completed and recorded within sixty days of the driver's medical certification status becoming ''not-certified'' to operate a commercial motor vehicle.

(b) Beginning January 1, 2012, if a driver fails to provide the department with the certification contained in 49 C.F.R. 383.71(a)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to 49 C.F.R. 383.71(a)(1)(ii)(A) that he or she is operating in nonexcepted interstate commerce as required by 49 C.F.R. 383.71(h), the department shall mark that Commercial Driver License Information System driver record as ''not-certi-

fied'' and initiate a commercial driver's license downgrade following department procedures in accordance with subdivision (4)(a)(ii) of this section.

Source: Laws 2011, LB178, § 14.

60-4,145 Application; operation in interstate or foreign commerce; certification required.

This section applies up to and including December 31, 2011. Upon making any application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391. A commercial driver's license examiner may require any applicant making certification pursuant to this section to demonstrate with or without the aid of corrective devices sufficient powers of eyesight to enable him or her to operate a commercial motor vehicle in conformance with the minimum vision requirements of 49 C.F.R. part 391 adopted pursuant to section 75-363. If from the examination given it appears that any applicant's powers of eyesight are such that he or she cannot meet the minimum vision requirements, the examiner shall allow the applicant to present an ophthalmologist's or optometrist's certificate to the effect that the applicant has sufficient powers of eyesight for such purpose before issuing a commercial driver's license to the applicant. If the examination given by the commercial driver's license examiner or the ophthalmologist's or optometrist's certificate indicates that the applicant must wear a corrective device to meet the minimum vision requirements established by this section, the applicant shall have the use of the commercial driver's license issued to him or her restricted to wearing a corrective device while operating a motor vehicle. An applicant who has been issued a waiver or exemption by the Federal Motor Carrier Safety Administration from the vision requirements set forth in 49 C.F.R. 391.41(b)(10) may be issued an interstate commercial driver's license without meeting the vision requirements set forth in 49 C.F.R. 391.41(b)(10).

Source: Laws 1989, LB 285, § 95; Laws 1990, LB 980, § 18; Laws 1999, LB 704, § 30; Laws 2006, LB 1007, § 7; Laws 2011, LB178, § 15.

60-4,146 Application; requirements of federal law; certification.

(1) Beginning January 1, 2012, in addition to certifying himself or herself under this section, an applicant shall also certify himself or herself under section 60-4,144.01.

(2) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle in interstate or foreign commerce and who is not subject to 49 C.F.R. part 391 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(3) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that the applicant meets the qualification requirements of 49 C.F.R. part 391.

(4) Upon making application pursuant to section 60-4,144, any applicant who operates or expects to operate a commercial motor vehicle solely in intrastate commerce and who is not subject to 49 C.F.R. part 391 adopted pursuant to section 75-363 shall certify that he or she is not subject to 49 C.F.R. part 391. Any applicant making certification pursuant to this subsection shall meet the physical and vision requirements established in section 60-4,118 and shall be subject to the provisions of such section relating to the Health Advisory Board.

(5) An applicant who certifies that he or she is not subject to 49 C.F.R. part 391 under subsection (2) or (4) of this section shall answer the following questions on the application:

(a) Have you within the last three months (e.g. due to diabetes, epilepsy, mental illness, head injury, stroke, heart condition, neurological disease, etc.):

(i) lost voluntary control or consciousness .... yes .... no

(ii) experienced vertigo or multiple episodes of dizziness or fainting .... yes .... no

(iii) experienced disorientation .... yes .... no

(iv) experienced seizures .... yes .... no

(v) experienced impairment of memory, memory loss .... yes .... no

Please explain: .....

(b) Do you experience any condition which affects your ability to operate a motor vehicle? (e.g. due to loss of, or impairment of, foot, leg, hand, arm; neurological or neuromuscular disease, etc.) .... yes .... no

Please explain: .....

(c) Since the issuance of your last driver's license/permit has your health or medical condition changed or worsened? .... yes .... no

Please explain, including how the above affects your ability to drive: .....

.....

Source: Laws 1989, LB 285, § 96; Laws 1990, LB 980, § 19; Laws 1994, LB 211, § 11; Laws 1996, LB 938, § 2; Laws 1998, LB 320, § 18; Laws 1999, LB 704, § 31; Laws 2006, LB 1007, § 8; Laws 2011, LB178, § 16; Laws 2012, LB751, § 34.
Operative date April 7, 2012.

60-4,147.02 Hazardous materials endorsement; USA PATRIOT Act requirements.

No endorsement authorizing the driver to operate a commercial motor vehicle transporting hazardous materials shall be issued, renewed, or transferred by the Department of Motor Vehicles unless the endorsement is issued, renewed, or transferred in conformance with the requirements of section 1012 of the federal Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, USA PATRIOT Act, 49 U.S.C. 5103a, including all amendments and federal regulations adopted pursuant thereto as of January 1, 2012, for the issuance of licenses to operate commercial motor vehicles transporting hazardous materials.

Source: Laws 2005, LB 76, § 17; Laws 2006, LB 853, § 12; Laws 2007, LB239, § 5; Laws 2008, LB756, § 17; Laws 2009, LB331, § 10;

Laws 2010, LB805, § 7; Laws 2011, LB212, § 6; Laws 2012, LB751, § 35.
Operative date April 7, 2012.

60-4,149 Commercial drivers' licenses; examination; issuance; delivery.

(1) The examination for commercial drivers' licenses by the department shall occur in and for each county of the State of Nebraska. Each county shall furnish office space for the administration of the examinations, except that two or more counties may, with the permission of the director, establish a separate facility to jointly conduct the examinations for such licenses.

(2) Except as provided for by section 60-4,157, all commercial driver's license examinations shall be conducted by department personnel designated by the director. Each successful applicant shall be issued a certificate entitling the applicant to secure a commercial driver's license. If department personnel refuse to issue such certificate for cause, he or she shall state such cause in writing and deliver the same to the applicant. Department personnel shall not be required to hold a commercial driver's license to administer a driving skills examination and occupy the seat beside an applicant for a commercial driver's license.

(3) The successful applicant shall, within thirty days, present his or her issuance certificate to the county treasurer who shall collect the fee and surcharge as provided in section 60-4,115 and issue a receipt with driving privileges which is valid for up to thirty days. The commercial driver's license shall be delivered to the applicant as provided in section 60-4,113.

Source: Laws 1989, LB 285, § 99; Laws 1990, LB 980, § 21; Laws 1999, LB 704, § 34; Laws 2008, LB911, § 23; Laws 2011, LB215, § 20.

60-4,150 Commercial drivers' licenses; duplicate and replacement licenses; delivery.

(1) Any person holding a commercial driver's license who loses his or her license, who requires issuance of a replacement license because of a change of name or address, or whose license is mutilated or unreadable may obtain a duplicate or replacement commercial driver's license by filing an application and by furnishing proof of identification in accordance with section 60-484.

(2) The application for a replacement license because of a change of name or address shall be made within sixty days after the change of name or address.

(3) A duplicate or replacement commercial driver's license shall be delivered to the applicant as provided in section 60-4,113 after the county treasurer collects the fee and surcharge prescribed in section 60-4,115 and issues the applicant a receipt with driving privileges which is valid for up to thirty days.

(4) Duplicate and replacement commercial drivers' licenses shall be issued in the manner provided for the issuance of original and renewal commercial drivers' licenses as provided for by section 60-4,149. Upon issuance of any duplicate or replacement commercial driver's license, the commercial driver's license for which the duplicate or replacement license is issued shall be void.

Source: Laws 1989, LB 285, § 100; Laws 1990, LB 980, § 22; Laws 1993, LB 126, § 2; Laws 1998, LB 309, § 10; Laws 2001, LB 574, § 25; Laws 2005, LB 1, § 9; Laws 2008, LB911, § 24; Laws 2010, LB805, § 8; Laws 2011, LB215, § 21.

60-4,151 Commercial driver's license; restricted commercial driver's license; seasonal permit; form.

(1)(a) The commercial driver's license shall be conspicuously marked Nebraska Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof.

(b) The form of the commercial driver's license shall also comply with section 60-4,117.

(2) The restricted commercial driver's license shall be conspicuously marked Nebraska Restricted Commercial Driver's License and shall be, to the maximum extent practicable, tamper and forgery proof. The restricted commercial driver's license shall contain such additional information as deemed necessary by the director.

(3) The seasonal permit shall contain such information as deemed necessary by the director but shall include the time period during which the commercial motor vehicle operating privilege is effective. The seasonal permit shall be valid only when held in conjunction with a restricted commercial driver's license.

Source: Laws 1989, LB 285, § 101; Laws 1992, LB 1178, § 5; Laws 1993, LB 420, § 11; Laws 2001, LB 34, § 6; Laws 2001, LB 574, § 26; Laws 2008, LB911, § 25; Laws 2011, LB215, § 22.

60-4,153 Issuance of license; department; duties.

Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the department shall, within twenty-four hours prior to issuance if the applicant does not currently possess a valid commercial driver's license issued by this state and within ten days prior to the issuance or reissuance for all other applicants:

(1) Check the driving record of the applicant as maintained by the department or by any other state which has issued an operator's license to the applicant;

(2) Contact the Commercial Driver License Information System to determine whether the applicant possesses any valid commercial driver's license issued by any other state, whether such license or the applicant's privilege to operate a commercial motor vehicle has been suspended, revoked, or canceled, or whether the applicant has been disqualified from operating a commercial motor vehicle; and

(3) Contact the National Driver Register to determine if the applicant (a) has been disqualified from operating any motor vehicle, (b) has had an operator's license suspended, revoked, or canceled for cause in the three-year period ending on the date of application, (c) has been convicted of operation of a motor vehicle while under the influence of or while impaired by alcohol or a controlled substance, a traffic violation arising in connection with a fatal traffic accident, reckless driving, racing on the highways, failure to render aid or provide identification when involved in an accident which resulted in a fatality or personal injury, or perjury or the knowledgeable making of a false affidavit or statement to officials in connection with activities governed by a law, rule, or

regulation related to the operation of a motor vehicle, (d) is not eligible, or (e) is deceased.

Source: Laws 1989, LB 285, § 103; Laws 1999, LB 704, § 36; Laws 2011, LB178, § 17.

60-4,154 Issuance of license; director notify Commercial Driver License Information System; department; post information.

(1) Prior to the issuance of any original or renewal commercial driver's license or the reissuance of any commercial driver's license with a change of any classification, endorsement, or restriction, the director shall notify the Commercial Driver License Information System of the issuance and shall provide the applicant's name, social security number, and any other required information to the operator of the system.

(2) Beginning January 1, 2012, the department shall post information from the medical examiner's certificate to the Commercial Driver License Information System in accordance with section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 1989, LB 285, § 104; Laws 2011, LB178, § 18.

60-4,164 Alcoholic liquor; implied consent to submit to chemical tests; refusal or failure; penalty; officer; report.

(1) Any person who operates or is in the actual physical control of a commercial motor vehicle upon a highway in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the amount of alcoholic content in his or her blood or breath.

(2) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village who, after stopping or detaining the operator of any commercial motor vehicle, has reasonable grounds to believe that the operator was driving or in the actual physical control of a commercial motor vehicle while having any alcoholic liquor in his or her body may require such operator to submit to a chemical test or tests of his or her blood or breath for the purpose of determining the alcoholic content of such blood or breath.

(3) Any law enforcement officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person who operates or has in his or her actual physical control a commercial motor vehicle upon a highway in this state to submit to a preliminary breath test of his or her breath for alcoholic content if the officer has reasonable grounds to believe that such person has any alcoholic liquor in his or her body, has committed a moving traffic violation, or has been involved in a traffic accident. Any such person who refuses to submit to a preliminary breath test shall be placed under arrest and shall be guilty of a Class V misdemeanor. Any person arrested for refusing to submit to a preliminary breath test or any person who submits to a preliminary breath test the results of which indicate the presence of any alcoholic liquor in such person's body may, upon the direction of a law enforcement officer, be required to submit to a chemical test or tests of his or her blood or breath for a determination of the alcoholic content.

(4) Any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses the presence of any alcoholic liquor in his or her body shall be placed out of service for twenty-four hours by the law enforcement officer.

(5) Any person operating or in the actual physical control of a commercial motor vehicle who refuses to submit to a chemical test or tests of his or her blood or breath or any person operating or in the actual physical control of a commercial motor vehicle who submits to a chemical test or tests of his or her blood or breath which discloses an alcoholic concentration of: (a) Four-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (b) four-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath shall be placed out of service for twenty-four hours by the law enforcement officer, and the officer shall forward to the director a sworn report. The director may accept a sworn report submitted electronically. The report shall state that the person was operating or in the actual physical control of a commercial motor vehicle, was requested to submit to the required chemical test or tests, and refused to submit to the required chemical test or tests or submitted to the required chemical test or tests and possessed an alcohol concentration at or in excess of that specified by this subsection.

(6) Any person involved in a commercial motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood or breath by any law enforcement officer if the officer has reasonable grounds to believe that such person was driving or was in actual physical control of a commercial motor vehicle on a highway in this state while under the influence of alcoholic liquor at the time of the accident. A person involved in a commercial motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test or tests of his or her blood or breath by reason of leaving this state. If the person refuses a test or tests under this section and leaves the state for any reason following an accident, he or she shall remain subject to this section upon return.

Source: Laws 1989, LB 285, § 114; Laws 1992, LB 872, § 6; Laws 1993, LB 191, § 2; Laws 1996, LB 323, § 6; Laws 2011, LB667, § 31.

60-4,167 Alcoholic liquor; officer's report; notice of disqualification; hearing before director; procedure.

Upon receipt of a law enforcement officer's sworn report provided for in section 60-4,164, the director shall serve the notice of disqualification to the person who is the subject of the report by regular United States mail to the person's last-known address appearing on the records of the director. If the address on the director's records differs from the address on the arresting officer's report, the notice of disqualification shall be sent to both addresses. The notice of disqualification shall contain a statement explaining the operation of the disqualification procedure and the rights of the person. The director shall also provide to the person a self-addressed envelope and a petition form which the person may use to request a hearing before the director to contest the disqualification. The petition form shall clearly state on its face that the petition must be completed and delivered to the department or postmarked within ten

days after receipt or the person's right to a hearing to contest the disqualification will be foreclosed. The director shall prescribe and approve the form for the petition, the self-addressed envelope, and the notice of disqualification. If not contested, the disqualification shall automatically take effect thirty days after the date of mailing of the notice of disqualification by the director. Any chemical test or tests made under section 60-4,164, if made in conformity with the requirements of section 60-6,201, shall be competent evidence of the alcoholic content of such person's blood or breath. The commercial driver's license of the person who is the subject of the report shall be automatically disqualified upon the expiration of thirty days after the date of the mailing of the notice of disqualification by the director. The director shall conduct the hearing in the county in which the violation occurred or in any county agreed to by the parties. Upon receipt of a petition, the director shall notify the petitioner of the date and location for the hearing by regular United States mail postmarked at least seven days prior to the hearing date.

After granting the petitioner an opportunity to be heard on such issue, if it is not shown to the director that the petitioner's refusal to submit to such chemical test or tests was reasonable or unless it is shown to the director that the petitioner was not operating or in the actual physical control of a commercial motor vehicle with an alcoholic concentration in his or her blood or breath equal to or in excess of that specified in subsection (5) of section 60-4,164, the director shall enter an order pursuant to section 60-4,169 revoking the petitioner's commercial driver's license and privilege to operate a commercial motor vehicle in this state and disqualifying the person from operating a commercial motor vehicle for the period specified by section 60-4,168.

Source: Laws 1989, LB 285, § 117; Laws 1993, LB 191, § 5; Laws 1993, LB 370, § 92; Laws 1996, LB 323, § 8; Laws 2012, LB751, § 36. Operative date July 19, 2012.

60-4,167.01 Alcoholic liquor; disqualification decision; director; duties.

(1) The director shall reduce the decision disqualifying a commercial driver from operating a commercial motor vehicle pursuant to a hearing under section 60-4,167 to writing and the director shall notify the person in writing of the disqualification within seven days following a hearing. The decision shall set forth the period of disqualification and be served by mailing it to such person by regular United States mail to the address provided to the director at the hearing or, if the person does not appear at the hearing, to the address appearing on the records of the director. If the address on the director's records differs from the address on the arresting peace officer's report, the notice shall be sent to both addresses.

(2) If the director does not disqualify the commercial driver from operating a commercial motor vehicle, the director shall notify the person in writing of the decision within seven days following a hearing. The notice shall be mailed by regular United States mail as provided in subsection (1) of this section. No reinstatement fee shall be charged.

Source: Laws 1996, LB 323, § 9; Laws 2012, LB751, § 37. Operative date July 19, 2012.

60-4,168 Disqualification; when.

(1) Except as provided in subsections (2) and (3) of this section, a person shall be disqualified from driving a commercial motor vehicle for one year upon his or her first conviction, after April 1, 1992, in this or any other state for:

(a) Driving a commercial motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance or, beginning September 30, 2005, driving any motor vehicle in violation of section 60-6,196 or 60-6,197 or under the influence of a controlled substance;

(b) Driving a commercial motor vehicle in violation of section 60-4,163 or 60-4,164;

(c) Leaving the scene of an accident involving a commercial motor vehicle driven by the person or, beginning September 30, 2005, leaving the scene of an accident involving any motor vehicle driven by the person;

(d) Using a commercial motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section or, beginning September 30, 2005, using any motor vehicle in the commission of a felony other than a felony described in subdivision (3)(b) of this section;

(e) Beginning September 30, 2005, driving a commercial motor vehicle after his or her commercial driver's license has been suspended, revoked, or canceled or the driver is disqualified from driving a commercial motor vehicle; or

(f) Beginning September 30, 2005, causing a fatality through the negligent or criminal operation of a commercial motor vehicle.

(2) Except as provided in subsection (3) of this section, if any of the offenses described in subsection (1) of this section occurred while a person was transporting hazardous material in a commercial motor vehicle which required placarding pursuant to section 75-364, the person shall, upon conviction or administrative determination, be disqualified from driving a commercial motor vehicle for three years.

(3) A person shall be disqualified from driving a commercial motor vehicle for life if, after April 1, 1992, he or she:

(a) Is convicted of or administratively determined to have committed a second or subsequent violation of any of the offenses described in subsection (1) of this section or any combination of those offenses arising from two or more separate incidents; or

(b) Beginning September 30, 2005, used a commercial motor vehicle in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance.

(4)(a) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a commercial motor vehicle.

(b) A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if he or she is convicted in this or any other state of two serious traffic violations, or not less than one hundred twenty days if he or she is convicted in this or any other state of three serious traffic violations, arising from separate incidents occurring within a three-year period while operating a motor vehicle other than a commercial motor vehicle if the

convictions have resulted in the revocation, cancellation, or suspension of the person's operator's license or driving privileges.

(5)(a) A person who is convicted of operating a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a highway-rail grade crossing shall be disqualified for the period of time specified in subdivision (5)(b) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(b)(i) A person shall be disqualified for not less than sixty days if the person is convicted of a first violation described in this subsection.

(ii) A person shall be disqualified for not less than one hundred twenty days if, during any three-year period, the person is convicted of a second violation described in this subsection in separate incidents.

(iii) A person shall be disqualified for not less than one year if, during any three-year period, the person is convicted of a third or subsequent violation described in this subsection in separate incidents.

(6) For purposes of this section, controlled substance has the same meaning as in section 28-401.

(7) For purposes of this section, conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law, in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court costs, or a violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(8) For purposes of this section, serious traffic violation means:

(a) Speeding at or in excess of fifteen miles per hour over the legally posted speed limit;

(b) Willful reckless driving as described in section 60-6,214 or reckless driving as described in section 60-6,213;

(c) Improper lane change as described in section 60-6,139;

(d) Following the vehicle ahead too closely as described in section 60-6,140;

(e) A violation of any law or ordinance related to motor vehicle traffic control, other than parking violations or overweight or vehicle defect violations, arising in connection with an accident or collision resulting in death to any person;

(f) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license;

(g) Beginning September 30, 2005, driving a commercial motor vehicle without a commercial driver's license in the operator's possession;

(h) Beginning September 30, 2005, driving a commercial motor vehicle without the proper class of commercial driver's license and any endorsements, if required, for the specific vehicle group being operated or for the passengers or type of cargo being transported on the vehicle; and

(i) Beginning October 27, 2013, texting while driving as described in section 60-6,179.02.

Source: Laws 1989, LB 285, § 118; Laws 1990, LB 980, § 24; Laws 1993, LB 191, § 6; Laws 1993, LB 370, § 93; Laws 1996, LB 323, § 11; Laws 2001, LB 773, § 13; Laws 2002, LB 499, § 3; Laws 2003, LB 562, § 16; Laws 2005, LB 76, § 15; Laws 2012, LB751, § 38. Operative date April 7, 2012.

60-4,170 Revocation; notice; failure to surrender license; violation; penalty; appeal.

Within ten days after the revocation provided for by section 60-4,169, the director shall notify in writing the person whose commercial driver's license or privilege to operate a commercial motor vehicle has been revoked that such license or privilege has been revoked. Such notice shall: (1) Contain a list of the disqualifying convictions or administrative determinations upon which the director relies as his or her authority for the revocation, with the dates on which such disqualifying violations occurred and the dates of such convictions or administrative determinations and the trial courts or administrative agencies in which such convictions or administrative determinations were rendered; (2) state the term of revocation; (3) include a demand that the commercial driver's license be returned to the director immediately; and (4) be served by mailing the notice to such person by regular United States mail to the address of such person. If any person fails to return a commercial driver's license following a demand by the director, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. Any person refusing or failing to surrender a commercial driver's license as required by this section shall, upon conviction, be guilty of a Class III misdemeanor.

Any person who feels himself or herself aggrieved because of a revocation pursuant to section 60-4,169 may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation unless a stay of such revocation shall be allowed by the court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event of a final judgment of a court against such person, until the full time of revocation, as fixed by the director, has elapsed.

Source: Laws 1989, LB 285, § 120; Laws 1999, LB 704, § 38; Laws 2012, LB751, § 39.
Operative date July 19, 2012.

60-4,171 Issuance of Class O or M operator's license; reinstatement of commercial driver's license; when.

(1) Following any period of revocation ordered by a court, a resident who has had a commercial driver's license revoked pursuant to section 60-4,169 may apply for a Class O or M operator's license.

(2) Any person who has had his or her commercial driver's license revoked pursuant to section 60-4,169 may, at the end of such revocation period, apply to have his or her eligibility for a commercial driver's license reinstated. The applicant shall (a) apply to the Department of Motor Vehicles and provide his or her social security number, (b) take the commercial driver's license knowledge and driving skills examinations prescribed pursuant to section 60-4,155, (c) up to and including December 31, 2011, comply with section 60-4,145 regarding physical requirements, (d) on or after January 1, 2012, certify pursuant to section 60-4,144.01 and meet the applicable medical requirements for such certification, (e) be subject to a check of his or her driving record, (f) pay the fees specified in section 60-4,115 and a reinstatement fee as provided in section 60-499.01, and (g) surrender any operator's license issued pursuant to subsection (1) of this section.

Source: Laws 1989, LB 285, § 121; Laws 1993, LB 420, § 14; Laws 1993, LB 491, § 14; Laws 1997, LB 752, § 144; Laws 1999, LB 704, § 39; Laws 2001, LB 38, § 38; Laws 2001, LB 574, § 27; Laws 2011, LB178, § 19.

(j) STATE IDENTIFICATION CARDS

60-4,181 State identification cards; issuance; requirements; form; delivery; cancellation.

(1) Each applicant for a state identification card shall provide the information and documentation required by section 60-484 and also, beginning on an implementation date designated by the director on or before January 1, 2014, the information and documentation required by section 60-484.04. The form of the state identification card shall comply with section 60-4,117. Upon presentation of an applicant's issuance certificate, the county treasurer shall collect the fee and surcharge as prescribed in section 60-4,115 and issue a receipt to the applicant which is valid up to thirty days. The state identification card shall be delivered to the applicant as provided in section 60-4,113.

(2) The director may summarily cancel any state identification card, and any judge or magistrate may order a state identification card canceled in a judgment of conviction, if the application or issuance certificate for the card contains any false or fraudulent statements which were deliberately and knowingly made as to any matter material to the issuance of the card or if the application or issuance certificate does not contain required or correct information. Any state identification card so obtained shall be void from the date of issuance. Any judgment of conviction ordering cancellation of a state identification card shall be transmitted to the director who shall cancel the card.

(3) This subsection applies beginning on an implementation date designated by the director on or before January 1, 2014. No person shall be a holder of a state identification card and an operator's license at the same time.

Source: Laws 1989, LB 284, § 6; Laws 1989, LB 285, § 130; Laws 1992, LB 1178, § 6; Laws 1993, LB 491, § 15; Laws 1994, LB 76, § 576; Laws 1995, LB 467, § 14; Laws 1996, LB 1073, § 2; Laws 1997, LB 21, § 1; Laws 1997, LB 635, § 22; Laws 1998, LB 309,

§ 11; Laws 1999, LB 147, § 4; Laws 1999, LB 704, § 41; Laws 2000, LB 1317, § 9; Laws 2001, LB 34, § 7; Laws 2001, LB 574, § 29; Laws 2003, LB 228, § 14; Laws 2004, LB 559, § 5; Laws 2008, LB911, § 26; Laws 2011, LB215, § 23.

(k) POINT SYSTEM

60-4,182 Point system; offenses enumerated.

In order to prevent and eliminate successive traffic violations, there is hereby provided a point system dealing with traffic violations as disclosed by the files of the director. The following point system shall be adopted:

(1) Conviction of motor vehicle homicide - 12 points;

(2) Third offense drunken driving in violation of any city or village ordinance or of section 60-6,196, as disclosed by the records of the director, regardless of whether the trial court found the same to be a third offense - 12 points;

(3) Failure to stop and render aid as required under section 60-697 in the event of involvement in a motor vehicle accident resulting in the death or personal injury of another - 6 points;

(4) Failure to stop and report as required under section 60-696 or any city or village ordinance in the event of a motor vehicle accident resulting in property damage - 6 points;

(5) Driving a motor vehicle while under the influence of alcoholic liquor or any drug or when such person has a concentration of eight-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or per two hundred ten liters of his or her breath in violation of any city or village ordinance or of section 60-6,196 - 6 points;

(6) Willful reckless driving in violation of any city or village ordinance or of section 60-6,214 or 60-6,217 - 6 points;

(7) Careless driving in violation of any city or village ordinance or of section 60-6,212 - 4 points;

(8) Negligent driving in violation of any city or village ordinance - 3 points;

(9) Reckless driving in violation of any city or village ordinance or of section 60-6,213 - 5 points;

(10) Speeding in violation of any city or village ordinance or any of sections 60-6,185 to 60-6,190 and 60-6,313:

(a) Not more than five miles per hour over the speed limit - 1 point;

(b) More than five miles per hour but not more than ten miles per hour over the speed limit - 2 points;

(c) More than ten miles per hour but not more than thirty-five miles per hour over the speed limit - 3 points, except that one point shall be assessed upon conviction of exceeding by not more than ten miles per hour, two points shall be assessed upon conviction of exceeding by more than ten miles per hour but not more than fifteen miles per hour, and three points shall be assessed upon conviction of exceeding by more than fifteen miles per hour but not more than thirty-five miles per hour the speed limits provided for in subdivision (1)(e), (f), (g), or (h) of section 60-6,186; and

(d) More than thirty-five miles per hour over the speed limit - 4 points;

(11) Failure to yield to a pedestrian not resulting in bodily injury to a pedestrian - 2 points;

(12) Failure to yield to a pedestrian resulting in bodily injury to a pedestrian - 4 points;

(13) Using a handheld wireless communication device in violation of section 60-6,179.01 or texting while driving in violation of section 60-6,179.02 - 3 points;

(14) Unlawful obstruction or interference of the view of an operator in violation of section 60-6,256 - 1 point;

(15) A violation of subsection (1) of section 60-6,175 - 3 points; and

(16) All other traffic violations involving the operation of motor vehicles by the operator for which reports to the Department of Motor Vehicles are required under sections 60-497.01 and 60-497.02 - 1 point.

Subdivision (16) of this section does not include violations involving an occupant protection system pursuant to section 60-6,270, parking violations, violations for operating a motor vehicle without a valid operator's license in the operator's possession, muffler violations, overwidth, overheight, or overlength violations, motorcycle or moped protective helmet violations, or overloading of trucks.

All such points shall be assessed against the driving record of the operator as of the date of the violation for which conviction was had. Points may be reduced by the department under section 60-4,188.

In all cases, the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the operator was charged.

The point system shall not apply to persons convicted of traffic violations committed while operating a bicycle or an electric personal assistive mobility device as defined in section 60-618.02.

Source: Laws 1953, c. 219, § 1, p. 768; Laws 1955, c. 156, § 1, p. 457; Laws 1957, c. 168, § 1, p. 587; Laws 1957, c. 366, § 26, p. 1261; Laws 1959, c. 169, § 2, p. 617; Laws 1959, c. 174, § 1, p. 625; Laws 1961, c. 185, § 3, p. 571; Laws 1967, c. 235, § 2, p. 630; R.R.S.1943, § 39-7,128; Laws 1974, LB 590, § 1; Laws 1974, LB 873, § 4; Laws 1975, LB 328, § 1; Laws 1975, LB 381, § 4; Laws 1976, LB 265, § 1; Laws 1983, LB 204, § 1; Laws 1985, LB 496, § 2; Laws 1987, LB 224, § 3; Laws 1987, LB 430, § 3; Laws 1988, LB 428, § 6; Laws 1992, LB 958, § 2; R.S.Supp.,1992, § 39-669.26; Laws 1993, LB 370, § 80; Laws 1993, LB 575, § 17; Laws 1996, LB 901, § 2; Laws 2001, LB 166, § 3; Laws 2001, LB 773, § 14; Laws 2002, LB 1105, § 446; Laws 2006, LB 925, § 3; Laws 2007, LB35, § 1; Laws 2008, LB621, § 1; Laws 2010, LB945, § 1; Laws 2011, LB500, § 1; Laws 2012, LB751, § 40; Laws 2012, LB1039, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB751, section 40, with LB1039, section 1, to reflect all amendments.

Note: Changes made by LB751 became operative April 7, 2012. Changes made by LB1039 became effective July 19, 2012.

Cross References

Assessment of points when person is placed on probation, see section 60-497.01.

60-4,184 Revocation of license; notice; failure to return license; procedure; penalty; appeal; effect.

Within ten days after the revocation provided for by section 60-4,183, the director shall notify in writing the person whose operator's license has been revoked that such license has been revoked. Such notice shall:

(1) Contain a list of the convictions for violations upon which the director relies as his or her authority for the revocation, with the dates of such violations upon which convictions were had and the dates of such convictions, the trial courts in which such judgments of conviction were rendered, and the points charged for each conviction;

(2) State the term of such revocation;

(3) Include a demand that the license be returned to the director immediately; and

(4) Be served by mailing it to such person by regular United States mail to the last-known residence of such person or, if such address is unknown, to the last-known business address of such person.

If any person fails to return his or her license to the director as demanded, the director shall immediately direct any peace officer or authorized representative of the director to secure possession of such license and return the license to the director. A refusal to surrender an operator's license on demand shall be unlawful, and any person failing to surrender his or her license as required by this section shall be guilty of a Class III misdemeanor.

Any person who feels aggrieved because of such revocation may appeal from such revocation in the manner set forth in section 60-4,105. Such appeal shall not suspend the order of revocation of such license unless a stay of such order is allowed by a judge of such court pending a final determination of the review. The license of any person claiming to be aggrieved shall not be restored to such person, in the event the final judgment of a court finds against such person, until the full time of revocation, as fixed by the Department of Motor Vehicles, has elapsed.

Source: Laws 1953, c. 219, § 3, p. 770; Laws 1955, c. 157, § 1, p. 460; Laws 1957, c. 242, § 32, p. 845; Laws 1957, c. 366, § 28, p. 1263; Laws 1959, c. 174, § 3, p. 627; R.R.S.1943, § 39-7,130; Laws 1975, LB 263, § 2; Laws 1989, LB 285, § 4; R.S.Supp.,1992, § 39-669.28; Laws 1993, LB 370, § 82; Laws 1999, LB 704, § 42; Laws 2012, LB751, § 41.
Operative date July 19, 2012.

ARTICLE 5

MOTOR VEHICLE SAFETY RESPONSIBILITY

(a) DEFINITIONS

Section
60-501. Terms, defined.

(c) SECURITY FOLLOWING ACCIDENT

60-507. Accident; damage in excess of one thousand dollars; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520. Judgments; payments sufficient to satisfy requirements.
60-547. Bond; proof of financial responsibility.

(a) DEFINITIONS

60-501 Terms, defined.

For purposes of the Motor Vehicle Safety Responsibility Act, unless the context otherwise requires:

(1) Department means Department of Motor Vehicles;

(2) Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, and is designed and manufactured for operation on a golf course for sporting and recreational purposes;

(3) Judgment means any judgment which shall have become final by the expiration of the time within which an appeal might have been perfected without being appealed, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, (a) upon a cause of action arising out of the ownership, maintenance, or use of any motor vehicle for damages, including damages for care and loss of services, because of bodily injury to or death of any person or for damages because of injury to or destruction of property, including the loss of use thereof, or (b) upon a cause of action on an agreement of settlement for such damages;

(4) License means any license issued to any person under the laws of this state pertaining to operation of a motor vehicle within this state;

(5) Low-speed vehicle means a four-wheeled motor vehicle (a) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (b) whose gross vehicle weight rating is less than three thousand pounds, and (c) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011;

(6) Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (a) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (b) is sixty-seven inches or less in width, (c) has a dry weight of four thousand two hundred pounds or less, (d) travels on four or more tires, (e) has a top speed of approximately fifty-five miles per hour, (f) is equipped with a bed or compartment for hauling, (g) has an enclosed passenger cab, (h) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (i) has a four-speed, five-speed, or automatic transmission;

(7) Motor vehicle means any self-propelled vehicle which is designed for use upon a highway, including trailers designed for use with such vehicles, minitrucks, and low-speed vehicles. Motor vehicle does not include (a) mopeds as defined in section 60-637, (b) traction engines, (c) road rollers, (d) farm tractors, (e) tractor cranes, (f) power shovels, (g) well drillers, (h) every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails, (i) electric personal assistive mobility devices as defined in section 60-618.02, and (j) off-road designed vehicles, including, but not limited to, golf car vehicles, go-carts, riding lawnmowers, garden tractors, all-terrain vehicles and utility-type vehicles as defined in section 60-6,355, minibikes as defined in section 60-636, and snowmobiles as defined in section 60-663;

(8) Nonresident means every person who is not a resident of this state;

(9) Nonresident's operating privilege means the privilege conferred upon a nonresident by the laws of this state pertaining to the operation by him or her of a motor vehicle or the use of a motor vehicle owned by him or her in this state;

(10) Operator means every person who is in actual physical control of a motor vehicle;

(11) Owner means a person who holds the legal title of a motor vehicle, or in the event (a) a motor vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee or (b) a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purposes of the act;

(12) Person means every natural person, firm, partnership, limited liability company, association, or corporation;

(13) Proof of financial responsibility means evidence of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of such proof, arising out of the ownership, maintenance, or use of a motor vehicle, (a) in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, (b) subject to such limit for one person, in the amount of fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and (c) in the amount of twenty-five thousand dollars because of injury to or destruction of property of others in any one accident;

(14) Registration means registration certificate or certificates and registration plates issued under the laws of this state pertaining to the registration of motor vehicles;

(15) State means any state, territory, or possession of the United States, the District of Columbia, or any province of the Dominion of Canada; and

(16) The forfeiture of bail, not vacated, or of collateral deposited to secure an appearance for trial shall be regarded as equivalent to conviction of the offense charged.

Source: Laws 1949, c. 178, § 1, p. 482; Laws 1957, c. 366, § 42, p. 1275; Laws 1959, c. 298, § 1, p. 1107; Laws 1959, c. 299, § 1, p. 1123; Laws 1971, LB 644, § 4; Laws 1972, LB 1196, § 4; Laws 1973, LB 365, § 1; Laws 1979, LB 23, § 14; Laws 1983, LB 253, § 1; Laws 1987, LB 80, § 11; Laws 1993, LB 121, § 385; Laws 1993, LB 370, § 94; Laws 2002, LB 1105, § 447; Laws 2010, LB650, § 32; Laws 2011, LB289, § 26; Laws 2012, LB898, § 3; Laws 2012, LB1155, § 15.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB898, section 3, with LB1155, section 15, to reflect all amendments.

Note: Changes made by LB898 became effective July 19, 2012. Changes made by LB1155 became operative January 1, 2013.

(c) SECURITY FOLLOWING ACCIDENT

60-507 Accident; damage in excess of one thousand dollars; suspend license; suspend privilege of operation by nonresident; notice; exception; proof of financial responsibility; failure to furnish information; effect.

(1) Within ninety days after the receipt by the Department of Roads of a report of a motor vehicle accident within this state which has resulted in bodily injury or death, or damage to the property of any one person, including such operator, to an apparent extent in excess of one thousand dollars, the Department of Motor Vehicles shall suspend (a) the license of each operator of a motor vehicle in any manner involved in such accident and (b) the privilege, if such operator is a nonresident, of operating a motor vehicle within this state, unless such operator deposits security in a sum which shall be sufficient, in the judgment of the Department of Motor Vehicles, to satisfy any judgment or judgments for damages resulting from such accident which may be recovered against such operator and unless such operator gives proof of financial responsibility.

Notice of such suspension shall be sent by the Department of Motor Vehicles by regular United States mail to such operator not less than twenty days prior to the effective date of such suspension at his or her last-known mailing address as shown by the records of the department and shall state the amount required as security and the requirement of proof of financial responsibility. In the event a person involved in a motor vehicle accident within this state fails to make a report to the Department of Motor Vehicles indicating the extent of his or her injuries or the damage to his or her property within thirty days after the accident, and the department does not have sufficient information on which to base an evaluation of such injury or damage, the department, after reasonable notice to such person, may not require any deposit of security for the benefit or protection of such person. If the operator fails to respond to the notice on or before twenty days after the date of the notice, the director shall summarily suspend the operator's license or privilege and issue an order of suspension.

(2) The order of suspension provided for in subsection (1) of this section shall not be entered by the Department of Motor Vehicles if the department determines that in its judgment there is no reasonable possibility of a judgment being rendered against such operator.

(3) In determining whether there is a reasonable possibility of judgment being rendered against such operator, the department shall consider all reports and information filed in connection with the accident.

(4) The order of suspension provided for in subsection (1) of this section shall advise the operator that he or she has a right to appeal the order of suspension in accordance with the provisions set forth in section 60-503.

(5) The order of suspension provided for in subsection (1) of this section shall be sent by regular United States mail to the person's last-known mailing address as shown by the records of the department.

Source: Laws 1949, c. 178, § 7, p. 486; Laws 1953, c. 215, § 3, p. 763; Laws 1957, c. 366, § 45, p. 1278; Laws 1959, c. 298, § 5, p. 1111; Laws 1961, c. 319, § 7, p. 1022; Laws 1967, c. 392, § 1, p. 1218; Laws 1972, LB 1303, § 2; Laws 1973, LB 417, § 4; Laws 1985, LB 94, § 6; Laws 1997, LB 10, § 2; Laws 2003, LB 185, § 1; Laws 2012, LB751, § 42.
Operative date July 19, 2012.

(d) PROOF OF FINANCIAL RESPONSIBILITY

60-520 Judgments; payments sufficient to satisfy requirements.

Judgments in excess of the amounts specified in subdivision (13) of section 60-501 shall, for the purpose of the Motor Vehicle Safety Responsibility Act only, be deemed satisfied when payments in the amounts so specified have been credited thereon. Payments made in settlement of any claims because of bodily injury, death, or property damage arising from a motor vehicle accident shall be credited in reduction of the respective amounts so specified.

Source: Laws 1949, c. 178, § 20, p. 492; Laws 2010, LB650, § 33; Laws 2011, LB289, § 27; Laws 2012, LB1155, § 16.
Operative date January 1, 2013.

60-547 Bond; proof of financial responsibility.

Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business within this state, or a bond with at least two individual sureties who each own real estate within this state, which real estate shall be scheduled in the bond approved by a judge of a court of record. The bond shall be conditioned for the payment of the amounts specified in subdivision (13) of section 60-501. It shall be filed with the department and shall not be cancelable except after ten days' written notice to the department. Such bond shall constitute a lien in favor of the state upon the real estate so scheduled of any surety, which lien shall exist in favor of any holder of a final judgment against the person who has filed such bond, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, resulting from the ownership, maintenance, use, or operation of a motor vehicle after such bond was filed, upon the filing of notice to that effect by the department in the office of the register of deeds of the county where such real estate shall be located.

Source: Laws 1949, c. 178, § 47, p. 498; Laws 2010, LB650, § 34; Laws 2011, LB289, § 28; Laws 2012, LB1155, § 17.
Operative date January 1, 2013.

ARTICLE 6

NEBRASKA RULES OF THE ROAD

(a) GENERAL PROVISIONS

(d) ACCIDENTS AND ACCIDENT REPORTING

(e) APPLICABILITY OF TRAFFIC LAWS

(g) USE OF ROADWAY AND PASSING

(l) SPECIAL STOPS

Section

(m) MISCELLANEOUS RULES

(o) ALCOHOL AND DRUG VIOLATIONS

(q) LIGHTING AND WARNING EQUIPMENT

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

(u) OCCUPANT PROTECTION SYSTEMS

(y) SIZE, WEIGHT, AND LOAD

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

(a) GENERAL PROVISIONS

60-601 Rules, how cited.

Sections 60-601 to 60-6,381 shall be known and may be cited as the Nebraska Rules of the Road.

Source: Laws 1973, LB 45, § 122; Laws 1989, LB 285, § 9; Laws 1992, LB 291, § 14; Laws 1992, LB 872, § 5; R.S.Supp.,1992, § 39-6,122; Laws 1993, LB 370, § 97; Laws 1993, LB 564, § 14; Laws 1996, LB 901, § 3; Laws 1996, LB 1104, § 2; Laws 1997, LB 91, § 1; Laws 1998, LB 309, § 12; Laws 1999, LB 585, § 3; Laws 2001, LB 38, § 42; Laws 2002, LB 1105, § 448; Laws 2002, LB 1303, § 10; Laws 2004, LB 208, § 8; Laws 2006, LB 853, § 14; Laws 2006, LB 925, § 4; Laws 2008, LB736, § 6; Laws 2008, LB756, § 18; Laws 2009, LB92, § 1; Laws 2010, LB650, § 35; Laws 2010, LB945, § 2; Laws 2011, LB164, § 1; Laws 2011, LB289, § 29; Laws 2011, LB667, § 32; Laws 2011, LB675, § 4; Laws 2012, LB751, § 43; Laws 2012, LB1155, § 18.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB751, section 43, with LB1155, section 18, to reflect all amendments.

Note: Changes made by LB751 became operative April 7, 2012. Changes made by LB1155 became operative January 1, 2013.

60-605 Definitions, where found.

For purposes of the Nebraska Rules of the Road, the definitions found in sections 60-606 to 60-676 shall be used.

Source: Laws 1993, LB 370, § 101; Laws 1996, LB 901, § 4; Laws 1997, LB 91, § 2; Laws 2001, LB 38, § 43; Laws 2006, LB 853, § 15; Laws 2006, LB 925, § 5; Laws 2008, LB756, § 19; Laws 2010, LB650, § 36; Laws 2011, LB289, § 30; Laws 2012, LB1155, § 19. Operative date January 1, 2013.

60-622.01 Golf car vehicle, defined.

Golf car vehicle means a vehicle that has at least four wheels, has a maximum level ground speed of less than twenty miles per hour, has a maximum payload capacity of one thousand two hundred pounds, has a maximum gross vehicle weight of two thousand five hundred pounds, has a maximum passenger capacity of not more than four persons, is designed and manufactured for operation on a golf course for sporting and recreational purposes, and is not being operated within the boundaries of a golf course.

Source: Laws 2012, LB1155, § 20.
Operative date January 1, 2013.

60-628.01 Low-speed vehicle, defined.

Low-speed vehicle means a four-wheeled motor vehicle (1) whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface, (2) whose gross vehicle weight rating is less than three thousand pounds, and (3) that complies with 49 C.F.R. part 571, as such part existed on January 1, 2011.

Source: Laws 2011, LB289, § 31.

60-636.01 Minitruck, defined.

Minitruck means a foreign-manufactured import vehicle or domestic-manufactured vehicle which (1) is powered by an internal combustion engine with a piston or rotor displacement of one thousand five hundred cubic centimeters or less, (2) is sixty-seven inches or less in width, (3) has a dry weight of four thousand two hundred pounds or less, (4) travels on four or more tires, (5) has a top speed of approximately fifty-five miles per hour, (6) is equipped with a bed or compartment for hauling, (7) has an enclosed passenger cab, (8) is equipped with headlights, taillights, turnsignals, windshield wipers, a rearview mirror, and an occupant protection system, and (9) has a four-speed, five-speed, or automatic transmission.

Source: Laws 2010, LB650, § 37; Laws 2012, LB898, § 4.
Effective date July 19, 2012.

(d) ACCIDENTS AND ACCIDENT REPORTING

60-697 Accident; driver's duty; penalty.

(1) The driver of any vehicle involved in an accident upon either a public highway, private road, or private drive, resulting in injury or death to any person, shall (a) immediately stop such vehicle at the scene of such accident and ascertain the identity of all persons involved, (b) give his or her name and address and the license number of the vehicle and exhibit his or her operator's license to the person struck or the occupants of any vehicle collided with, and (c) render to any person injured in such accident reasonable assistance, including the carrying of such person to a physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person.

(2) Any person violating any of the provisions of this section shall upon conviction thereof be punished as provided in section 60-698.

Source: Laws 1931, c. 110, § 28, p. 314; C.S.Supp.,1941, § 39-1159; R.S.1943, § 39-762; Laws 1947, c. 148, § 2(1), p. 409; Laws 1949, c. 119, § 1, p. 315; Laws 1949, c. 120, § 1, p. 317; R.R.S.1943, § 39-762; R.S.1943, (1988), § 39-6,104.01; Laws 1993, LB 370, § 193; Laws 2005, LB 274, § 240; Laws 2006, LB 925, § 8; Laws 2011, LB675, § 5.

Cross References

Operator's license, assessment of points, revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.

60-698 Accident; failure to stop; penalty.

(1) Any person convicted of violating section 60-697 relative to the duty to stop in the event of certain accidents shall be guilty of (a) a Class IIIA felony if

the accident resulted in an injury to any person other than a serious bodily injury as defined in section 60-6,198 or death or (b) a Class III felony if the accident resulted in the death of any person or serious bodily injury as defined in section 60-6,198.

(2) The court shall, as part of the judgment of conviction, order such person not to drive any motor vehicle for any purpose for a period of not less than one year nor more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for a like period. The order of the court shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked, whichever is later.

Source: Laws 1931, c. 110, § 56, p. 324; C.S.Supp.,1941, § 39-1187; R.S.1943, § 39-763; Laws 1953, c. 214, § 2, p. 757; R.R.S.1943, § 39-763; Laws 1978, LB 748, § 27; R.S.1943, (1988), § 39-6,104.03; Laws 1993, LB 31, § 18; Laws 1993, LB 370, § 194; Laws 1997, LB 772, § 6; Laws 2006, LB 925, § 9; Laws 2011, LB675, § 6.

(e) APPLICABILITY OF TRAFFIC LAWS

60-6,109 Drivers to exercise due care with pedestrian; audible signal.

Notwithstanding the other provisions of the Nebraska Rules of the Road, every driver of a vehicle shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, to avoid colliding with any pedestrian upon any roadway and shall give an audible signal when necessary and shall exercise proper precaution upon observing any child or obviously confused or incapacitated person upon a roadway.

Source: Laws 1973, LB 45, § 44; R.S.1943, (1988), § 39-644; Laws 1993, LB 370, § 205; Laws 2012, LB1030, § 1.
Effective date July 19, 2012.

(g) USE OF ROADWAY AND PASSING

60-6,133 Overtaking and passing rules; vehicles proceeding in same direction.

Except when overtaking and passing on the right is permitted, the following rules shall govern the overtaking and passing of vehicles proceeding in the same direction:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall first give a visible signal of his or her intention and shall pass to the left of the other vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle;

(2) The driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle; and

(3) The driver of a vehicle overtaking a bicycle or electric personal assistive mobility device proceeding in the same direction shall exercise due care, which shall include, but not be limited to, leaving a safe distance of no less than three feet clearance, when applicable, when passing a bicycle or electric personal

assistive mobility device and shall maintain such clearance until safely past the overtaken bicycle or electric personal assistive mobility device.

Source: Laws 1973, LB 45, § 22; R.S.1943, (1988), § 39-622; Laws 1993, LB 370, § 229; Laws 1993, LB 575, § 6; Laws 2000, LB 1361, § 3; Laws 2012, LB1030, § 2.
Effective date July 19, 2012.

(l) SPECIAL STOPS

60-6,175 School bus; safety requirements; use of stop signal arm; use of warning signal lights; violations; penalty.

(1) Upon meeting or overtaking, from the front or rear, any school bus on which the yellow warning signal lights are flashing, the driver of a motor vehicle shall reduce the speed of such vehicle to not more than twenty-five miles per hour, shall bring such vehicle to a complete stop when the school bus is stopped, the stop signal arm is extended, and the flashing red signal lights are turned on, and shall remain stopped until the flashing red signal lights are turned off, the stop signal arm is retracted, and the school bus resumes motion. This section shall not apply to approaching traffic in the opposite direction on a divided highway or to approaching traffic when there is displayed a sign as provided in subsection (8) of this section directing traffic to proceed. Any person violating this subsection shall be guilty of a Class IV misdemeanor, shall be fined five hundred dollars, and shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182.

(2) Except as provided in subsection (8) of this section, the driver of any school bus, when stopping to receive or discharge pupils, shall turn on flashing yellow warning signal lights at a distance of not less than three hundred feet when inside the corporate limits of any city or village and not less than five hundred feet nor more than one thousand feet in any area outside the corporate limits of any city or village from the point where such pupils are to be received or discharged from the bus. At the point of receiving or discharging pupils, the bus driver shall bring the school bus to a stop, extend a stop signal arm, and turn on the flashing red signal lights. After receiving or discharging pupils, the bus driver shall turn off the flashing red signal lights, retract the stop signal arm, and then proceed on the route.

(3)(a) Except as provided in subdivision (b) of this subsection, no school bus shall stop to load or unload pupils unless there is at least four hundred feet of clear vision in each direction of travel.

(b) If four hundred feet of clear vision in each direction of travel is not possible as determined by the school district, a school bus may stop to load or unload pupils if there is proper signage installed indicating that a school bus stop is ahead.

(4) All pupils shall be received and discharged from the right front entrance of every school bus. If such pupils must cross a roadway, the bus driver shall instruct such pupils to cross in front of the school bus and the bus driver shall keep such school bus halted with the flashing red signal lights turned on and the stop signal arm extended until such pupils have reached the opposite side of such roadway.

(5) The driver of a vehicle upon a divided highway need not stop upon meeting or passing a school bus which is on a different roadway or when upon

a freeway and such school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway.

(6) Every school bus shall bear upon the front and rear thereof plainly visible signs containing the words school bus in letters not less than eight inches high.

(7) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or school-sponsored activities, all markings thereon indicating school bus shall be covered or concealed. The stop signal arm and system of flashing yellow warning signal lights and flashing red signal lights shall not be operable through the usual controls.

(8) When a school bus is (a) parked in a designated school bus loading area which is out of the flow of traffic and which is adjacent to a school site or (b) parked on a roadway which possesses more than one lane of traffic flowing in the same direction and which is adjacent to a school site, the bus driver shall engage only the hazard warning flasher lights when receiving or discharging pupils if a school bus loading area warning sign is displayed. Such signs shall not be directly attached to any school bus but shall be free standing and placed at the rear of a parked school bus or line of parked school buses. No school district shall utilize a school bus loading area warning sign unless such sign complies with the requirements of section 60-6,176.

Source: Laws 1973, LB 45, § 60; Laws 1974, LB 863, § 2; Laws 1977, LB 41, § 11; Laws 1987, LB 347, § 1; R.S.1943, (1988), § 39-660; Laws 1993, LB 370, § 271; Laws 1993, LB 575, § 10; Laws 2012, LB1039, § 2.
Effective date July 19, 2012.

(m) MISCELLANEOUS RULES

60-6,179.01 Use of handheld wireless communication device; prohibited acts; enforcement; violation; penalty.

(1) This section does not apply to an operator of a commercial motor vehicle if section 60-6,179.02 applies.

(2) Except as otherwise provided in subsection (3) of this section, no person shall use a handheld wireless communication device to read a written communication, manually type a written communication, or send a written communication while operating a motor vehicle which is in motion.

(3) The prohibition in subsection (2) of this section does not apply to:

(a) A person performing his or her official duties as a law enforcement officer, a firefighter, an ambulance driver, or an emergency medical technician; or

(b) A person operating a motor vehicle in an emergency situation.

(4) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(5) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(6) For purposes of this section:

(a)(i) Handheld wireless communication device means any device that provides for written communication between two or more parties and is capable of receiving, displaying, or transmitting written communication.

(ii) Handheld wireless communication device includes, but is not limited to, a mobile or cellular telephone, a text messaging device, a personal digital assistant, a pager, or a laptop computer.

(iii) Handheld wireless communication device does not include an electronic device that is part of the motor vehicle or permanently attached to the motor vehicle or a handsfree wireless communication device; and

(b) Written communication includes, but is not limited to, a text message, an instant message, electronic mail, and Internet web sites.

Source: Laws 2010, LB945, § 3; Laws 2012, LB751, § 44.
Operative date April 7, 2012.

60-6,179.02 Operator of commercial motor vehicle; texting while driving prohibited; exception; violation; penalty.

(1) Beginning October 27, 2013, except as otherwise provided in subsection (2) of this section, no operator of a commercial motor vehicle shall engage in texting while driving.

(2) Texting while driving is permissible by an operator of a commercial motor vehicle if such texting is necessary to communicate with law enforcement officials or other emergency services.

(3) Any person who violates this section shall be guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be subject to disqualification as provided in section 60-4,168, shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182, and shall be fined:

(a) Two hundred dollars for the first offense;

(b) Three hundred dollars for a second offense; and

(c) Five hundred dollars for a third and subsequent offense.

(4) For purposes of this section:

(a) Driving means operating a commercial motor vehicle, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the operator moves the vehicle to the side of, or off, a highway and halts in a location where the vehicle can safely remain stationary;

(b) Electronic device includes, but is not limited to, a cellular telephone; a personal digital assistant; a pager; a computer; or any other device used to input, write, send, receive, or read text; and

(c)(i) Texting means manually entering alphanumeric text into, or reading text from, an electronic device. Texting includes, but is not limited to, short message service, emailing, instant messaging, a command or request to access

an Internet web page, pressing more than a single button to initiate or terminate a voice communication using a mobile telephone, or engaging in any other form of electronic text retrieval or electronic text entry for present or future communication.

(ii) Texting does not include:

(A) Inputting, selecting, or reading information on a global positioning system or navigation system;

(B) Pressing a single button to initiate or terminate a voice communication using a mobile telephone; or

(C) Using a device capable of performing multiple functions, including, but not limited to, fleet management systems, dispatching devices, smartphones, citizens band radios, and music players, for a purpose other than texting.

Source: Laws 2012, LB751, § 45.
Operative date April 7, 2012.

(o) ALCOHOL AND DRUG VIOLATIONS

60-6,196.01 Driving under influence of alcoholic liquor or drug; additional penalty.

In addition to any other penalty provided for operating a motor vehicle in violation of section 60-6,196, if a person has a prior conviction as defined in section 60-6,197.02 for a violation punishable as a felony under section 60-6,197.03 and is subsequently found to have operated or been in the actual physical control of any motor vehicle when such person has (1) a concentration of two-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or (2) a concentration of two-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class IIIA misdemeanor.

Source: Laws 2011, LB675, § 7.

60-6,197 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; when test administered; refusal; advisement; effect; violation; penalty.

(1) Any person who operates or has in his or her actual physical control a motor vehicle in this state shall be deemed to have given his or her consent to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine.

(2) Any peace officer who has been duly authorized to make arrests for violations of traffic laws of this state or of ordinances of any city or village may require any person arrested for any offense arising out of acts alleged to have been committed while the person was driving or was in actual physical control of a motor vehicle while under the influence of alcoholic liquor or drugs to submit to a chemical test or tests of his or her blood, breath, or urine for the purpose of determining the concentration of alcohol or the presence of drugs in such blood, breath, or urine when the officer has reasonable grounds to believe that such person was driving or was in the actual physical control of a motor vehicle in this state while under the influence of alcoholic liquor or drugs in violation of section 60-6,196.

(3) Any person arrested as described in subsection (2) of this section may, upon the direction of a peace officer, be required to submit to a chemical test or tests of his or her blood, breath, or urine for a determination of the concentration of alcohol or the presence of drugs. If the chemical test discloses the presence of a concentration of alcohol in violation of subsection (1) of section 60-6,196, the person shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and upon conviction be punished as provided in sections 60-6,197.02 to 60-6,197.08. Any person who refuses to submit to such test or tests required pursuant to this section shall be subject to the administrative license revocation procedures provided in sections 60-498.01 to 60-498.04 and shall be guilty of a crime and upon conviction punished as provided in sections 60-6,197.02 to 60-6,197.08.

(4) Any person involved in a motor vehicle accident in this state may be required to submit to a chemical test or tests of his or her blood, breath, or urine by any peace officer if the officer has reasonable grounds to believe that the person was driving or was in actual physical control of a motor vehicle on a public highway in this state while under the influence of alcoholic liquor or drugs at the time of the accident. A person involved in a motor vehicle accident subject to the implied consent law of this state shall not be deemed to have withdrawn consent to submit to a chemical test of his or her blood, breath, or urine by reason of leaving this state. If the person refuses a test under this section and leaves the state for any reason following an accident, he or she shall remain subject to subsection (3) of this section and sections 60-498.01 to 60-498.04 upon return.

(5) Any person who is required to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be advised that refusal to submit to such test or tests is a separate crime for which the person may be charged. Failure to provide such advisement shall not affect the admissibility of the chemical test result in any legal proceedings. However, failure to provide such advisement shall negate the state's ability to bring any criminal charges against a refusing party pursuant to this section.

(6) Refusal to submit to a chemical blood, breath, or urine test or tests pursuant to this section shall be admissible evidence in any action for a violation of section 60-6,196 or a city or village ordinance enacted in conformance with such section.

Source: Laws 1959, c. 168, § 1, p. 613; Laws 1961, c. 187, § 2, p. 577; Laws 1963, c. 229, § 1, p. 716; Laws 1971, LB 948, § 2; Laws 1972, LB 1095, § 2; R.S.Supp.,1972, § 39-727.03; Laws 1982, LB 568, § 6; Laws 1986, LB 153, § 4; Laws 1987, LB 404, § 2; Laws 1987, LB 224, § 1; Laws 1988, LB 377, § 2; Laws 1990, LB 799, § 2; Laws 1992, LB 872, § 1; Laws 1992, LB 291, § 5; R.S.Supp.,1992, § 39-669.08; Laws 1993, LB 370, § 293; Laws 1993, LB 564, § 8; Laws 1996, LB 939, § 2; Laws 1998, LB 309, § 14; Laws 1999, LB 585, § 6; Laws 2000, LB 1004, § 2; Laws 2001, LB 38, § 48; Laws 2001, LB 773, § 16; Laws 2003, LB 209, § 12; Laws 2004, LB 208, § 11; Laws 2011, LB667, § 33.

Cross References

Applicability of statute to private property, see section 60-6,108.
Conviction of felony involving use of motor vehicle, transmittal of abstract, see section 60-497.02.
Ineligibility for pretrial diversion, see section 29-3604.

Operator's license, assessment of points and revocation, see sections 60-497.01, 60-498, and 60-4,182 et seq.
Violation of ordinance, prosecuting attorney, consult victim, see section 29-120.

60-6,197.02 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; terms, defined; prior convictions; use; sentencing provisions; when applicable.

(1) A violation of section 60-6,196 or 60-6,197 shall be punished as provided in sections 60-6,196.01 and 60-6,197.03. For purposes of sentencing under sections 60-6,196.01 and 60-6,197.03:

(a) Prior conviction means a conviction for a violation committed within the fifteen-year period prior to the offense for which the sentence is being imposed as follows:

(i) For a violation of section 60-6,196:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198; or

(ii) For a violation of section 60-6,197:

(A) Any conviction for a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(B) Any conviction for a violation of a city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197; or

(C) Any conviction under a law of another state if, at the time of the conviction under the law of such other state, the offense for which the person was convicted would have been a violation of subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198;

(b) Prior conviction includes any conviction under subdivision (3)(b) or (c) of section 28-306, subdivision (3)(b) or (c) of section 28-394, or section 28-1254, 60-6,196, 60-6,197, or 60-6,198, or any city or village ordinance enacted in conformance with section 60-6,196 or 60-6,197, as such sections or city or village ordinances existed at the time of such conviction regardless of subsequent amendments to any of such sections or city or village ordinances; and

(c) Fifteen-year period means the period computed from the date of the prior offense to the date of the offense which resulted in the conviction for which the sentence is being imposed.

(2) In any case charging a violation of section 60-6,196 or 60-6,197, the prosecutor or investigating agency shall use due diligence to obtain the person's driving record from the Department of Motor Vehicles and the person's driving record from other states where he or she is known to have resided within the last fifteen years. The prosecutor shall certify to the court, prior to sentencing, that such action has been taken. The prosecutor shall present as evidence for

purposes of sentence enhancement a court-certified copy or an authenticated copy of a prior conviction in another state. The court-certified or authenticated copy shall be prima facie evidence of such prior conviction.

(3) For each conviction for a violation of section 60-6,196 or 60-6,197, the court shall, as part of the judgment of conviction, make a finding on the record as to the number of the convicted person's prior convictions. The convicted person shall be given the opportunity to review the record of his or her prior convictions, bring mitigating facts to the attention of the court prior to sentencing, and make objections on the record regarding the validity of such prior convictions.

(4) A person arrested for a violation of section 60-6,196 or 60-6,197 before January 1, 2012, but sentenced pursuant to section 60-6,197.03 for such violation on or after January 1, 2012, shall be sentenced according to the provisions of section 60-6,197.03 in effect on the date of arrest.

Source: Laws 2004, LB 208, § 12; Laws 2005, LB 594, § 2; Laws 2009, LB497, § 6; Laws 2011, LB667, § 34; Laws 2011, LB675, § 8.

60-6,197.03 Driving under influence of alcoholic liquor or drugs; implied consent to submit to chemical test; penalties.

Any person convicted of a violation of section 60-6,196 or 60-6,197 shall be punished as follows:

(1) Except as provided in subdivision (2) of this section, if such person has not had a prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of six months from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to section 60-6,211.05 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of sixty days from the date ordered by the court. The court shall order that during the period of revocation the person apply for an ignition interlock permit pursuant to section 60-6,211.05. Such order of probation or sentence suspension shall also include, as one of its conditions, the payment of a five-hundred-dollar fine;

(2) If such person has not had a prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation

shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person apply for an ignition interlock permit pursuant to subdivision (1)(b) of section 60-6,197.01 for the revocation period and have an ignition interlock device installed on any motor vehicle he or she operates during the revocation period. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for two days or the imposition of not less than one hundred twenty hours of community service;

(3) Except as provided in subdivision (5) of this section, if such person has had one prior conviction, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court shall order that the person apply for an ignition interlock permit for the remainder of the revocation period and have an ignition interlock device installed on any motor vehicle he or she owns or operates during the remainder of the revocation period and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such revocation shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of one year from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court shall order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a five-hundred-dollar fine and either confinement in the city or county jail for ten days or the imposition of not less than two hundred forty hours of community service;

(4) Except as provided in subdivision (6) of this section, if such person has had two prior convictions, such person shall be guilty of a Class W misdemeanor, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence

suspension, order that the operator's license of such person be revoked for a period of at least two years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(5) If such person has had one prior conviction and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class I misdemeanor, and the court shall, as part of the judgment of conviction, order payment of a one-thousand-dollar fine and revoke the operator's license of such person for a period of at least one year but not more than fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least ninety days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of at least one year but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine and confinement in the city or county jail for thirty days;

(6) If such person has had two prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence

suspension, order that the operator's license of such person be revoked for a period of at least five years but not more than fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a one-thousand-dollar fine, confinement in the city or county jail for sixty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than sixty days;

(7) Except as provided in subdivision (8) of this section, if such person has had three prior convictions, such person shall be guilty of a Class IIIA felony, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked. The court shall also sentence such person to serve at least one hundred eighty days' imprisonment in the city or county jail or an adult correctional facility.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for ninety days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than ninety days;

(8) If such person has had three prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class III felony, and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after

which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred twenty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred twenty days;

(9) Except as provided in subdivision (10) of this section, if such person has had four or more prior convictions, such person shall be guilty of a Class III felony with a minimum sentence of two years' imprisonment, and the court shall, as part of the judgment of conviction, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such orders shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days; and

(10) If such person has had four or more prior convictions and, as part of the current violation, had a concentration of fifteen-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or fifteen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath or refused to submit to a test as required under section 60-6,197, such person shall be guilty of a Class II felony with a minimum sentence of two years' imprisonment and the court shall, as part of the judgment of conviction, revoke the operator's license of such person for a period of fifteen years from the date ordered by the court and shall issue an order pursuant to section 60-6,197.01. Such revocation and order shall be administered upon sentencing, upon final judgment of any appeal or review, or upon the date that any probation is revoked.

If the court places such person on probation or suspends the sentence for any reason, the court shall, as one of the conditions of probation or sentence suspension, order that the operator's license of such person be revoked for a period of fifteen years from the date ordered by the court. The revocation order shall require that the person not drive for a period of forty-five days, after which the court may order that during the period of revocation the person apply for an ignition interlock permit and installation of an ignition interlock device issued pursuant to section 60-6,211.05 and shall issue an order pursuant

to subdivision (1)(b) of section 60-6,197.01. Such order of probation or sentence suspension shall also include, as conditions, the payment of a two-thousand-dollar fine, confinement in the city or county jail for one hundred eighty days, and, upon release from such confinement, the use of a continuous alcohol monitoring device and abstention from alcohol use at all times for no less than one hundred eighty days.

Source: Laws 2004, LB 208, § 13; Laws 2005, LB 594, § 3; Laws 2006, LB 925, § 11; Laws 2007, LB578, § 4; Laws 2008, LB736, § 8; Laws 2009, LB497, § 7; Laws 2010, LB924, § 4; Laws 2011, LB667, § 35; Laws 2011, LB675, § 9.

60-6,197.05 Driving under influence of alcoholic liquor or drugs; implied consent to chemical test; revocation; effect.

Any period of revocation imposed by the court for a violation of section 60-6,196 or 60-6,197 shall be reduced by any period of revocation imposed under sections 60-498.01 to 60-498.04, including any period during which a person has a valid ignition interlock permit, arising from the same incident.

Source: Laws 2004, LB 208, § 15; Laws 2009, LB497, § 8; Laws 2011, LB667, § 36.

60-6,197.09 Driving under influence of alcoholic liquor or drugs; not eligible for probation or suspended sentence.

Notwithstanding the provisions of section 60-6,197.03, a person who commits a violation punishable under subdivision (3)(b) or (c) of section 28-306 or subdivision (3)(b) or (c) of section 28-394 or a violation of section 60-6,196, 60-6,197, or 60-6,198 while participating in criminal proceedings for a violation of section 60-6,196, 60-6,197, or 60-6,198, or a city or village ordinance enacted in accordance with section 60-6,196 or 60-6,197, or a law of another state if, at the time of the violation under the law of such other state, the offense for which the person was charged would have been a violation of section 60-6,197, shall not be eligible to receive a sentence of probation or a suspended sentence for either violation committed in this state.

Source: Laws 2006, LB 925, § 14; Laws 2011, LB667, § 37.

60-6,197.10 Driving under influence of alcohol or drugs; public education campaign; Department of Motor Vehicles; duties.

The Department of Motor Vehicles shall conduct an ongoing public education campaign to inform the residents of this state about the dangers and consequences of driving under the influence of alcohol or drugs in this state. Information shall include, but not be limited to, the criminal and administrative penalties for driving under the influence, any related laws, rules, instructions, and any explanatory matter. The department shall use its best efforts to utilize all available opportunities for making public service announcements on television and radio broadcasts for the public education campaign and to obtain and utilize federal funds for highway safety and other grants in conducting the public education campaign. The information may be included in publications containing information related to other motor vehicle laws and shall be given wide distribution by the department.

Source: Laws 2011, LB667, § 38.

60-6,198 Driving under influence of alcoholic liquor or drugs; serious bodily injury; violation; penalty.

(1) Any person who, while operating a motor vehicle in violation of section 60-6,196 or 60-6,197, proximately causes serious bodily injury to another person or an unborn child of a pregnant woman shall be guilty of a Class IIIA felony and the court shall, as part of the judgment of conviction, order the person not to drive any motor vehicle for any purpose for a period of at least sixty days and not more than fifteen years from the date ordered by the court and shall order that the operator's license of such person be revoked for the same period.

(2) For purposes of this section, serious bodily injury means bodily injury which involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a temporary or protracted loss or impairment of the function of any part or organ of the body.

(3) For purposes of this section, unborn child has the same meaning as in section 28-396.

(4) The crime punishable under this section shall be treated as a separate and distinct offense from any other offense arising out of acts alleged to have been committed while the person was in violation of this section.

Source: Laws 1986, LB 153, § 6; Laws 1992, LB 291, § 13; R.S.Supp.,1992, § 39-669.39; Laws 1993, LB 370, § 307; Laws 1997, LB 364, § 17; Laws 2001, LB 38, § 50; Laws 2006, LB 57, § 10; Laws 2011, LB667, § 39; Laws 2011, LB675, § 10.

Cross References

Conviction of felony involving use of vehicle, transmittal of abstract, see section 60-497.02.

60-6,211.05 Ignition interlock device; continuous alcohol monitoring device and abstention from alcohol use; orders authorized; prohibited acts; violation; penalty; costs; Department of Motor Vehicles Ignition Interlock Fund; created; use; investment; prohibited acts relating to tampering with device; hearing.

(1) If an order is granted under section 60-6,196 or 60-6,197 and sections 60-6,197.02 and 60-6,197.03, the court may order that the defendant install an ignition interlock device of a type approved by the Director of Motor Vehicles on each motor vehicle operated by the defendant during the period of revocation. Upon sufficient evidence of installation, the defendant may apply to the director for an ignition interlock permit pursuant to section 60-4,118.06. The device shall, without tampering or the intervention of another person, prevent the defendant from operating the motor vehicle when the defendant has an alcohol concentration greater than three-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood or three-hundredths of one gram or more by weight of alcohol per two hundred ten liters of his or her breath. The Department of Motor Vehicles shall issue an ignition interlock permit to the defendant under section 60-4,118.06 only upon sufficient proof that a defendant has installed an ignition interlock device on any motor vehicle that the defendant will operate during his or her release.

(2) If the court orders installation of an ignition interlock device and issuance of an ignition interlock permit pursuant to subsection (1) of this section, the court may also order the use of a continuous alcohol monitoring device and abstention from alcohol use at all times. The device shall, without tampering or

the intervention of another person, test and record the alcohol consumption level of the defendant on a periodic basis and transmit such information to probation authorities.

(3) Any order issued by the court pursuant to this section shall not take effect until the defendant is eligible to operate a motor vehicle pursuant to subsection (8) of section 60-498.01. A person shall be eligible to be issued an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device if he or she is not subject to any other suspension, cancellation, required no-driving period, or period of revocation and has successfully completed the ignition interlock permit application process. The Department of Motor Vehicles shall review its records and the driving record abstract of any person who applies for an ignition interlock permit allowing operation of a motor vehicle equipped with an ignition interlock device to determine (a) the applicant's eligibility for an ignition interlock permit, (b) the applicant's previous convictions under section 60-6,196, 60-6,197, or 60-6,197.06 or any previous administrative license revocation, if any, (c) if the applicant is subject to any required no-drive periods before the ignition interlock permit may be issued, and (d) the permitted driving uses to be allowed to that person on his or her ignition interlock permit.

(4)(a) If the court orders an ignition interlock device or the Board of Pardons orders an ignition interlock device under section 83-1,127.02, the court or the Board of Pardons shall order the defendant to apply for an ignition interlock permit as provided in section 60-4,118.06 which indicates that the defendant is only allowed to operate a motor vehicle equipped with an ignition interlock device.

(b) Such court order shall remain in effect for a period of time as determined by the court not to exceed the maximum term of revocation which the court could have imposed according to the nature of the violation and shall allow operation by the defendant of an ignition-interlock-equipped motor vehicle only (i) if the defendant has no previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 and no previous administrative license revocation, to and from his or her residence for purposes of his or her employment, his or her school, a substance abuse treatment program, his or her probation officer, his or her continuing health care or the continuing health care of another person who is dependent upon the person, his or her court-ordered community service responsibilities, or an ignition interlock service facility or (ii) if the defendant has a previous conviction under section 60-6,196, 60-6,197, or 60-6,197.06 or a previous administrative license revocation, to and from his or her residence, his or her place of employment, his or her school, a substance abuse treatment program, or an ignition interlock service facility.

(c) Such Board of Pardons order shall remain in effect for a period of time not to exceed any period of revocation the applicant is subject to at the time the application for a reprieve is made.

(5) Any person restricted to operating a motor vehicle equipped with an ignition interlock device, pursuant to a Board of Pardons order, who operates upon the highways of this state a motor vehicle without such device or if the device has been disabled, bypassed, or altered in any way, shall be punished as provided in subsection (3) of section 83-1,127.02.

(6) If a person ordered to use a continuous alcohol monitoring device and abstain from alcohol use pursuant to a court order as provided in subsection (2)

of this section violates the provisions of such court order by removing, tampering with, or otherwise bypassing the continuous alcohol monitoring device or by consuming alcohol while required to use such device, he or she shall have his or her ignition interlock permit revoked and be unable to apply for reinstatement for the duration of the revocation period imposed by the court.

(7) The director shall adopt and promulgate rules and regulations regarding the approval of ignition interlock devices, the means of installing ignition interlock devices, and the means of administering the ignition interlock permit program.

(8)(a) The costs incurred in order to comply with the ignition interlock requirements of this section shall be paid directly to the ignition interlock provider by the person complying with an order for an ignition interlock permit and installation of an ignition interlock device.

(b) If the Department of Motor Vehicles has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section, such costs shall be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available, according to rules and regulations adopted and promulgated by the department. Such costs shall also be paid out of the Department of Motor Vehicles Ignition Interlock Fund if such funds are available and if the court or the Board of Pardons, whichever is applicable, has determined the person to be indigent and incapable of paying for the cost of installation, removal, or maintenance of the ignition interlock device in accordance with this section. The Department of Motor Vehicles Ignition Interlock 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.

(9)(a)(i) An ignition interlock service facility shall notify the appropriate district probation office or the appropriate court, as applicable, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(ii) An ignition interlock service facility shall notify the Department of Motor Vehicles, if the ignition interlock permit is issued pursuant to sections 60-498.01 to 60-498.04, of any evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, when the facility becomes aware of such evidence. Failure of the facility to provide notification as provided in this subdivision is a Class V misdemeanor.

(b) If a district probation office receives evidence of tampering with or circumvention of an ignition interlock device, or any attempts to do so, from an ignition interlock service facility, the district probation office shall notify the appropriate court of such violation. The court shall immediately schedule an evidentiary hearing to be held within fourteen days after receiving such evidence, either from the district probation office or an ignition interlock service facility, and the court shall cause notice of the hearing to be given to the person operating a motor vehicle pursuant to an order under subsection (1) of this section. If the person who is the subject of such evidence does not appear at the hearing and show cause why the order made pursuant to subsection (1) of this section should remain in effect, the court shall rescind the original order.

Nothing in this subsection shall apply to an order made by the Board of Pardons pursuant to section 83-1,127.02.

(10) Notwithstanding any other provision of law, the issuance of an ignition interlock permit by the Department of Motor Vehicles under section 60-498.01 or an order for the installation of an ignition interlock device and ignition interlock permit made pursuant to subsection (1) of this section as part of a conviction, as well as the administration of such court order by the Office of Probation Administration for the installation, maintenance, and removal of such device, as applicable, shall not be construed to create an order of probation when an order of probation has not been issued.

Source: Laws 1993, LB 564, § 6; Laws 1998, LB 309, § 24; Laws 2001, LB 38, § 55; Laws 2003, LB 209, § 15; Laws 2004, LB 208, § 22; Laws 2006, LB 925, § 16; Laws 2008, LB736, § 10; Laws 2009, LB497, § 10; Laws 2010, LB924, § 5; Laws 2011, LB667, § 40; Laws 2012, LB751, § 46.
Operative date April 7, 2012.

Cross References

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

60-6,211.08 Open alcoholic beverage container; consumption of alcoholic beverages; prohibited acts; applicability of section to certain passengers of limousine or bus.

(1) For purposes of this section:

(a) Alcoholic beverage means (i) beer, ale porter, stout, and other similar fermented beverages, including sake or similar products, of any name or description containing one-half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, (ii) wine of not less than one-half of one percent of alcohol by volume, or (iii) distilled spirits which is that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced. Alcoholic beverage does not include trace amounts not readily consumable as a beverage;

(b) Highway means a road or street including the entire area within the right-of-way;

(c) Limousine means a luxury vehicle used to provide prearranged passenger transportation on a dedicated basis at a premium fare that has a seating capacity of at least five and no more than fourteen persons behind the driver with a physical partition separating the driver seat from the passenger compartment. Limousine does not include taxicabs, hotel or airport buses or shuttles, or buses;

(d) Open alcoholic beverage container, except as provided in subsection (3) of section 53-123.04 and subdivision (1)(c) of section 53-123.11, means any bottle, can, or other receptacle:

(i) That contains any amount of alcoholic beverage; and

(ii)(A) That is open or has a broken seal or (B) the contents of which are partially removed; and

(e) Passenger area means the area designed to seat the driver and passengers while the motor vehicle is in operation and any area that is readily accessible to

the driver or a passenger while in their seating positions, including any compartments in such area. Passenger area does not include the area behind the last upright seat of such motor vehicle if the area is not normally occupied by the driver or a passenger and the motor vehicle is not equipped with a trunk.

(2) Except as otherwise provided in this section, it is unlawful for any person in the passenger area of a motor vehicle to possess an open alcoholic beverage container while the motor vehicle is located in a public parking area or on any highway in this state.

(3) Except as provided in section 53-186 or subsection (4) of this section, it is unlawful for any person to consume an alcoholic beverage (a) in a public parking area or on any highway in this state or (b) inside a motor vehicle while in a public parking area or on any highway in this state.

(4) This section does not apply to persons who are passengers of, but not drivers of, a limousine or bus being used in a charter or special party service as defined by rules and regulations adopted and promulgated by the Public Service Commission and subject to Chapter 75, article 3. Such passengers may possess open alcoholic beverage containers and may consume alcoholic beverages while such limousine or bus is in a public parking area or on any highway in this state if (a) the driver of the limousine or bus is prohibited from consuming alcoholic liquor and (b) alcoholic liquor is not present in any area that is readily accessible to the driver while in the driver's seat, including any compartments in such area.

Source: Laws 1999, LB 585, § 4; Laws 2006, LB 562, § 6; Laws 2011, LB281, § 3.

60-6,211.11 Prohibited acts relating to ignition interlock device; violation; penalty.

(1) Any person who tampers with or circumvents an ignition interlock device installed under a court order or Department of Motor Vehicles order while the order is in effect or who operates a motor vehicle which is not equipped with an ignition interlock device in violation of a court order or Department of Motor Vehicles order shall be guilty of a Class IV felony.

(2) Any person who otherwise operates a motor vehicle equipped with an ignition interlock device in violation of the requirements of the court order or Department of Motor Vehicles order under which the device was installed shall be guilty of a Class III misdemeanor.

Source: Laws 2011, LB667, § 41.

(q) LIGHTING AND WARNING EQUIPMENT

60-6,232 Rotating or flashing amber light; when permitted.

A rotating or flashing amber light or lights shall be displayed on the roof of any motor vehicle being operated by any rural mail carrier outside the corporate limits of any municipality in this state on or near any highway in the process of delivering mail.

A rotating or flashing amber light or lights may be displayed on (1) any vehicle of the Military Department while on any state emergency mission, (2) any motor vehicle being operated by any public utility, vehicle service, or towing service or any publicly or privately owned construction or maintenance

vehicle while performing its duties on or near any highway, (3) any motor vehicle being operated by any member of the Civil Air Patrol, (4) any pilot vehicle escorting an overdimensional load, (5) any vehicle while actually engaged in the moving of houses, buildings, or other objects of extraordinary bulk, including unbaled livestock forage as authorized by subdivision (2)(f) of section 60-6,288, (6) any motor vehicle owned by or operated on behalf of a railroad carrier that is stopped to load or unload passengers, or (7) any motor vehicle operated by or for an emergency management worker as defined in section 81-829.39 or a storm spotter as defined in section 81-829.67 who is activated by a local emergency management organization.

Source: Laws 1969, c. 327, § 4, p. 1171; Laws 1971, LB 365, § 1; R.S.Supp.,1972, § 39-788.03; Laws 1977, LB 427, § 1; R.S.1943, (1988), § 39-6,150; Laws 1993, LB 370, § 328; Laws 1995, LB 59, § 7; Laws 2000, LB 1361, § 4; Laws 2005, LB 471, § 1; Laws 2011, LB573, § 1.

(t) WINDSHIELDS, WINDOWS, AND MIRRORS

60-6,256 Objects placed or hung to obstruct or interfere with view of operator; unlawful; enforcement; penalty.

(1) It shall be unlawful for any person to operate a motor vehicle with any object placed or hung in or upon the motor vehicle, except required or permitted equipment of the motor vehicle, in such a manner as to significantly and materially obstruct or interfere with the view of the operator through the windshield or to prevent the operator from having a clear and full view of the road and condition of traffic behind the motor vehicle. Any sticker or identification authorized or required by the federal government or any agency thereof or the State of Nebraska or any political subdivision thereof may be placed upon the windshield of the motor vehicle without violating this section.

(2) Enforcement of this section by state or local law enforcement agencies shall be accomplished only as a secondary action when a driver of a motor vehicle has been cited or charged with a traffic violation or some other offense.

(3) Any person who violates this section is guilty of a traffic infraction. Any person who is found guilty of a traffic infraction under this section shall be assessed points on his or her motor vehicle operator's license pursuant to section 60-4,182 and shall be fined:

(a) Fifty dollars for the first offense;

(b) One hundred dollars for a second offense; and

(c) One hundred fifty dollars for a third and subsequent offense.

Source: Laws 1959, c. 173, § 1, p. 624; R.R.S.1943, § 39-7,123.04; Laws 1977, LB 41, § 30; R.S.1943, (1988), § 39-6,170; Laws 1993, LB 370, § 352; Laws 2011, LB500, § 2.

Cross References

Interference with view of driver by passengers or load prohibited, see section 60-6,179.

(u) OCCUPANT PROTECTION SYSTEMS

60-6,267 Use of restraint system or occupant protection system; when; information and education program.

(1) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children up to six years of age being transported by such vehicle use a child passenger restraint system of a type which meets Federal Motor Vehicle Safety Standard 213 as developed by the National Highway Traffic Safety Administration, as such standard existed on January 1, 2009, and which is correctly installed in such vehicle.

(2) Any person in Nebraska who drives any motor vehicle which has or is required to have an occupant protection system shall ensure that all children six years of age and less than eighteen years of age being transported by such vehicle use an occupant protection system.

(3) Subsections (1) and (2) of this section apply to every motor vehicle which is equipped with an occupant protection system or is required to be equipped with restraint systems pursuant to Federal Motor Vehicle Safety Standard 208, as such standard existed on January 1, 2009, except taxicabs, mopeds, motorcycles, and any motor vehicle designated by the manufacturer as a 1963 year model or earlier which is not equipped with an occupant protection system.

(4) Whenever any licensed physician determines, through accepted medical procedures, that use of a child passenger restraint system by a particular child would be harmful by reason of the child's weight, physical condition, or other medical reason, the provisions of subsection (1) or (2) of this section shall be waived. The driver of any vehicle transporting such a child shall carry on his or her person or in the vehicle a signed written statement of the physician identifying the child and stating the grounds for such waiver.

(5) The drivers of authorized emergency vehicles shall not be subject to the requirements of subsection (1) or (2) of this section when operating such authorized emergency vehicles pursuant to their employment.

(6) A driver of a motor vehicle shall not be subject to the requirements of subsection (1) or (2) of this section if the motor vehicle is being operated in a parade or exhibition and the parade or exhibition is being conducted in accordance with applicable state law and local ordinances and resolutions.

(7) The Department of Roads shall develop and implement an ongoing statewide public information and education program regarding the use of child passenger restraint systems and occupant protection systems and the availability of distribution and discount programs for child passenger restraint systems.

(8) All persons being transported by a motor vehicle operated by a holder of a provisional operator's permit or a school permit shall use such motor vehicle's occupant protection system.

Source: Laws 1983, LB 306, § 2; Laws 1985, LB 259, § 1; Laws 1990, LB 958, § 1; Laws 1992, LB 958, § 3; R.S.Supp.,1992, § 39-6,103.01; Laws 1993, LB 370, § 363; Laws 2000, LB 410, § 1; Laws 2002, LB 1073, § 1; Laws 2004, LB 227, § 2; Laws 2006, LB 853, § 20; Laws 2007, LB239, § 7; Laws 2008, LB756, § 22; Laws 2009, LB219, § 1; Laws 2009, LB331, § 12; Laws 2011, LB67, § 1.

60-6,268 Use of restraint system or occupant protection system; violations; penalty; enforcement; when.

(1) A person violating any provision of subsection (1) or (2) of section 60-6,267 shall be guilty of an infraction as defined in section 29-431 and shall

be fined twenty-five dollars for each violation. The failure to provide a child restraint system for more than one child in the same vehicle at the same time, as required in such subsection, shall not be treated as a separate offense.

(2) Enforcement of subsection (2) or (8) of section 60-6,267 shall be accomplished only as a secondary action when an operator of a motor vehicle has been cited or charged with a violation or some other offense unless the violation involves a person under the age of eighteen years riding in or on any portion of the vehicle not designed or intended for the use of passengers when the vehicle is in motion.

Source: Laws 1983, LB 306, § 3; R.S.1943, (1988), § 39-6,103.02; Laws 1993, LB 370, § 364; Laws 2000, LB 410, § 2; Laws 2002, LB 1073, § 2; Laws 2004, LB 227, § 3; Laws 2011, LB67, § 2.

(y) SIZE, WEIGHT, AND LOAD

60-6,288.01 Person moving certain buildings or objects; notice required; contents.

Any person moving a building or an object that, in combination with the transporting vehicle, is over fifteen feet, six inches high or wider than the roadway on a county or township road shall notify the local authority and the electric utility responsible for the infrastructure, including poles, wires, substations, and underground residential distribution cable boxes adjacent to or crossing the roadway along the route over which such building or object is being transported. Notification shall be made at least ten days prior to the move. Notification shall specifically describe the transporting vehicle, the width, length, height, and weight of the building or object to be moved, the route to be used, and the date and hours during which the building or object will be transported. Complying with the notification requirement of this section does not exempt the person from complying with any other federal, state, or local authority permit or notification requirements.

Source: Laws 2011, LB164, § 2.

60-6,290 Vehicles; length; limit; exceptions.

(1)(a) No vehicle shall exceed a length of forty feet, extreme overall dimensions, inclusive of front and rear bumpers including load, except that:

(i) A bus or a motor home, as defined in section 71-4603, may exceed the forty-foot limitation but shall not exceed a length of forty-five feet;

(ii) A truck-tractor may exceed the forty-foot limitation;

(iii) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation;

(iv) A semitrailer operating in a truck-tractor single semitrailer combination, which semitrailer was not actually and lawfully operating in the State of Nebraska on December 1, 1982, may exceed the forty-foot limitation but shall not exceed a length of fifty-three feet including load; and

(v) A semitrailer operating in a truck-tractor single semitrailer combination, while transporting baled livestock forage, may exceed the forty-foot limitation but shall not exceed a length of fifty-nine feet six inches including load.

(b) No combination of vehicles shall exceed a length of sixty-five feet, extreme overall dimensions, inclusive of front and rear bumpers and including load, except:

(i) One truck and one trailer, loaded or unloaded, used in transporting implements of husbandry to be engaged in harvesting, while being transported into or through the state during daylight hours if the total length does not exceed seventy-five feet including load;

(ii) A truck-tractor single semitrailer combination;

(iii) A truck-tractor semitrailer trailer combination, but the semitrailer trailer portion of such combination shall not exceed sixty-five feet inclusive of connective devices; and

(iv) A driveaway saddlemount vehicle transporter combination and driveaway saddlemount with fullmount vehicle transporter combination, but the total overall length shall not exceed ninety-seven feet.

(c) A truck shall be construed to be one vehicle for the purpose of determining length.

(d) A trailer shall be construed to be one vehicle for the purpose of determining length.

(2) Subsection (1) of this section shall not apply to:

(a) Extra-long vehicles which have been issued a permit pursuant to section 60-6,292;

(b) Vehicles which have been issued a permit pursuant to section 60-6,299;

(c) The temporary moving of farm machinery during daylight hours in the normal course of farm operations;

(d) The movement of unbaled livestock forage vehicles, loaded or unloaded;

(e) The movement of public utility or other construction and maintenance material and equipment at any time;

(f) Farm equipment dealers hauling, driving, delivering, or picking up farm equipment or implements of husbandry within the county in which the dealer maintains his or her place of business, or in any adjoining county or counties, and return;

(g) The overhang of any motor vehicle being hauled upon any lawful combination of vehicles, but such overhang shall not exceed the distance from the rear axle of the hauled motor vehicle to the closest bumper thereof;

(h) The overhang of a combine to be engaged in harvesting, while being transported into or through the state driven during daylight hours by a truck-tractor semitrailer combination, but the length of the semitrailer, including overhang, shall not exceed sixty-three feet and the maximum semitrailer length shall not exceed fifty-three feet;

(i) Any self-propelled specialized mobile equipment with a fixed load when the requirements of subdivision (2)(i) of section 60-6,288 are met; or

(j) One truck-tractor two trailer combination or one truck-tractor semitrailer trailer combination used in transporting equipment utilized by custom harvesters under contract to agricultural producers to harvest wheat, soybeans, or milo during the months of April through November but the length of the property-carrying units, excluding load, shall not exceed eighty-one feet six inches.

(3) The length limitations of this section shall be exclusive of safety and energy conservation devices such as rearview mirrors, turnsignal lights, marker lights, steps and handholds for entry and egress, flexible fender extensions, mudflaps and splash and spray suppressant devices, load-induced tire bulge, refrigeration units or air compressors, and other devices necessary for safe and efficient operation of commercial motor vehicles, except that no device excluded from the limitations of this section shall have by its design or use the capability to carry cargo.

Source: Laws 1933, c. 102, § 1, p. 414; Laws 1933, c. 105, § 3, p. 425; Laws 1935, c. 86, § 1, p. 277; Laws 1939, c. 50, § 1, p. 217; C.S.Supp.,1941, § 39-1034; R.S.1943, § 39-721; Laws 1947, c. 146, § 1, p. 402; Laws 1951, c. 117, § 2, p. 527; Laws 1953, c. 133, § 1, p. 413; Laws 1957, c. 156, § 3, p. 564; Laws 1959, c. 164, § 1, p. 599; Laws 1959, c. 165, § 1, p. 603; Laws 1961, c. 309, § 1, p. 980; Laws 1963, c. 220, § 2, p. 694; Laws 1963, c. 222, § 1, p. 699; Laws 1963, c. 223, § 1, p. 701; Laws 1965, c. 213, § 1, p. 625; Laws 1971, LB 530, § 1; C.S.Supp.,1972, § 39-721; Laws 1974, LB 920, § 2; Laws 1979, LB 112, § 1; Laws 1980, LB 284, § 3; Laws 1980, LB 785, § 2; Laws 1982, LB 383, § 1; Laws 1983, LB 411, § 1; Laws 1984, LB 983, § 3; Laws 1985, LB 553, § 5; Laws 1987, LB 224, § 13; R.S.1943, (1988), § 39-6,179; Laws 1993, LB 370, § 386; Laws 1993, LB 575, § 36; Laws 1996, LB 1104, § 3; Laws 1997, LB 720, § 18; Laws 2000, LB 1361, § 7; Laws 2001, LB 376, § 4; Laws 2006, LB 853, § 21; Laws 2008, LB756, § 25; Laws 2012, LB740, § 1.
Effective date July 19, 2012.

60-6,291 Violations; penalty.

Any person who violates any provision of sections 60-6,288 to 60-6,290 or who drives, moves, causes, or knowingly permits to be moved on any highway any vehicle or vehicles which exceed the limitations as to width, length, or height as provided in such sections for which a penalty is not elsewhere provided shall be guilty of a Class III misdemeanor.

Source: Laws 1933, c. 105, § 8, p. 431; Laws 1941, c. 76, § 1, p. 312; C.S.Supp.,1941, § 39-1037; R.S.1943, § 39-725; Laws 1949, c. 115, § 1, p. 309; Laws 1953, c. 134, § 6, p. 421; Laws 1955, c. 151, § 2, p. 449; R.R.S.1943, § 39-725; Laws 1974, LB 593, § 4; Laws 1977, LB 41, § 35; R.S.1943, (1988), § 39-6,188; Laws 1993, LB 370, § 387; Laws 1993, LB 121, § 207; Laws 1994, LB 884, § 81; Laws 2011, LB164, § 3.

60-6,297 Disabled vehicles; length, load, width, height limitations; exception; special single trip permit; liability.

(1) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed to a place of secure safekeeping by any wrecker or tow truck performing a wrecker or towing service.

(2) Subdivision (1)(b) of section 60-6,290 and subsections (2) and (3) of section 60-6,294 shall not apply to a single vehicle that is disabled or wrecked

when the single vehicle is towed by any wrecker or tow truck to a place for repair or to a point of storage.

(3)(a) Section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294 shall not apply to a vehicle or combination of vehicles permitted by the Department of Roads for overwidth, overheight, overlength, or overweight operation that is disabled or wrecked on a highway or right-of-way when the vehicle or combination of vehicles is towed if the vehicle or combination of vehicles is towed by any wrecker or tow truck performing a wrecker or towing service to the first or nearest place of secure safekeeping off the traveled portion of the highway that can accommodate the parking of such disabled vehicle or combination of vehicles.

(b) After the vehicle or combination of vehicles has been towed to a place of secure safekeeping, such vehicle or combination of vehicles shall then be operated in compliance with section 60-6,288, subsection (1) of section 60-6,289, subdivision (1)(b) of section 60-6,290, and subsections (2) and (3) of section 60-6,294, or the vehicle or combination of vehicles shall acquire a special single trip permit from the department for the movement of the overwidth, overheight, overlength, or overweight vehicle or combination of vehicles beyond the first or nearest place of secure safekeeping to its intended destination.

(4) The owners, lessees, and operators of any wrecker or tow truck exceeding the width, height, length, or weight restrictions while towing a disabled or wrecked vehicle or combination of vehicles shall be jointly and severally liable for any injury or damages that result from the operation of the wrecker or tow truck while exceeding such restrictions.

(5) If a disabled or wrecked vehicle or combination of vehicles is towed, the wrecker or tow truck shall be connected with the air brakes and brake lights of the towed vehicle or combination of vehicles.

(6) For purposes of this section:

(a) Place of secure safekeeping means a location off the traveled portion of the highway that can accommodate the parking of the disabled or wrecked vehicle or combination of vehicles in order for the vehicle or combination of vehicles to be repaired or moved to a point of storage; and

(b) Wrecker or tow truck means an emergency commercial vehicle equipped, designed, and used to assist or render aid and transport or tow a disabled vehicle or combination of vehicles from a highway or right-of-way to a place of secure safekeeping.

Source: Laws 1982, LB 383, § 3; R.S.1943, (1988), § 39-6,180.02; Laws 1993, LB 370, § 393; Laws 2003, LB 137, § 1; Laws 2005, LB 82, § 4; Laws 2011, LB35, § 1.

60-6,298 Vehicles; size; weight; load; overweight; special, continuing, or continuous permit; issuance discretionary; conditions; penalty; continuing permit; fees.

(1)(a) The Department of Roads or the Nebraska State Patrol, with respect to highways under its jurisdiction including the National System of Interstate and Defense Highways, and local authorities, with respect to highways under their jurisdiction, may in their discretion upon application and good cause being

shown therefor issue a special, continuing, or continuous permit in writing authorizing the applicant or his or her designee:

(i) To operate or move a vehicle, a combination of vehicles, or objects of a size or weight of vehicle or load exceeding the maximum specified by law when such permit is necessary:

(A) To further the national defense or the general welfare;

(B) To permit movement of cost-saving equipment to be used in highway or other public construction or in agricultural land treatment; or

(C) Because of an emergency, an unusual circumstance, or a very special situation;

(ii) To operate vehicles, for a distance up to one hundred twenty miles, loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, except that any combination with two or more cargo-carrying units, not including the truck-tractor, also known as a longer combination vehicle, may only operate for a distance up to seventy miles loaded up to fifteen percent greater than the maximum weight specified by law, or up to ten percent greater than the maximum length specified by law, or both, when carrying grain or other seasonally harvested products from the field where such grain or products are harvested to storage, market, or stockpile in the field or from stockpile to market or factory when failure to move such grain or products in abundant quantities would cause an economic loss to the person or persons whose grain or products are being transported or when failure to move such grain or products in as large quantities as possible would not be in the best interests of the national defense or general welfare. The distance limitation may be waived for vehicles when carrying dry beans from the field where harvested to storage or market when dry beans are not normally stored, purchased, or used within the permittee's local area and must be transported more than one hundred twenty miles to an available marketing or storage destination. No permit shall authorize a weight greater than twenty thousand pounds on any single axle;

(iii) To transport an implement of husbandry which does not exceed twelve and one-half feet in width during daylight hours, except that the permit shall not allow transport on holidays;

(iv) To operate one or more recreational vehicles, as defined in section 71-4603, exceeding the maximum width specified by law if movement of the recreational vehicles is prior to retail sale and the recreational vehicles comply with subdivision (2)(k) of section 60-6,288; or

(v) To operate an emergency vehicle for purposes of sale, demonstration, exhibit, or delivery, if the applicant or his or her designee is a manufacturer or sales agent of the emergency vehicle. No permit shall be issued for an emergency vehicle which weighs over sixty thousand pounds on the tandem axle.

(b) No permit shall be issued under subdivision (a)(i) of this subsection for a vehicle carrying a load unless such vehicle is loaded with an object which exceeds the size or weight limitations, which cannot be dismantled or reduced in size or weight without great difficulty, and which of necessity must be moved over the highways to reach its intended destination. No permit shall be required for the temporary movement on highways other than dustless-surfaced state highways and for necessary access to points on such highways during daylight hours of cost-saving equipment to be used in highway or other public construc-

tion or in agricultural land treatment when such temporary movement is necessary and for a reasonable distance.

(2) The application for any such permit shall specifically describe the vehicle, the load to be operated or moved, whenever possible the particular highways for which permit to operate is requested, and whether such permit is requested for a single trip or for continuous or continuing operation. The permit shall include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities.

(3) The department or local authority is authorized to issue or withhold such permit at its discretion or, if such permit is issued, to limit the number of days during which the permit is valid, to limit the number of trips, to establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated, or to issue a continuous or continuing permit for use on all highways, including the National System of Interstate and Defense Highways. The permits are subject to reasonable conditions as to periodic renewal of such permit and as to operation or movement of such vehicles. The department or local authority may otherwise limit or prescribe conditions of operation of such vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces, or structures or undue danger to the public safety. The department or local authority may require such undertaking or other security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(4) Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. Each such permit shall state the maximum weight permissible on a single axle or combination of axles and the total gross weight allowed. No person shall violate any of the terms or conditions of such special permit. In case of any violation, the permit shall be deemed automatically revoked and the penalty of the original limitations shall be applied unless:

(a) The violation consists solely of exceeding the size or weight specified by the permit, in which case only the penalty of the original size or weight limitation exceeded shall be applied; or

(b) The total gross load is within the maximum authorized by the permit, no axle is more than ten percent in excess of the maximum load for such axle or group of axles authorized by the permit, and such load can be shifted to meet the weight limitations of wheel and axle loads authorized by such permit. Such shift may be made without penalty if it is made at the state or commercial scale designated in the permit. The vehicle may travel from its point of origin to such designated scale without penalty, and a scale ticket from such scale, showing the vehicle to be properly loaded and within the gross and axle weights authorized by the permit, shall be reasonable evidence of compliance with the terms of the permit.

(5) The department or local authority issuing a permit as provided in this section may adopt and promulgate rules and regulations with respect to the issuance of permits provided for in this section.

(6) The department shall make available applications for permits authorized pursuant to subdivisions (1)(a)(ii) and (1)(a)(iii) of this section in the office of each county treasurer. The department may make available applications for all other permits authorized by this section to the office of the county treasurer and may make available applications for all permits authorized by this section to any other location chosen by the department.

(7) The department or local authority issuing a permit may require a permit fee of not to exceed twenty-five dollars, except that:

(a) The fee for a continuous or continuing permit may not exceed twenty-five dollars for a ninety-day period, fifty dollars for a one-hundred-eighty-day period, or one hundred dollars for a one-year period; and

(b) The fee for permits issued pursuant to subdivision (1)(a)(ii) of this section shall be twenty-five dollars. Permits issued pursuant to such subdivision shall be valid for thirty days and shall be renewable three times for a total number of days not to exceed one hundred twenty days per calendar year.

A vehicle or combination of vehicles for which an application for a permit is requested pursuant to this section shall be registered under section 60-3,147 or 60-3,198 for the maximum gross vehicle weight that is permitted pursuant to section 60-6,294 before a permit shall be issued.

Source: Laws 1957, c. 156, § 4, p. 565; Laws 1961, c. 183, § 1, p. 546; Laws 1963, c. 220, § 3, p. 695; Laws 1963, c. 226, § 1, p. 708; Laws 1965, c. 214, § 1, p. 627; Laws 1967, c. 235, § 1, p. 627; Laws 1972, LB 1337, § 1; Laws 1973, LB 152, § 1; R.S.Supp.,1973, § 39-722.01; Laws 1975, LB 306, § 2; Laws 1979, LB 287, § 1; Laws 1980, LB 842, § 1; Laws 1981, LB 285, § 3; Laws 1986, LB 122, § 1; Laws 1986, LB 833, § 1; R.S.1943, (1988), § 39-6,181; Laws 1993, LB 176, § 1; Laws 1993, LB 370, § 394; Laws 1994, LB 1061, § 4; Laws 1995, LB 467, § 15; Laws 1996, LB 1306, § 2; Laws 1997, LB 122, § 1; Laws 1997, LB 261, § 1; Laws 2000, LB 1361, § 9; Laws 2001, LB 376, § 5; Laws 2003, LB 563, § 33; Laws 2005, LB 82, § 5; Laws 2005, LB 274, § 246; Laws 2010, LB820, § 2; Laws 2011, LB35, § 2; Laws 2012, LB841, § 1; Laws 2012, LB997, § 4.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB841, section 1, with LB997, section 4, to reflect all amendments.

Note: Changes made by LB841 became effective March 15, 2012. Changes made by LB997 became effective July 19, 2012.

Cross References

Rules and regulations of Department of Roads, adoption, penalty, see sections 39-102 and 39-103.

60-6,299 Permit to move building; limitations; application; Department of Roads; rules and regulations; violation; penalty.

(1) The Department of Roads may issue permits for vehicles moving a building or objects requiring specialized moving dollies. Such permits shall allow the vehicles transporting buildings or objects requiring specialized dollies to operate on highways under the jurisdiction of the department, excluding any portion of the National System of Interstate and Defense Highways. Such permit shall specify the maximum allowable width, length, height, and weight of the building to be transported, the route to be used, and the hours during which such building or object may be transported. Any vehicle moving a building or object requiring specialized moving dollies shall be escorted by another vehicle or vehicles in the manner determined by the department. Such

vehicles shall travel at a speed which is not in excess of five miles per hour when carrying loads which are in excess of the maximum gross weight specified by law by more than twenty-five percent. The permit shall not be issued for travel on a state highway containing a bridge or structure which is structurally inadequate to carry such building or object as determined by the department. The department may prescribe conditions of operation of such vehicle when necessary to assure against damage to the road foundations, surfaces, or structures and require such security as may be deemed necessary to compensate for any injury to any roadway or road structure.

(2) The application for any such permit shall (a) specifically describe the vehicle, (b) specifically describe the load to be moved, (c) include a signed affirmation under oath that, for any load sixteen feet high or higher, the applicant has contacted any and all electric utilities that have high voltage conductors and infrastructure that cross over the roadway affected by the move and made arrangements with such electric utilities for the safe movement of the load under any high voltage conductors owned by such electric utilities, and (d) whenever possible, describe the particular highways for which the permit is requested. The company or individual shall maintain a copy of the permit in each vehicle moving a building or object requiring specialized moving dollies which shall be open to inspection by any peace officer, carrier enforcement officer, or authorized agent of any authority granting such permit. The fee for such permit shall be ten dollars.

(3) The department shall adopt and promulgate rules and regulations governing the issuance of the permits. Such rules and regulations shall include, but not be limited to, driver qualifications, equipment selection, hours of operation, weather conditions, road conditions, determination of any damage caused to highways or bridges, cutting or trimming of trees, removal or relocation of signs or other property of the state, raising or lowering of electric supply and communication lines, and such other safety considerations as the department deems necessary.

(4) Any person who violates the terms of a permit issued pursuant to this section or otherwise violates this section shall be guilty of a Class III misdemeanor.

Source: Laws 1985, LB 553, § 1; R.S.1943, (1988), § 39-6,181.01; Laws 1993, LB 370, § 395; Laws 2012, LB997, § 5.
Effective date July 19, 2012.

(ee) SPECIAL RULES FOR MINIBIKES AND OTHER OFF-ROAD VEHICLES

60-6,348 Minibikes and off-road designed vehicles; use; emergencies; parades.

Minibikes and all off-road designed vehicles not authorized by law for use on a highway, including, but not limited to, go-carts, riding lawnmowers, garden tractors, and snowmobiles, shall be exempt from the provisions of sections 60-678, 60-6,351 to 60-6,353, 60-6,380, and 60-6,381 during any public emergency or while being used in parades by regularly organized units of any recognized charitable, social, educational, or community service organization.

Source: Laws 1971, LB 644, § 7; Laws 1972, LB 1196, § 6; Laws 1987, LB 80, § 12; R.S.1943, (1988), § 60-2102; Laws 1993, LB 370, § 444; Laws 2011, LB289, § 33; Laws 2012, LB1155, § 21.
Operative date January 1, 2013.

60-6,349 Minibikes and similar vehicles; sale; notice.

All minibikes and similar two-wheeled, three-wheeled, and four-wheeled miniature vehicles offered for sale in this state shall bear the following notice to the customer and user: This vehicle as manufactured or sold is for off-road use only. This section shall not apply to a golf car vehicle or a low-speed vehicle, as applicable to its design, or to an electric personal assistive mobility device.

Source: Laws 1971, LB 644, § 8; Laws 1972, LB 1196, § 7; R.S.1943, (1988), § 60-2103; Laws 1993, LB 370, § 445; Laws 2002, LB 1105, § 464; Laws 2011, LB289, § 34; Laws 2012, LB1155, § 22. Operative date January 1, 2013.

(ff) SPECIAL RULES FOR ALL-TERRAIN VEHICLES

60-6,355 All-terrain vehicle, defined; utility-type vehicle, defined.

(1) For purposes of sections 60-6,355 to 60-6,362:

(a) All-terrain vehicle means any motorized off-highway vehicle which (i) is fifty inches or less in width, (ii) has a dry weight of nine hundred pounds or less, (iii) travels on three or more low-pressure tires, (iv) is designed for operator use only with no passengers or is specifically designed by the original manufacturer for the operator and one passenger, (v) has a seat or saddle designed to be straddled by the operator, and (vi) has handlebars or any other steering assembly for steering control; and

(b)(i) Utility-type vehicle means any motorized off-highway vehicle which (A) is not less than forty-eight inches nor more than seventy-four inches in width, (B) is not more than one hundred thirty-five inches, including the bumper, in length, (C) has a dry weight of not less than nine hundred pounds nor more than two thousand pounds, (D) travels on four or more low-pressure tires, and (E) is equipped with a steering wheel and bench or bucket-type seating designed for at least two people to sit side-by-side.

(ii) Utility-type vehicle does not include golf car vehicles or low-speed vehicles.

(2) All-terrain vehicles and utility-type vehicles which have been modified to include additional equipment not required by sections 60-6,357 and 60-6,358 shall not be required to be registered under the Motor Vehicle Registration Act.

Source: Laws 1987, LB 80, § 1; R.S.1943, (1988), § 60-2801; Laws 1993, LB 370, § 451; Laws 2003, LB 333, § 33; Laws 2005, LB 274, § 250; Laws 2010, LB650, § 39; Laws 2012, LB1155, § 24. Operative date January 1, 2013.

Cross References

Motor Vehicle Registration Act, see section 60-301.

(kk) SPECIAL RULES FOR LOW-SPEED VEHICLES

60-6,380 Low-speed vehicle; restrictions on use.

A low-speed vehicle may be operated on any highway on which the speed limit is not more than thirty-five miles per hour. A low-speed vehicle may cross a highway on which the speed limit is more than thirty-five miles per hour. Nothing in this section shall prevent a county, city, or village from adopting

more stringent ordinances governing low-speed vehicle operation if the governing body of the county, city, or village determines that such ordinances are necessary in the interest of public safety. Any person operating a low-speed vehicle as authorized under this section shall have a valid Class O operator's license and shall have liability insurance coverage for the low-speed vehicle. The Department of Roads may prohibit the operation of low-speed vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

Source: Laws 2011, LB289, § 32.

(ll) SPECIAL RULES FOR GOLF CAR VEHICLES

60-6,381 Golf car vehicles; city, village, or county; operation authorized; Department of Roads; power to prohibit operation.

(1) A city or village may adopt an ordinance authorizing the operation of golf car vehicles within the corporate limits of the city or village if the operation is on streets adjacent and contiguous to a golf course.

(2) A county board may adopt a resolution authorizing the operation of golf car vehicles within the county if the operation is on roads adjacent and contiguous to a golf course.

(3) Any person operating a golf car vehicle as authorized under this section shall have a valid Class O operator's license and the owner of the golf car vehicle shall have liability insurance coverage for the golf car vehicle. The Department of Roads may prohibit the operation of golf car vehicles on any highway under its jurisdiction if it determines that the prohibition is necessary in the interest of public safety.

(4) For purposes of this section:

(a) Road means a public way for the purposes of vehicular travel, including the entire area within the right-of-way; and

(b) Street means a public way for the purposes of vehicular travel in a city or village and includes the entire area within the right-of-way.

Source: Laws 2012, LB1155, § 23.
Operative date January 1, 2013.

ARTICLE 14

MOTOR VEHICLE INDUSTRY LICENSING

Section

60-1401 Act, how cited; applicability of amendments.

Sections 60-1401 to 60-1440 shall be known and may be cited as the Motor Vehicle Industry Regulation Act.

Any amendments to the act shall apply to franchises subject to the act which are entered into, amended, altered, modified, renewed, or extended after the date of the amendments to the act except as otherwise specifically provided in the act.

All amendments to the act shall apply upon the issuance or renewal of a dealer's or manufacturer's license.

Source: Laws 2010, LB816, § 12; Laws 2011, LB477, § 1.

60-1409 Nebraska Motor Vehicle Industry Licensing Fund; created; collections; disbursements; investment; audited.

The Nebraska Motor Vehicle Industry Licensing Fund is created. All fees collected under the Motor Vehicle Industry Regulation Act shall be remitted by the board, as collected, to the State Treasurer for credit to the fund. Such fund shall be appropriated by the Legislature for the operations of the Nebraska Motor Vehicle Industry Licensing Board and shall be paid out from time to time by warrants of the Director of Administrative Services on the State Treasurer for authorized expenditures upon duly itemized vouchers executed as provided by law and approved by the chairperson of the board or the executive secretary, except that transfers from the fund to the General Fund may be made at the direction of the Legislature through June 30, 2011. The expenses of conducting the office must always be kept within the income collected and reported to the State Treasurer by such board. Such office and expense thereof shall not be supported or paid from the General Fund, and all money deposited in the Nebraska Motor Vehicle Industry Licensing Fund shall be expended only for such office and expense thereof and, unless determined by the board, it shall not be required to expend any funds to any person or any other governmental agency.

Any money in the Nebraska Motor Vehicle Industry Licensing 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 fund shall be audited by the Auditor of Public Accounts at such time as he or she determines necessary.

Source: Laws 1957, c. 280, § 9, p. 1019; Laws 1969, c. 584, § 60, p. 2382; Laws 1972, LB 1335, § 5; Laws 1974, LB 754, § 8; Laws 1978, LB 248, § 6; Laws 1995, LB 7, § 63; Laws 2002, LB 1310, § 6; Laws 2009, First Spec. Sess., LB3, § 36; Laws 2010, LB816, § 65; Laws 2011, LB337, § 3.

Cross References

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

60-1420 Franchise; termination; noncontinuance; change community; hearing; when required.

(1) Except as provided in subsection (2) or (3) of this section, no franchisor shall terminate or refuse to continue any franchise or change a franchisee's community unless the franchisor has first established, in a hearing held pursuant to section 60-1425, that:

(a) The franchisor has good cause for termination, noncontinuance, or change;

(b) Upon termination or noncontinuance, another franchise in the same line-make will become effective in the same community, without diminution of the franchisee's service formerly provided, or that the community cannot be reasonably expected to support such a dealership; and

(c) Upon termination or noncontinuance, the franchisor is willing and able to comply with section 60-1430.02.

(2) Upon providing good and sufficient evidence to the board, a franchisor may terminate a franchise without such hearing (a) for a particular line-make if the franchisor discontinues that line-make, (b) if the franchisee's license as a motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealer is revoked pursuant to the Motor Vehicle Industry Regulation Act, or (c) upon a mutual written agreement of the franchisor and franchisee.

(3) A franchisor may change a franchisee's community without a hearing if the franchisor notifies the franchisee of the proposed change at least thirty days before the change, provides the franchisee an opportunity to object, and enters into an agreement with the franchisee regarding the change of the franchisee's community. If no agreement is reached, the franchisor shall comply with sections 60-1420 to 60-1435 prior to changing the franchisee's community.

Source: Laws 1971, LB 768, § 20; Laws 1987, LB 327, § 1; Laws 1989, LB 280, § 5; Laws 2010, LB816, § 72; Laws 2011, LB477, § 2.

60-1424 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application.

If a franchisor seeks to terminate or not continue any franchise or change a franchisee's community, or seeks to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle or trailer dealership of the same line-make, the franchisor shall file an application with the board for permission to terminate or not continue the franchise, to change a franchisee's community, or to enter into a franchise for additional representation of the same line-make in that community, except that no application needs to be filed to change a franchisee's community if an agreement has been entered into as provided in subsection (3) of section 60-1420.

Source: Laws 1971, LB 768, § 24; Laws 2011, LB477, § 3.

60-1425 Franchise; termination; noncontinuance; change community; additional dealership of same line-make; application; hearing; notice.

Upon receiving an application under section 60-1424, the board shall enter an order fixing a time, which shall be within ninety days of the date of such order, and place of hearing, and shall send by certified or registered mail, with return receipt requested, a copy of the order to the franchisee whose franchise the franchisor seeks to terminate, not continue, or change. If the application

requests permission to change a franchisee's community or establish an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership, a copy of the order shall be sent to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of orders shall be addressed to the franchisee at the place where the business is conducted. The board may also give notice of franchisor's application to any other parties whom the board may deem interested persons, such notice to be in the form and substance and given in the manner the board deems appropriate. Any person who can show an interest in the application may become a party to the hearing, whether or not he or she receives notice, but a party not receiving notice shall be limited to participation at the hearing on the question of the public interest in the termination or continuation of the franchise, the change in community, or the establishment of an additional motor vehicle dealership.

Source: Laws 1971, LB 768, § 25; Laws 2011, LB477, § 4.

60-1427 Franchise; termination; noncontinuance; change community; additional dealership; application; hearing; burden of proof.

Upon hearing, the franchisor shall have the burden of proof to establish that under the Motor Vehicle Industry Regulation Act the franchisor should be granted permission to terminate or not continue the franchise, to change the franchisee's community, or to enter into a franchise establishing an additional motor vehicle, combination motor vehicle and trailer, motorcycle, or trailer dealership.

Nothing contained in the act shall be construed to require or authorize any investigation by the board of any matter before the board under the provisions of sections 60-1420 to 60-1435. Upon hearing, the board shall hear the evidence introduced by the parties and shall make its decision solely upon the record so made.

Source: Laws 1971, LB 768, § 27; Laws 1972, LB 1335, § 14; Laws 2010, LB816, § 75; Laws 2011, LB477, § 5.

60-1429 Franchise; termination; noncontinuation; change community; additional dealership; acts not constituting good cause.

Notwithstanding the terms, provisions, or conditions of any agreement or franchise, the following shall not constitute good cause, as used in sections 60-1420 and 60-1422, for the termination or noncontinuation of a franchise, for changing the franchisee's community, or for entering into a franchise for the establishment of an additional dealership in a community for the same line-make:

(1) The sole fact that the franchisor desires further penetration of the market;

(2) The change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor, having the burden of proof, proves that such change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles, combination motor vehicles and trailers, motorcycles, or trailer products or to competition in the community. Substantially detrimental may include, but is not limited to, the failure of any proposed transferee or individual to meet the current criteria generally applied by the franchisor in qualifying new motor vehicle dealers; or

(3) The fact that the franchisee refused to purchase or accept delivery of any motor vehicle, combination motor vehicle and trailer, motorcycle, trailer, vehicle parts or accessories, or other commodity or service not ordered by the franchisee.

Source: Laws 1971, LB 768, § 29; Laws 1984, LB 825, § 32; Laws 1989, LB 280, § 6; Laws 2011, LB477, § 6.

60-1436 Manufacturer or distributor; prohibited acts with respect to new motor vehicle dealers.

A manufacturer or distributor shall not require or coerce any new motor vehicle dealer in this state to do any of the following:

(1) Order or accept delivery of any new motor vehicle, part or accessory, equipment, or other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer or retain any part or accessory that the dealer has not sold within twelve months if the part or accessory was not obtained through a specific order initiated by the dealer but was specified for, sold to, and shipped to the dealer pursuant to an automatic ordering system, if the part or accessory is in the condition required for return, and if the part or accessory is returned within thirty days after such twelve-month period. For purposes of this subdivision, automatic ordering system means a computerized system required by the franchisor, manufacturer, or distributor that automatically specifies parts and accessories for sale and shipment to the dealer without specific order thereof initiated by the dealer. The manufacturer, factory branch, distributor, or distributor branch shall not charge a restocking or handling fee for any part or accessory returned under this subdivision. In determining whether parts or accessories in the dealer's inventory were specified and sold under an automated ordering system, the parts and accessories in the dealer's inventory are presumed to be the most recent parts and accessories that were sold to the dealer. This section shall not be construed to prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

(2) Offer or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

(3) Participate monetarily in any advertising campaign or contest or purchase any promotional materials, display devices, or display decorations or materials at the expense of the new motor vehicle dealer;

(4) Join, contribute to, or affiliate with an advertising association;

(5) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor. Notice in good faith to any dealer of the dealer's violation of any terms or provisions of the dealer agreement shall not constitute a violation of the Motor Vehicle Industry Regulation Act;

(6) Change the capital structure of the new motor vehicle dealership or the means by or through which the dealer finances the operation of the dealership,

if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria;

(7) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products as long as the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer;

(8) Prospectively assent to a release, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by the act or require any controversy between the new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of the state or the United States, if the referral would be binding upon the new motor vehicle dealer;

(9) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, if such changes or alterations would be unreasonable, including unreasonably requiring a franchisee to establish, maintain, or continue exclusive sales facilities, sales display space, personnel, service, parts, or administrative facilities for a line-make, unless such exclusivity is reasonable and otherwise justified by reasonable business considerations. In making that determination, the franchisor shall take into consideration the franchisee's compliance with facility requirements as required by the franchise agreement. The franchisor shall have the burden of proving that business considerations justify exclusivity;

(10) Release, convey, or otherwise provide customer information if to do so is unlawful or if the customer objects in writing to doing so, unless the information is necessary for the manufacturer, factory branch, or distributor to meet its obligations to consumers or the new motor vehicle dealer including vehicle recalls or other requirements imposed by state or federal law;

(11) Release to any unaffiliated third party any customer information which has been provided by the new motor vehicle dealer to the manufacturer except as provided in subdivision (10) of this section. A manufacturer, importer, or distributor may not share, sell, or transfer customer information, obtained from a dealer and not otherwise publicly available, to other dealers franchised by the manufacturer while the originating dealer is still a franchised dealer of the manufacturer unless otherwise agreed to by the originating dealer. A manufacturer, importer, or distributor may not use any nonpublic personal information, as that term is used in 16 C.F.R. part 313, which is obtained from a dealer unless such use falls within one or more of the exceptions to opt out requirements under 16 C.F.R. 313.14 or 313.15;

(12) Establish in connection with the sale of a motor vehicle prices at which the dealer must sell products or services not manufactured or distributed by the manufacturer or distributor, whether by agreement, program, incentive provision, or otherwise;

(13) Underutilize the dealer's facilities by requiring or coercing a dealer to exclude or remove from the dealer's facilities operations for selling or servicing a line-make of motor vehicles for which the dealer has a franchise agreement to utilize the facilities, except that this subdivision does not prohibit a manufacturer from requiring an exclusive sales area within the facilities that are in compliance with reasonable requirements for the facilities if the dealer complies with subdivision (9) of this section; or

(14)(a) Enter into any agreement with a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates which gives site control of the premises of the dealer that does not terminate upon the occurrence of any of the following events:

(i) The right of the franchisor to manufacture or distribute the line-make of vehicles covered by the dealer's franchise is sold, assigned, or otherwise transferred by the manufacturer, factory branch, distributor, or distributor branch to another; or

(ii) The final termination of the dealer's franchise for any reason unless an agreement for site control is voluntarily negotiated separately and apart from the franchise agreement and consideration has been offered by the manufacturer and accepted by the dealer. If a dealer voluntarily terminates and has entered into a separately negotiated site control agreement, the agreement may survive the termination if the agreement clearly states that fact.

(b) For purposes of this subdivision, site control means the contractual right to control in any way the commercial use and development of the premises upon which a dealer's business operations are located, including the right to approve of additional or different uses for the property beyond those of its franchise, the right to lease or sublease the dealer's property, or the right or option to purchase the dealer's property.

Any action prohibited for a manufacturer or distributor under the Motor Vehicle Industry Regulation Act is also prohibited for a subsidiary which is wholly owned or controlled by contract by a manufacturer or distributor or in which a manufacturer or distributor has more than a ten percent ownership interest, including a financing division.

Source: Laws 1984, LB 825, § 19; Laws 1999, LB 632, § 7; Laws 2010, LB816, § 81; Laws 2011, LB477, § 7.

60-1437 Manufacturer or distributor; prohibited acts with respect to new motor vehicles.

In addition to the restrictions imposed by section 60-1436, a manufacturer or distributor shall not:

(1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor;

(2) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor or, if a line-make is allocated among new motor vehicle dealers, refuse to disclose to any new motor vehicle dealer that handles the same line-make the system of allocation, including, but not limited to, a complete breakdown by model, and a concise listing of dealerships with an explanation of the derivation of the allocation system, including its mathematical formula in a clear and comprehensible form;

(3) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model which the manufacturer or distributor has sold

during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest;

(4) Increase the price of any new motor vehicle which the new motor vehicle dealer had ordered and delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer shall constitute evidence of such order. In the event of manufacturer or distributor price reduction or cash rebate, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of five dollars shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to a new model or series of motor vehicles at the time of the introduction of the new model or series shall not be considered a price increase or price decrease. This subdivision shall not apply to price changes caused by the following:

(a) The addition to a motor vehicle of required or optional equipment pursuant to state or federal law;

(b) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

(c) Any increase in transportation charges due to an increase in rates charged by a common carrier or other transporter;

(5) Fail or refuse to sell or offer to sell to all franchised new motor vehicle dealers in a line-make every new motor vehicle sold or offered for sale to any franchised new motor vehicle dealer of the same line-make. However, the failure to deliver any such new motor vehicle shall not be considered a violation of this section if the failure is due to a lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or any other cause over which the franchisor has no control. A manufacturer or distributor shall not require that any of its new motor vehicle dealers located in this state pay any extra fee, purchase unreasonable or unnecessary quantities of advertising displays or other materials, or remodel, renovate, or recondition the new motor vehicle dealer's existing facilities in order to receive any particular model or series of vehicles manufactured or distributed by the manufacturer for which the dealers have a valid franchise. Notwithstanding the provisions of this subdivision, nothing contained in this section shall be deemed to prohibit or prevent a manufacturer from requiring that its franchised dealers located in this state purchase special tools or equipment, stock reasonable quantities of certain parts, or participate in training programs which are reasonably necessary for those dealers to sell or service any model or series of new motor vehicles. This subdivision shall not apply to manufacturers of recreational vehicles;

(6) Fail to offer dealers of a specific line-make a new franchise agreement containing substantially similar terms and conditions for sales of the line-make if the ownership of the manufacturer or distributor changes or there is a change in the plan or system of distribution;

(7) Take an adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States. A franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is enforceable only if, at

the time of the original sale or lease, the dealer knew or reasonably should have known that the motor vehicle would be exported to a location outside the United States. A dealer is presumed to have no knowledge that a motor vehicle the dealer sells or leases will be exported to a location outside the United States if, under the laws of a state of the United States (a) the motor vehicle is titled, (b) the motor vehicle is registered, and (c) applicable state and local taxes are paid for the motor vehicle. Such presumption may be rebutted by direct, clear, and convincing evidence that the dealer knew or reasonably should have known at the time of the original sale or lease that the motor vehicle would be exported to a location outside the United States. Except as otherwise permitted by subdivision (7) of this section, a franchise provision that allows a manufacturer or distributor to take adverse action against a dealer because the dealer sells or leases a motor vehicle that is later exported to a location outside the United States is void and unenforceable;

(8) Discriminate against a dealer holding a franchise for a line-make of the manufacturer or distributor in favor of other dealers of the same line-make in this state by:

(a) Selling or offering to sell a new motor vehicle to a dealer at a lower actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is available to another dealer in this state during a similar time period; or

(b) Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in this state during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in this state on substantially comparable terms;

(9) Refuse to pay a new motor vehicle dealer for sales incentives, service incentives, rebates, or other forms of incentive compensation within thirty days after their approval by the manufacturer or distributor. The manufacturer or distributor shall either approve or disapprove each claim by the dealer within thirty days after receipt of the claim in a proper form generally used by the manufacturer or distributor. Any claims not specifically disapproved in writing within thirty days after receipt shall be considered to be approved;

(10) Perform an audit to confirm payment of a sales incentive, service incentive, rebate, or other form of incentive compensation more than twelve months after the date of payment of the claim or twelve months after the end of the incentive program by the new motor vehicle dealer unless the claim is fraudulent;

(11) Reduce the amount to be paid to a new motor vehicle dealer for a sales incentive, service incentive, rebate, or other form of incentive compensation or charge back a new motor vehicle dealer subsequent to the payment of the claim for a sales incentive, service incentive, rebate, or other form of incentive compensation unless the manufacturer or distributor shows that the claim lacks required documentation or is alleged to be false, fraudulent, or based on a misrepresentation.

A manufacturer or distributor may not deny a claim based solely on a new motor vehicle dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error, that does not put into question the legitimacy of the claim. No reduction in the amount to be paid to the new motor vehicle dealer and no charge back subsequent to the payment of a claim may be made until the new motor vehicle dealer has had notice and an opportunity to correct any deficiency and resubmit the claim and to participate in all franchisor internal appeal processes as well as all available legal processes. If a charge back is the subject of adjudication, internal appeal, mediation, or arbitration, no charge back shall be made until, in the case of an adjudication or legal action, a final order has been issued.

A claim for reimbursement by the manufacturer or distributor of sums due following an audit must be presented to the dealer within ninety days after completion of the audit of the item subject to the claim. A manufacturer or distributor may not setoff or otherwise take control over funds owned or under the control of the new motor vehicle dealer or which are in an account designated for the new motor vehicle dealer when such action is based upon the findings of an audit or other claim with respect thereto until a final decision is issued with respect to any challenge or appeal by either party of any such audit or claim.

Any ambiguity or inconsistency in submission guidelines shall be construed against the manufacturer or distributor;

(12) Make any express or implied statement or representation directly or indirectly that the dealer is under any obligation whatsoever to offer to sell or sell any extended service contract, extended maintenance plan, gap policy, gap waiver, or other aftermarket product or service offered, sold, backed by, or sponsored by the manufacturer or distributor or to sell, assign, or transfer any of the dealer's retail sales contracts or leases in this state on motor vehicles manufactured or sold by the manufacturer or distributor to a finance company or class of finance companies, leasing company or class of leasing companies, or other specified person, because of any relationship or affiliation between the manufacturer or distributor and the finance company or companies, leasing company or leasing companies, or the specified person or persons; or

(13) Prohibit a franchisee from acquiring a line-make of new motor vehicles solely because the franchisee owns or operates a franchise of the same line-make in a contiguous market.

Any such statements, threats, promises, acts, contracts, or offers of contracts, when their effect may be to lessen or eliminate competition or tend to create a monopoly, are declared unfair trade practices and unfair methods of competition and are prohibited.

Source: Laws 1984, LB 825, § 20; Laws 1999, LB 632, § 8; Laws 2010, LB816, § 82; Laws 2011, LB477, § 8; Laws 2012, LB896, § 1. Effective date April 11, 2012.

60-1438 Manufacturer or distributor; warranty obligation; prohibited acts.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service which such manufacturer or distributor

requires the dealer to provide, including warranty and recall obligations related to repairing and servicing motor vehicles and all parts and components included in or manufactured for installation in the motor vehicles of the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, work, and service and the time allowance for the performance of the work and service.

(2)(a) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the principal factors to be given consideration shall be the prevailing wage rates being paid by dealers in the community in which the dealer is doing business, and in no event shall the compensation of the dealer for warranty parts and labor be less than the rates charged by the dealer for like parts and service to retail or fleet customers, as long as such rates are reasonable. In determining prevailing wage rates, the rate of compensation for labor for that portion of repair orders for routine maintenance, such as oil and fluid changes, shall not be used.

(b) For purposes of this section, compensation for parts may be determined by calculating the price paid by the dealer for parts, including all shipping and other charges, multiplied by the sum of one and the dealer's average percentage markup over the price paid by the dealer for parts purchased by the dealer from the manufacturer and sold at retail. The dealer may establish average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission and declaring what the average percentage markup is. Within thirty days after receipt of the repair orders, the manufacturer may audit the submitted repair orders and approve or deny approval of the average percentage markup based on the audit. The average percentage markup shall go into effect forty-five days after the approval based on that audit. If the manufacturer denies approval of the average percentage markup declared by the dealer, the dealer may file a complaint with the board. The manufacturer shall have the burden to establish that the denial was reasonable. If the board determines that the denial was not reasonable, the denial shall be deemed a violation of the Motor Vehicle Industry Regulation Act subject to the enforcement procedures of the act. Only retail sales not involving warranty repairs or parts supplied for routine vehicle maintenance shall be considered in calculating average percentage markup. No manufacturer shall require a dealer to establish average percentage markup by a methodology, or by requiring information, that is unduly burdensome or time consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations. A dealer shall not request a change in the average percentage markup more than twice in one calendar year.

(3) A manufacturer or distributor shall not do any of the following:

(a) Fail to perform any warranty obligation;

(b) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

(c) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall.

(4) A dealer's claim for warranty compensation may be denied only if:

(a) The dealer's claim is based on a nonwarranty repair;

(b) The dealer lacks documentation for the claim;

(c) The dealer fails to comply with specific substantive terms and conditions of the franchisor's warranty compensation program; or

(d) The manufacturer has a bona fide belief based on competent evidence that the dealer's claim is intentionally false, fraudulent, or misrepresented.

(5) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be made within six months after completing the work and shall be paid within thirty days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within thirty days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within thirty days after the receipt of the form shall be considered to be approved and payment shall be made within thirty days. The manufacturer has the right to audit the claims for one year after payment, except that if the manufacturer has reasonable cause to believe that a claim submitted by a dealer is intentionally false or fraudulent, the manufacturer has the right to audit the claims for four years after payment. For purposes of this subsection, reasonable cause means a bona fide belief based upon evidence that the issues of fact are such that a person of ordinary caution, prudence, and judgment could believe that a claim was intentionally false or fraudulent. As a result of an audit authorized under this subsection, the manufacturer has the right to charge back to the new motor vehicle dealer the amount of any previously paid claim after the new motor vehicle dealer has had notice and an opportunity to participate in all franchisor internal appeal processes as well as all available legal processes. The requirement to approve and pay the claim within thirty days after receipt of the claim does not preclude chargebacks for any fraudulent claim previously paid. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error that does not put into question the legitimacy of the claim. If a claim is rejected for a clerical error, the dealer may resubmit a corrected claim in a timely manner.

(6) The warranty obligations set forth in this section shall also apply to any manufacturer of a new motor vehicle transmission, engine, or rear axle that separately warrants its components to customers.

(7) This section does not apply to recreational vehicles.

Source: Laws 1984, LB 825, § 21; Laws 1991, LB 393, § 1; Laws 2003, LB 371, § 1; Laws 2010, LB816, § 83; Laws 2011, LB477, § 9.

60-1438.01 Manufacturer or distributor; restrictions with respect to franchises and consumer care or service facilities.

(1) For purposes of this section, manufacturer or distributor includes (a) a factory representative or a distributor representative or (b) a person who is affiliated with a manufacturer or distributor or who, directly or indirectly through an intermediary, is controlled by, or is under common control with, the manufacturer or distributor. A person is controlled by a manufacturer or

distributor if the manufacturer or distributor has the authority directly or indirectly, by law or by agreement of the parties, to direct or influence the management and policies of the person. A franchise agreement with a Nebraska-licensed dealer which conforms to and is subject to the Motor Vehicle Industry Regulation Act is not control for purposes of this section.

(2) Except as provided in this section, a manufacturer or distributor shall not directly or indirectly:

(a) Own an interest in a franchise, franchisee, or consumer care or service facility, except that a manufacturer or distributor may hold stock in a publicly held franchise, franchisee, or consumer care or service facility so long as the manufacturer or distributor does not by virtue of holding such stock operate or control the franchise, franchisee, or consumer care or service facility;

(b) Operate or control a franchise, franchisee, or consumer care or service facility; or

(c) Act in the capacity of a franchisee or motor vehicle dealer.

(3) A manufacturer or distributor may own an interest in a franchisee or otherwise control a franchise for a period not to exceed twelve months after the date the manufacturer or distributor acquires the franchise if:

(a) The person from whom the manufacturer or distributor acquired the franchise was a franchisee; and

(b) The franchise is for sale by the manufacturer or distributor.

(4) For purposes of broadening the diversity of its franchisees and enhancing opportunities for qualified persons who lack the resources to purchase a franchise outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a franchise if the manufacturer's or distributor's participation in the franchise is in a bona fide relationship with a franchisee and the franchisee:

(a) Has made a significant investment in the franchise, which investment is subject to loss;

(b) Has an ownership interest in the franchise; and

(c) Operates the franchise under a plan to acquire full ownership of the franchise within a reasonable time and under reasonable terms and conditions.

(5) On a showing of good cause by a manufacturer or distributor, the board may extend the time limit set forth in subsection (3) of this section. An extension may not exceed twelve months. An application for an extension after the first extension is granted is subject to protest by a franchisee of the same line-make whose franchise is located in the same community as the franchise owned or controlled by the manufacturer or distributor.

(6) The prohibition in subdivision (2)(b) of this section shall not apply to any manufacturer of manufactured housing, recreational vehicles, or trailers.

Source: Laws 2000, LB 1018, § 3; Laws 2010, LB816, § 84; Laws 2011, LB477, § 10.

ARTICLE 18

CAMPER UNITS

Section
60-1803. Permit; application; contents; fee.
60-1807. Permit; renewal; issuance; receipt required.

60-1803 Permit; application; contents; fee.

Every owner of a camper unit shall make application for a permit to the county treasurer of the county in which such owner resides or is domiciled or conducts a bona fide business, or if such owner is not a resident of this state, such application shall be made to the county treasurer of the county in which such owner actually lives or conducts a bona fide business, except as otherwise expressly provided. Any person, firm, association, or corporation who is neither a resident of this state nor domiciled in this state, but who desires to obtain a permit for a camper unit owned by such person, firm, association, or corporation, may register the same in any county of this state. The application shall contain a statement of the name, post office address, and place of residence of the applicant, a description of the camper unit, including the name of the maker, the number, if any, affixed or assigned thereto by the manufacturer, the weight, width, and length of the vehicle, the year, the model, and the trade name or other designation given thereto by the manufacturer, if any. Camper unit permits required by sections 60-1801 to 60-1808 shall be issued by the county treasurer in the same manner as registration certificates as provided in the Motor Vehicle Registration Act except as otherwise provided in sections 60-1801 to 60-1808. Every applicant for a permit, at the time of making such application, shall exhibit to the county treasurer evidence of ownership of such camper unit. Contemporaneously with such application, the applicant shall pay a permit fee in the amount of two dollars which shall be distributed in the same manner as all other motor vehicle license fees. Upon proper application being made and the payment of the permit fee, the applicant shall be issued a permit.

Source: Laws 1969, c. 627, § 3, p. 2526; Laws 1993, LB 112, § 40; Laws 1995, LB 37, § 11; Laws 1997, LB 271, § 34; Laws 2005, LB 274, § 260; Laws 2012, LB801, § 95.
Effective date July 19, 2012.

Cross References

Motor Vehicle Registration Act, see section 60-301.

60-1807 Permit; renewal; issuance; receipt required.

In issuing permits or renewals under sections 60-1801 to 60-1808, the county treasurer shall neither receive nor accept such application nor permit fee nor issue any permit for any such camper unit unless the applicant first exhibits proof by receipt or otherwise (1) that he or she has paid all applicable taxes and fees upon such camper unit based on the computation thereof made in the year preceding the year for which such application for permit is made, (2) that he or she was the owner of another camper unit or other motor vehicles on which he or she paid the taxes and fees during such year, or (3) that he or she owned no camper unit or other motor vehicle upon which taxes and fees might have been imposed during such year.

Source: Laws 1969, c. 627, § 7, p. 2528; Laws 1997, LB 271, § 35; Laws 2005, LB 274, § 262; Laws 2012, LB801, § 96.
Effective date July 19, 2012.

ARTICLE 21
MINIBIKES OR MOTORCYCLES

(b) MOTORCYCLE SAFETY EDUCATION

Section

(b) MOTORCYCLE SAFETY EDUCATION

60-2120 Act, how cited.

Sections 60-2120 to 60-2139 shall be known and may be cited as the Motorcycle Safety Education Act.

Source: Laws 1986, LB 1004, § 2; Laws 1989, LB 25, § 2; Laws 2011, LB170, § 4.

60-2121 Terms, defined.

For purposes of the Motorcycle Safety Education Act, unless the context otherwise requires:

(1) Department means the Department of Motor Vehicles;

(2) Director means the Director of Motor Vehicles;

(3) Driving course means a driving pattern used to aid students in learning the skills needed to safely operate a motorcycle as part of a motorcycle safety course;

(4) Motorcycle safety course means a curriculum of study which has been approved by the department designed to teach drivers the skills and knowledge to safely operate a motorcycle;

(5) Motorcycle safety instructor means any person who has successfully passed a motorcycle safety instructor's course curriculum and is certified by the department to teach a motorcycle safety course; and

(6) Motorcycle trainer means a person who is qualified and certified by the department to teach another person to become a certified motorcycle safety instructor in this state.

Source: Laws 1981, LB 22, § 1; Laws 1984, LB 1089, § 3; R.S.1943, (1984), § 60-2109; Laws 1986, LB 1004, § 3; Laws 2002, LB 93, § 5; Laws 2011, LB170, § 5.

60-2125 Motorcycle safety courses; requirements.

(1) The department may adopt and promulgate rules and regulations establishing minimum requirements for both basic and advanced motorcycle safety courses. The courses shall be designed to develop, instill, and improve the knowledge and skills necessary for safe operation of a motorcycle.

(2) The motorcycle safety courses shall be designed to teach either a novice motorcycle rider knowledge and basic riding skills or to refresh the knowledge and riding skills of motorcycle riders necessary for the safe and legal operation of a motorcycle on the highways of this state. Every motorcycle safety course shall be conducted at a site with room for a driving course designed to allow motorcycle riders to practice the knowledge and skills necessary for safe motorcycle operation.

Source: Laws 1981, LB 22, § 2; R.S.1943, (1984), § 60-2110; Laws 1986, LB 1004, § 7; Laws 2011, LB170, § 6.

60-2126 Motorcycle safety course; approval by director; application; contents; certified motorcycle safety instructor required; fee; course audits.

(1) A school, business, or organization may apply to the department to provide a motorcycle safety course or courses in this state. Prospective providers of such course or courses shall submit an application for approval of such course or courses to the director. The application shall include a list of instructors of the course or courses. Such instructors shall be or shall become motorcycle safety instructors certified by the department prior to teaching any motorcycle safety course in this state. Applications for certification of motorcycle safety instructors may be included along with an application for approval of a motorcycle safety course or courses. The director shall approve such course if it meets the requirements set forth by the department by rule and regulation and will be taught by a certified motorcycle safety instructor or instructors.

(2) The application for certification or renewal of a certification of each motorcycle safety course shall be accompanied by a fee of one hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Department of Motor Vehicles Cash Fund. Motorcycle safety course certification shall expire two years from the date of the director's certification.

(3) Motorcycle safety courses shall be subject to audits by the department to assure compliance with the Motorcycle Safety Education Act and rules and regulations of the department.

Source: Laws 1981, LB 22, § 3; R.S.1943, (1984), § 60-2111; Laws 1986, LB 1004, § 8; Laws 2011, LB170, § 7.

60-2127 Motorcycle safety instructors; certificate; requirements; renewal; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum standards, skills' qualifications, and education requirements for motorcycle safety instructors. The director shall issue or renew a certificate in the manner and form prescribed by the director to motorcycle safety instructor applicants who meet such requirements. A motorcycle safety instructor certificate shall expire two years after the date of issuance. To renew a certificate, a person shall submit an application demonstrating compliance with rules and regulations of the department.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle safety instructor by another state or recognized accrediting organization may be issued a motorcycle safety instructor's certificate by the department without having to take the course established in section 60-2128.

(3) A person who holds a valid, unexpired permit issued by the department to be a motorcycle safety instructor before January 1, 2012, shall be recognized as a certified motorcycle safety instructor until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and become a certified motorcycle safety instructor to teach a motorcycle safety class in this state as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 4; R.S.1943, (1984), § 60-2112; Laws 1986, LB 1004, § 9; Laws 2011, LB170, § 8.

60-2128 Motorcycle safety instructor preparation course; department; duties.

The department may adopt and promulgate rules and regulations developing a motorcycle safety instructor preparation course which shall be taught by motorcycle trainers. Such course shall insure that the motorcycle safety instructor who successfully passes the course is familiar with the material included in the particular motorcycle safety course which such motorcycle safety instructor will be teaching.

Source: Laws 1981, LB 22, § 5; Laws 1984, LB 1089, § 4; R.S.1943, (1984), § 60-2113; Laws 1986, LB 1004, § 10; Laws 2011, LB170, § 9.

60-2129 Motorcycle trainers; requirements; certificates; person certified by another state; how treated.

(1) The director may adopt and promulgate rules and regulations establishing minimum education requirements for motorcycle trainers. The director shall issue certificates in the manner and form prescribed by the director to no more than two motorcycle trainers who meet the minimum education, skill, and experience requirements. The department may reimburse documented expenses incurred by a person in connection with taking and successfully passing an educational course to become a motorcycle trainer, as provided in sections 81-1174 to 81-1177, when there are less than two motorcycle trainers working in this state. In return for the reimbursement of such documented expenses, motorcycle trainers shall teach the motorcycle safety instructor preparation course as assigned by the director.

(2) If the certification requirements are comparable to the requirements in this state, a person currently certified as a motorcycle trainer by another state or recognized accrediting organization may be issued a motorcycle trainer's

certificate by the department without having to receive the training required by this section.

(3) A person who holds a valid, unexpired permit issued by the department to be a chief instructor for motorcycle safety before January 1, 2012, shall be recognized as a motorcycle trainer until January 1, 2014, or until the expiration date of such permit, whichever is earlier. At that time the permit holder may apply for and be recertified as a motorcycle trainer to teach a motorcycle safety instructor preparation class in this state as provided in rules and regulations of the department.

Source: Laws 1986, LB 1004, § 11; Laws 2011, LB170, § 10.

60-2130 Motorcycle safety instructor or motorcycle trainer; certificate; term; renewal.

All certificates issued under sections 60-2127 and 60-2129 shall be valid for two years and may be renewed upon application to the director as provided in rules and regulations of the department.

Source: Laws 1981, LB 22, § 6; R.S.1943, (1984), § 60-2114; Laws 1986, LB 1004, § 12; Laws 1997, LB 752, § 148; Laws 2011, LB170, § 11.

60-2131 Certification of motorcycle safety course, motorcycle safety instructor's certificate, or motorcycle trainer's certificate; denial, suspension, or revocation; procedure.

(1) The director may cancel, suspend, revoke, or refuse to issue or renew certification of a motorcycle safety course, a motorcycle safety instructor's certificate, or a motorcycle trainer's certificate in any case when the director finds the certificate holder or applicant has not complied with or has violated the Motorcycle Safety Education Act or any rule or regulation adopted and promulgated by the director.

(2) No person or provider whose certificate has been canceled, suspended, revoked, or refused shall be certified until the person or provider meets the requirements of rules and regulations of the department and shows that the event or occurrence that caused the director to take action has been corrected and will not affect future performance. Persons or providers who are suspended may be summarily reinstated upon the director's acceptance of a demonstration of compliance and satisfactory correction of any noncompliance. All other persons or providers shall reapply for certification. A person or provider may contest action taken by the director to cancel, suspend, revoke, or refuse to issue or renew a certificate by filing a written petition with the department within thirty days after the date of the director's action.

Source: Laws 1981, LB 22, § 7; R.S.1943, (1984), § 60-2115; Laws 1986, LB 1004, § 13; Laws 1989, LB 285, § 136; Laws 1999, LB 704, § 48; Laws 2011, LB170, § 12.

60-2132 Repealed. Laws 2011, LB 170, § 17.

60-2132.01 Motorcycle Safety Education Fund; transfers.

Within sixty days after January 1, 2012, twenty-five percent of the money remaining in the Motorcycle Safety Education Fund shall be transferred to the Department of Motor Vehicles Cash Fund and seventy-five percent of the

money remaining in the Motorcycle Safety Education Fund shall be transferred to the Highway Trust Fund. The Motorcycle Safety Education Fund shall be eliminated on such date after the transfers are made.

Source: Laws 2011, LB170, § 13.

60-2133 Repealed. Laws 2011, LB 170, § 17.

60-2134 Repealed. Laws 2011, LB 170, § 17.

60-2135 Repealed. Laws 2011, LB 170, § 17.

60-2136 Repealed. Laws 2011, LB 170, § 17.

60-2137 Repealed. Laws 2011, LB 170, § 17.

60-2138 Repealed. Laws 2011, LB 170, § 17.

60-2139 Rules and regulations.

The director may adopt and promulgate such rules and regulations for the administration and enforcement of the Motorcycle Safety Education Act as are necessary. In adopting such rules and regulations, the director shall comply with the Administrative Procedure Act.

Source: Laws 1981, LB 22, § 14; R.S.1943, (1984), § 60-2119; Laws 1986, LB 1004, § 21; Laws 2011, LB170, § 14.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 29
UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT

Section
60-2909.01. Disclosure; purposes authorized.

60-2909.01 Disclosure; purposes authorized.

The department and any officer, employee, agent, or contractor of the department having custody of a motor vehicle record shall, upon the verification of identity and purpose of a requester, disclose and make available the requested motor vehicle record, including the sensitive personal information in the record, other than the social security number, for the following purposes:

(1) For use by any federal, state, or local governmental agency, including any court or law enforcement agency, in carrying out the agency's functions or by a private person or entity acting on behalf of a governmental agency in carrying out the agency's functions;

(2) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or governmental agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court, an administrative agency, or a self-regulatory body;

(3) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, anti-fraud activities, rating, or underwriting;

(4) For use by an employer or the employer's agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. 31301 et seq., or pursuant to sections 60-4,132 and 60-4,141; and

(5) For use by employers of commercial driver's license holders and by the Commercial Driver License Information System as provided in section 60-4,144.02 and 49 C.F.R. 383.73.

Source: Laws 2000, LB 1317, § 14; Laws 2011, LB178, § 20.

CHAPTER 61
NATURAL RESOURCES

Article.
2. Department of Natural Resources. 61-210 to 61-221.

ARTICLE 2
DEPARTMENT OF NATURAL RESOURCES

Section
61-210. Department of Natural Resources Cash Fund; created; use; investment.
61-217. Repealed. Laws 2010, LB 682, § 1.
61-218. Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.
61-219. Repealed. Laws 2010, LB 683, § 1.
61-220. State Treasurer; 2012 transfer to Water Resources Cash Fund.
61-221. State Treasurer; 2013 transfer to Water Resources Cash Fund.

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. Transfers may be made from the fund to the General Fund at the direction of the Legislature.

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; Laws 2009, First Spec. Sess., LB3, § 38.

Cross References

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

61-217 Repealed. Laws 2010, LB 682, § 1.

61-218 Water Resources Cash Fund; created; use; investment; eligibility for funding; annual report; contents; Nebraska Environmental Trust Fund; grant application; use of funds; legislative intent; department; establish subaccount.

(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) allocated pursuant to section 81-15,175.

(3) The fund shall be expended by the department (a) to aid management actions taken to reduce consumptive uses of water or to enhance streamflows or ground water recharge 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, (b) for purposes of projects or proposals described in the grant application as set forth in subdivision (2)(h) of section 81-15,175, and (c) to the extent funds are not expended pursuant to subdivisions (a) and (b) 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 three million three hundred thousand dollars be transferred each fiscal year from the General Fund to the Water Resources Cash Fund for FY2011-12 through FY2018-19, except that for FY2012-13 it is the intent of the Legislature that four million seven hundred thousand dollars be transferred from the General Fund to the Water Resources Cash Fund.

(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 achieve a sustainable balance of consumptive water uses or 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, including the local match as set forth in subdivision (5)(a) of this section.

(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 electronically 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.

(7)(a) Prior to the application deadline for fiscal year 2011-12, the Department of Natural Resources shall apply for a grant of nine million nine hundred thousand dollars from the Nebraska Environmental Trust Fund, to be paid out in three annual installments of three million three hundred thousand dollars. The purposes listed in the grant application shall be consistent with the uses of the Water Resources Cash Fund provided in this section and shall be used to aid management actions taken to reduce consumptive uses of water, to enhance streamflows, to recharge ground water, or to support wildlife habitat in any river basin determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713.

(b) If the application is granted, funds received from such grant shall be remitted to the State Treasurer for credit to the Water Resources Cash Fund for the purpose of supporting the projects set forth in the grant application. The department shall include in its grant application documentation that the Legislature has authorized a transfer of three million three hundred thousand dollars from the General Fund into the Water Resources Cash Fund for each of fiscal years 2011-12 and 2012-13 and has stated its intent to transfer three million three hundred thousand dollars to the Water Resources Cash Fund for fiscal year 2013-14.

(c) It is the intent of the Legislature that the department apply for an additional three-year grant that would begin in fiscal year 2014-15 if the criteria established in subsection (4) of section 81-15,175 are achieved.

(8) The department shall establish a subaccount within the Water Resources Cash Fund for the accounting of all money received as a grant from the Nebraska Environmental Trust Fund as the result of an application made pursuant to subsection (7) of this section. At the end of each calendar month, the department shall calculate the amount of interest earnings accruing to the subaccount and shall notify the State Treasurer who shall then transfer a like

amount from the Water Resources Cash Fund to the Nebraska Environmental Trust Fund.

Source: Laws 2007, LB701, § 25; Laws 2009, First Spec. Sess., LB3, § 39; Laws 2010, LB689, § 1; Laws 2010, LB993, § 1; Laws 2011, LB229, § 1; Laws 2012, LB782, § 87; Laws 2012, LB950, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 87, with LB950, section 1, to reflect all amendments.

Note: Changes made by LB950 became effective July 19, 2012. Changes made by LB782 became operative July 19, 2012.

Cross References

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

61-219 Repealed. Laws 2010, LB 683, § 1.

61-220 State Treasurer; 2012 transfer to Water Resources Cash Fund.

The State Treasurer shall transfer $600,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2012, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2011, LB229, § 4.

61-221 State Treasurer; 2013 transfer to Water Resources Cash Fund.

The State Treasurer shall transfer $600,000 from the General Fund to the Water Resources Cash Fund on or before June 30, 2013, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services, pursuant to section 61-218.

Source: Laws 2011, LB229, § 5.

CHAPTER 64
NOTARIES PUBLIC

Article.
1. General Provisions.
(a) Appointment and Powers. 64-101 to 64-113.
(c) Rules and Regulations. 64-119.

ARTICLE 1
GENERAL PROVISIONS

(a) APPOINTMENT AND POWERS

Section
64-101. Appointment; qualifications; term.
64-104. Notary public; commission; renewal; procedure.
64-105.01. Notary public; disqualified; when.
64-107. Powers and duties; certificate or records; receipt in evidence.
64-113. Removal; grounds; procedure; penalty.

(c) RULES AND REGULATIONS

64-119. Rules and regulations.

(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) a felony or (b) a crime involving fraud or dishonesty within the previous five years.

(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) No person shall be appointed a notary public unless he or she resides in the State of Nebraska, except that the Secretary of State may appoint and commission a person as a notary public who resides in a state that borders the State of Nebraska if such person is employed in or has a regular place of work or business in this state and the Secretary of State has obtained evidence of an address of the physical location of such employment or place of work or business prior to such appointment and commission.

(9) 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; Laws 2012, LB398, § 2.
Effective date July 19, 2012.

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. 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; Laws 2012, LB398, § 3.
Effective date July 19, 2012.

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:

(1) Is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives;

(2) Except in the performance of duties pursuant to sections 64-211 to 64-215, has a financial or beneficial interest in the transaction other than receipt of the ordinary notarial fee or is individually named as a party to the transaction; or

(3) Does not understand the acknowledgment or notarial certificate used to certify the performance of his or her duties.

Source: Laws 2004, LB 315, § 7; Laws 2012, LB398, § 4.
Effective date July 19, 2012.

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, acknowl-

edgments, 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; and (3) to exercise and perform such other powers and duties as authorized by the laws of this state. Over his or her signature and official seal, he or she shall certify the performance of such duties so exercised and performed under this section. Such 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; Laws 2012, LB398, § 5.
Effective date July 19, 2012.

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. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf. 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 finds that the notary public is guilty of acts of malfeasance in office, 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, (b) violating the

confidentiality provisions of section 71-6911, or (c) 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; Laws 2011, LB690, § 2; Laws 2012, LB398, § 6.
Effective date July 19, 2012.

(c) RULES AND REGULATIONS

64-119 Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 64-101 to 64-118.

Source: Laws 2012, LB398, § 7.
Effective date July 19, 2012.

CHAPTER 66
OILS, FUELS, AND ENERGY

Article.
4. Motor Vehicle Fuel Tax. 66-486 to 66-4,144.
5. Transportation of Fuels. 66-525.
6. Diesel, Alternative, and Compressed Fuel Taxes.
(c) Alternative Fuel Tax. 66-684 to 66-695. Repealed.
(d) Compressed Fuel Tax. 66-6,110, 66-6,113.
7. Motor Fuel Tax Enforcement and Collection. 66-712 to 66-739.
9. Solar Energy and Wind Energy. 66-901 to 66-912.02.
10. Energy Conservation.
(b) Low-Income Home Energy Conservation Act. 66-1012 to 66-1019.01.
13. Ethanol. 66-1336 to 66-1345.04.
14. International Fuel Tax Agreement Act. 66-1405, 66-1406.02.
15. Petroleum Release Remedial Action. 66-1501 to 66-1532.
18. State Natural Gas Regulation Act. 66-1801 to 66-1868.
19. Wind Measurement Equipment. 66-1901.
20. Natural Gas Fuel Board. 66-2001.
21. Rural Infrastructure Development. 66-2101 to 66-2107.

ARTICLE 4
MOTOR VEHICLE FUEL TAX

Section
66-486. Motor fuel tax; collection; commission.
66-488. Producer, supplier, distributor, wholesaler, importer, and exporter; return; contents.
66-489.02. Producer, supplier, distributor, wholesaler, or importer; tax on average wholesale price of gasoline; credit to Highway Trust Fund; use; allocation.
66-4,100. Highway Cash Fund; Roads Operations Cash Fund; created; use; investment.
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.

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.

(6) A producer, supplier, distributor, wholesaler, or importer shall not be entitled to the commission provided under subsection (1) or (2) of this section for the amount of any understatement of or refund of any such taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

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; Laws 2012, LB727, § 16.
Operative date April 12, 2012.

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 twentieth 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; Laws 2012, LB727, § 17. Operative date July 1, 2012.

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 State Energy Office and shall be an 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; Laws 2012, LB727, § 18.
Operative date April 12, 2012.

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, (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, and (8) for purchasing from political or governmental subdivisions or public corporations, pursuant to section 39-1307, any federal-aid transportation funds available to such entities.

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; Laws 2011, LB98, § 2.

Cross References

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

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 an electronic 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; Laws 2012, LB782, § 88.
Operative date July 19, 2012.

ARTICLE 5
TRANSPORTATION OF FUELS

Section
66-525. Carriers; transportation companies; shipments of motor fuel or diesel fuel into or out of state; reports; contents.

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, pipe-

line 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 twentieth 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; Laws 2012, LB727, § 19.
Operative date July 1, 2012.

ARTICLE 6

DIESEL, ALTERNATIVE, AND COMPRESSED FUEL TAXES

(c) ALTERNATIVE FUEL TAX

(d) COMPRESSED FUEL TAX

(c) ALTERNATIVE FUEL TAX

66-684 Repealed. Laws 2011, LB 289, § 41.

66-685 Repealed. Laws 2011, LB 289, § 41.

66-686 Repealed. Laws 2011, LB 289, § 41.

66-687 Repealed. Laws 2011, LB 289, § 41.

66-688 Repealed. Laws 2011, LB 289, § 41.

66-691 Repealed. Laws 2011, LB 289, § 41.

66-694 Repealed. Laws 2011, LB 289, § 41.

66-695 Repealed. Laws 2011, LB 289, § 41.

(d) COMPRESSED FUEL TAX

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 twentieth 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; Laws 2012, LB727, § 20. Operative date July 1, 2012.

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.

(4) A retailer shall not be entitled to a commission provided under subsection (1) of this section for the amount of any understatement or refund of any such

taxes collected as a result of a final assessment occurring pursuant to a notice of deficiency determination under section 66-722.

Source: Laws 1995, LB 182, § 17; Laws 1998, LB 1161, § 22; Laws 2012, LB727, § 21.
Operative date April 12, 2012.

ARTICLE 7

MOTOR FUEL TAX ENFORCEMENT AND COLLECTION

Section
66-712. Terms, defined.
66-719. Prohibited acts; financial penalties; department; powers; waiver of interest.
66-721. Notices; mailing requirements.
66-722. Returns; review by department; deficiency determination; procedure.
66-737. Repealed. Laws 2012, LB 727, § 58.
66-738. Motor Fuel Tax Enforcement and Collection Division; created within Department of Revenue; powers and duties; funding; contracts authorized.
66-739. Motor Fuel Tax Enforcement and Collection Cash Fund; created; use; investment.

66-712 Terms, defined.

For purposes of the Compressed Fuel Tax Act, the International Fuel Tax Agreement Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736:

(1) Department means the Motor Fuel Tax Enforcement and Collection Division of the Department of Revenue, except that for purposes of enforcement of the International Fuel Tax Agreement Act, 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 Compressed Fuel Tax Act and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, except that for purposes of enforcement of the International Fuel Tax Agreement Act, motor fuel laws means the provisions of the International Fuel Tax Agreement Act and sections 66-712 to 66-736; 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 66-736, 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; Laws 2011, LB289, § 35; Laws 2012, LB727, § 22.
Operative date July 1, 2012.

Cross References

Compressed Fuel Tax Act, see section 66-697.
International Fuel Tax Agreement Act, see section 66-1401.

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) The department may in its discretion waive any and all interest incurred upon sufficient showing by the taxpayer that such interest should be waived.

(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; Laws 2010, LB879, § 4.

66-721 Notices; mailing requirements.

All notices by the department required by the motor fuel laws shall be mailed to the address of the licensee or permitholder as shown on the records of the department.

Source: Laws 1991, LB 627, § 116; Laws 2012, LB727, § 23.
Operative date April 12, 2012.

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 twentieth 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; Laws 2012, LB727, § 24.
Operative date July 1, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

66-737 Repealed. Laws 2012, LB 727, § 58.

Operative date July 1, 2012.

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 the Compressed Fuel Tax Act, the Petroleum Release Remedial Action Act, the State Aeronautics Department Act, and sections 66-482 to 66-4,149, 66-501 to 66-531, and 66-712 to 66-736, 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 audit by the Auditor of Public Accounts, at such time as he or she determines necessary, which audit shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst by October 1 of the year under audit. 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 acts 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; Laws 2011, LB289, § 36; Laws 2011, LB337, § 4; Laws 2012, LB727, § 25.
Operative date July 1, 2012.

Cross References

Compressed Fuel Tax Act, see section 66-697.
Petroleum Release Remedial Action Act, see section 66-1501.
State Aeronautics Department Act, see section 3-154.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Motor Fuel Tax Enforcement and Collection 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 1991, LB 627, § 142; Laws 1994, LB 1066, § 53; Laws 1994, LB 1160, § 110; Laws 2009, First Spec. Sess., LB3, § 40.

Cross References

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

ARTICLE 9

SOLAR ENERGY AND WIND ENERGY

Section
66-901. Legislative findings.
66-902. Definitions; where found.
66-902.01. Decommissioning security, defined.
66-907. Repealed. Laws 2012, LB 828, § 22.
66-909. Solar agreement, defined.
66-909.03. Repealed. Laws 2012, LB 828, § 22.
66-909.04. Wind agreement, defined.
66-910. Solar agreement; wind agreement; manner granted.
66-911. Repealed. Laws 2012, LB 828, § 22.
66-911.01. Solar agreement; wind agreement; land right or option to secure a land right; requirements.
66-912. Solar agreement; wind agreement; how enforced.
66-912.01. Solar agreement; wind agreement; initial term; limitation; termination.
66-912.02. Interest in wind or solar resource; restriction on severance from surface estate.

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 energy and wind energy as provided in sections 66-901 to 66-914.

Source: Laws 1979, LB 353, § 1; Laws 1997, LB 140, § 1; Laws 2012, LB828, § 1.
Effective date March 8, 2012.

66-902 Definitions; where found.

For purposes of sections 66-901 to 66-914, unless the context otherwise requires, the definitions found in sections 66-902.01 to 66-909.04 apply.

Source: Laws 1979, LB 353, § 2; Laws 1997, LB 140, § 2; Laws 2012, LB828, § 2.
Effective date March 8, 2012.

66-902.01 Decommissioning security, defined.

Decommissioning security means a security instrument that is posted or given by a wind developer to a municipality or other governmental entity to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system.

Source: Laws 2012, LB828, § 3.
Effective date March 8, 2012.

66-907 Repealed. Laws 2012, LB 828, § 22.

66-909 Solar agreement, defined.

Solar agreement 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; Laws 2012, LB828, § 5.
Effective date March 8, 2012.

66-909.03 Repealed. Laws 2012, LB 828, § 22.

66-909.04 Wind agreement, defined.

Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, lease, or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for or to develop a wind energy conversion system on such land or in such air space.

Source: Laws 2012, LB828, § 4.
Effective date March 8, 2012.

66-910 Solar agreement; wind agreement; manner granted.

Any property owner may grant a solar agreement or wind agreement in the same manner and with the same effect as a conveyance of any other interest in real property.

Source: Laws 1979, LB 353, § 10; Laws 1997, LB 140, § 6; Laws 2012, LB828, § 6.
Effective date March 8, 2012.

66-911 Repealed. Laws 2012, LB 828, § 22.

66-911.01 Solar agreement; wind agreement; 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 agreement or a wind agreement 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 or local requirements related to decommissioning; and

(7) The terms or conditions, if any, under which the interest may be revised or terminated.

An abstract under this section need not include the items described in subdivisions (4) through (7) of this section.

Source: Laws 1997, LB 140, § 8; Laws 2009, LB568, § 5; Laws 2012, LB828, § 7.
Effective date March 8, 2012.

66-912 Solar agreement; wind agreement; how enforced.

A solar agreement or wind agreement may be enforced by injunction or proceedings in equity or other civil action.

Source: Laws 1979, LB 353, § 12; Laws 1997, LB 140, § 9; Laws 2012, LB828, § 8.
Effective date March 8, 2012.

66-912.01 Solar agreement; wind agreement; initial term; limitation; termination.

A solar agreement or wind agreement shall run with the land benefited and burdened and shall terminate upon the conditions stated in the solar agreement or wind agreement. The initial term of a solar agreement or wind agreement shall not exceed forty years, except that the parties to a solar agreement or wind agreement may extend or renew the initial term by mutual written agreement. A wind agreement shall terminate if development of a wind energy conversion system has not commenced within ten years after the effective date of the wind agreement, except that this period may be extended by mutual agreement of the parties to the wind agreement.

Source: Laws 2012, LB828, § 9.
Effective date March 8, 2012.

66-912.02 Interest in wind or solar resource; restriction on severance from surface estate.

No interest in any wind or solar resource located on a tract of land and associated with the production or potential production of wind or solar energy on the tract of land may be severed from the surface estate.

Source: Laws 2012, LB828, § 10.
Effective date March 8, 2012.

ARTICLE 10

ENERGY CONSERVATION

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

Section
66-1012. Act, how cited.
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.
66-1019.01. Act; termination date.

(b) LOW-INCOME HOME ENERGY CONSERVATION ACT

66-1012 Act, how cited.

Sections 66-1012 to 66-1019.01 shall be known and may be cited as the Low-Income Home Energy Conservation Act.

Source: Laws 2008, LB1001, § 1; Laws 2011, LB385, § 1.
Termination date July 1, 2019.

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 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;

(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; and

(6) Fiscal year means the state fiscal year which is the period July 1 to the following June 30.

Source: Laws 2008, LB1001, § 3; Laws 2011, LB385, § 2.
Termination date July 1, 2019.

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 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 funds remitted by the eligible entity and state matching funds as provided in subsection (2) of this section.

(2)(a) No later than September 1, 2012, and no later than September 1 of each even-numbered year thereafter, any eligible entity planning on administering a program of eligible energy conservation improvements shall notify the department of the amount the entity plans to remit pursuant to subdivision (2)(b) of this section for each of the next two fiscal years.

(b) Commencing July 1, 2014, any eligible entity may remit up to fifty thousand dollars per fiscal year for deposit in the subaccount of the fund for that eligible entity. The amount deposited shall be matched from the amount transferred by the state to the fund as provided in subsection (3) of this section and deposited in the subaccount of the eligible entity. Amounts for deposit shall be accepted on a first-come, first-served basis, and when a total of two hundred fifty thousand dollars of deposits from eligible entities has been received in a fiscal year, no further deposits shall be accepted. Any deposits received from eligible entities after the dollar limit has been reached shall be returned to the eligible entity. Any nonencumbered amount remaining in the fund at the end of the fiscal year shall be transferred to the General Fund.

(3) Commencing July 1, 2014, and each fiscal year thereafter, it is the intent of the Legislature to transfer two hundred fifty thousand dollars from the General Fund to the Energy Conservation Improvement Fund for the purposes of this section.

(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; Laws 2011, LB385, § 3.
Termination date July 1, 2019.

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 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; Laws 2011, LB385, § 4.
Termination date July 1, 2019.

66-1019.01 Act; termination date.

The Low-Income Home Energy Conservation Act terminates on July 1, 2019.

Source: Laws 2011, LB385, § 5.
Termination date July 1, 2019.

ARTICLE 13
ETHANOL

Section
66-1336. Administrator; appointed; duties.
66-1345. Ethanol Production Incentive Cash Fund; created; use; investment; transfers; duties.
66-1345.01. Corn and grain sorghum; excise tax; procedure.
66-1345.02. Excise tax; records required; remittance of tax; duties; calculations required by Department of Agriculture; report.
66-1345.04. Transfer to Ethanol Production Incentive Cash Fund; legislative intent.

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 submitted to the Clerk of the Legislature shall be submitted electronically. 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 an electronic copy of such report by making a request for it to the board.

Source: Laws 1993, LB 364, § 7; Laws 2012, LB782, § 89.
Operative date July 19, 2012.

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, (f) credited to the Ethanol Production Incentive Cash Fund pursuant to sections 66-489, 66-726, 66-1345.04, and 66-1519, and (g) directed to be transferred pursuant to section 84-612.

(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 subsection (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 one-half of the unexpended and unobligated funds, including all subsequent investment interest, from the Ethanol Production Incentive Cash Fund to the Nebraska Corn Development, Utilization, and Marketing Fund and the Grain Sorghum Development, Utilization, and Marketing Fund in the same proportion as funds were collected pursuant to section 66-1345.01 from corn and grain sorghum. The Department of Agriculture shall assist the State Treasurer in determining the amounts to be transferred to the funds. The State Treasurer shall transfer the remaining one-half of the unexpended and unobligated funds to the General 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 electronically 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; Laws 2010, LB689, § 2; Laws 2011, LB379, § 1; Laws 2012, LB782, § 90.
Operative date July 19, 2012.

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. 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; Laws 2010, LB689, § 3.

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.

(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.

Source: Laws 1995, LB 377, § 3; Laws 1999, LB 605, § 4; Laws 2001, LB 536, § 5; Laws 2007, LB322, § 15; Laws 2007, LB701, § 29; Laws 2010, LB689, § 4.

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;

(k) For fiscal year 2010-11, $3,000,000 in addition to the other amounts in this section; and

(l) For fiscal years 2011-12 and 2012-13, amounts totaling up to $1,000,000 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; Laws 2011, LB378, § 24; Laws 2012, LB969, § 7.
Operative date April 3, 2012.

ARTICLE 14

INTERNATIONAL FUEL TAX AGREEMENT ACT

Section
66-1405. Tax rate; how determined; setoff authorized.
66-1406.02. License; director; powers.

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 the Compressed Fuel Tax Act and sections 66-482 to 66-4,149. The Department of Revenue in administering the Compressed Fuel Tax Act and sections 66-482 to 66-4,149 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; Laws 2011, LB289, § 37.

Cross References

Compressed Fuel Tax Act, see section 66-697.

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 regular United States 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; Laws 2012, LB751, § 47.
Operative date July 19, 2012.

Cross References

Administrative Procedure Act, see section 84-920.
International Registration Plan Act, see section 60-3,192.

ARTICLE 15

PETROLEUM RELEASE REMEDIAL ACTION

Section
66-1501. Act, how cited.
66-1519. Petroleum Release Remedial Action Cash Fund; created; use; investment.
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.
66-1523. Reimbursement; amount; limitations; Prompt Payment Act applicable.
66-1525. Reimbursement; application; procedure; State Fire Marshal; duties; reduction of reimbursement; notification required.
66-1529.02. Remedial actions by department; third-party claims; recovery of expenses.
66-1532. Repealed. Laws 2010, LB 832, § 3.

66-1501 Act, how cited.

Sections 66-1501 to 66-1531 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; Laws 2010, LB832, § 1.

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, 2016, 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; and (h) the direct and indirect costs incurred by the department in responding to spills and other environmental emergencies related to petroleum or petroleum products.

(3) Transfers may be made from the Petroleum Release Remedial Action Cash Fund to the General 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; Laws 2011, LB2, § 6; Laws 2011, LB29, § 2; Laws 2012, LB873, § 1.
Operative date June 30, 2012.

Cross References

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

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 twentieth 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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Petroleum Release Remedial Action Collection 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; Laws 2009, First Spec. Sess., LB3, § 41; Laws 2012, LB727, § 26.
Operative date July 1, 2012.

Cross References

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

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, 2016, 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, 2016, 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, 2016.

(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; Laws 2012, LB873, § 2.
Operative date June 30, 2012.

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, 2016, 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; Laws 2012, LB873, § 3.
Operative date June 30, 2012.

Cross References

Environmental Protection Act, see section 81-1532.
Petroleum Products and Hazardous Substances Storage and Handling Act, see section 81-15,117.

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, 2016, 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 suspect-

ed 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; Laws 2012, LB873, § 4.
Operative date June 30, 2012.

66-1532 Repealed. Laws 2010, LB 832, § 3.

ARTICLE 18

STATE NATURAL GAS REGULATION ACT

Section
66-1801. Act, how cited.
66-1808. Rate changes; term or condition of service; when effective.
66-1831. Public advocate; powers.
66-1839. Municipal Rate Negotiations Revolving Loan Fund; created; use; administration; audit; investment; loan repayment.
66-1868. Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

66-1801 Act, how cited.

Sections 66-1801 to 66-1868 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; Laws 2012, LB1115, § 9.
Effective date July 19, 2012.

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. The commission may not suspend a tariff filed pursuant to section 66-1868.

(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; Laws 2012, LB1115, § 11.
Effective date July 19, 2012.

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 except for tariffs subject to section 66-1868;

(b) Petition for relief, request, initiate, and intervene in any proceeding before the commission concerning such utilities except for tariffs subject to section 66-1868;

(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 except for tariffs subject to section 66-1868;

(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 except for tariffs subject to section 66-1868; and

(e) Make motions for rehearing or reconsideration, appeal, or seek judicial review of any order or decision of the commission regarding jurisdictional utilities except for tariffs subject to section 66-1868.

(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; Laws 2012, LB1115, § 12.
Effective date July 19, 2012.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. 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; Laws 2009, First Spec. Sess., LB3, § 42.

Cross References

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

66-1868 Rural infrastructure development; rural infrastructure surcharge tariff; filing in additional filings; agreement; contents; gas supply cost adjustment tariff; collection; refund; billing.

(1) Prior to undertaking rural infrastructure development pursuant to sections 66-2101 to 66-2107, a jurisdictional utility shall file a rural infrastructure surcharge tariff with the commission consistent with the agreement negotiated pursuant to subsection (2) of this section. The filing may be a joint filing with other jurisdictional utilities and may affect more than one electing city. With the rural infrastructure surcharge tariff, the jurisdictional utility shall file:

(a) A map of the unserved or underserved area it proposes to serve;

(b) A description of the project;

(c) Information regarding support of the project from individuals, businesses, or government entities;

(d) An executed agreement with the electing city or cities; and

(e) The factors the jurisdictional utility has considered pursuant to section 66-2105.

(2) An agreement submitted pursuant to subdivision (1)(d) of this section may include, but shall not be limited to, terms and conditions that address the following:

(a) Inclusion of representatives of the following possible parties: The electing city or cities; the jurisdictional utility; an interstate natural gas pipeline company; current and prospective customers; and any other interested parties;

(b) Impact on other cities, jurisdictional utilities, interstate natural gas pipeline companies, and current and prospective customers;

(c) The possibility of a joint filing with other jurisdictional utilities and agreements with other electing cities;

(d) The factors set forth in section 66-2105;

(e) The capacity of the project;

(f) The potential to enhance demand for natural gas capacity created by the project;

(g) Ownership of the project or parts of the project;

(h) Participation by the electing city or cities and other parties to determine the customer or customers which will receive the additional natural gas capacity created by the project;

(i) Any matters involving rights-of-way and easements and fees, taxes, and surcharges related thereto;

(j) The payment of costs of the rural infrastructure development, including, but not limited to: (i) Proposed rate increases for customers of the electing city or cities and within a city's extraterritorial zoning jurisdiction, including direct customers and residential or commercial customers; (ii) any city funds, including funds from the Local Option Municipal Economic Development Act, which may be used to pay for consultants, issue bonds, lower proposed rate increases, or otherwise finance the rural infrastructure development project; and (iii) contributions from direct customers or other sources, including, but not limited to, state or federal grants or loans; and

(k) Reimbursement of costs to the electing city or cities or ratepayers of the electing city or cities, including ratepayers in a city's extraterritorial zoning jurisdiction.

(3) A jurisdictional utility may file a gas supply cost adjustment tariff with the commission, consistent with the agreement negotiated pursuant to subsection

(2) of this section, that adjusts the jurisdictional utility's residential or commercial customer rates to provide for the recovery of, but not limited to, costs related to ongoing gas supply, transmission, pipeline capacity, storage, financial instruments, or interstate pipeline charges or other related costs for rural infrastructure development.

(4) A rural infrastructure surcharge tariff or gas supply cost adjustment tariff shall become effective immediately upon filing with the commission of all items required under this section.

(5) Any rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, applied to high-volume customers obtaining direct service and to general system residential or commercial customers subject to jurisdiction of the commission shall be calculated and implemented in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(6) The rural infrastructure surcharge tariff or gas supply cost adjustment tariff, and any future changes thereto, shall first be applied to customers receiving direct service from the rural infrastructure development. If such resulting rates are uneconomic or commercially unreasonable to those customers, the jurisdictional utility shall recover the costs above the rates determined by the jurisdictional utility to be economical or commercially reasonable from general system residential or commercial customers in the electing city in a manner proposed by the jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section.

(7) A jurisdictional utility may collect a rural infrastructure surcharge or gas supply cost adjustment until costs are fully recovered even if the jurisdictional utility has not filed for or is the subject of a new general rate proceeding within that period of time.

(8) No more than once annually, the commission may initiate a proceeding and conduct a public hearing to determine whether the rural infrastructure surcharge of a jurisdictional utility reflects the actual costs of the rural infrastructure development and to reconcile any amounts collected from ratepayers with actual costs incurred by the jurisdictional utility. The commission shall make a decision as to whether the rural infrastructure surcharge reflects actual costs within ninety days after initiating the proceeding. The rural infrastructure surcharge shall be presumed to reflect the actual costs of the rural infrastructure development, unless the contrary is shown.

(9) Any refund, including interest thereon, shall be made to presently served ratepayers in the electing city by an appropriate adjustment shown as a credit on subsequent bills during a period selected by the jurisdictional utility, not to exceed twelve months, or by a cash refund at the option of the jurisdictional utility. The jurisdictional utility shall not be required to provide 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.

(10) A jurisdictional utility is not required to proceed with rural infrastructure development in an unserved or underserved area unless required to do so under an agreement with an electing city or cities.

(11) A jurisdictional utility utilizing a rural infrastructure surcharge shall separately identify the surcharge on each customer's bill using language sufficiently clear to identify the purpose of the surcharge.

(12) For purposes of this section:

(a) City means a city of the first or second class or village;

(b) Electing city means a city that has elected through its governing body to benefit from additional natural gas supply made possible by a rural infrastructure development and has executed an agreement with the jurisdictional utility serving the city and the city's extraterritorial zoning jurisdiction to provide the additional natural gas supply in accordance with terms and conditions mutually acceptable to the city and jurisdictional utility consistent with the agreement negotiated pursuant to subsection (2) of this section;

(c) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline's system for the transportation of natural gas necessary to supply unserved or underserved areas; and

(d) Rural infrastructure surcharge means a surcharge through which a jurisdictional utility may recover costs for rural infrastructure development.

Source: Laws 2012, LB1115, § 10.
Effective date July 19, 2012.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

ARTICLE 19
WIND MEASUREMENT EQUIPMENT

Section
66-1901. Wind measurement equipment; registration with Department of Aeronautics; data available to public; removal of equipment; report required.

66-1901 Wind measurement equipment; registration with Department of Aeronautics; data available to public; removal of equipment; report required.

(1) All wind measurement equipment associated with the development or study of wind-powered electric generation, whether owned or leased, shall be registered with the Department of Aeronautics if the equipment is at least fifty feet in height above the ground and is located outside the boundaries of any incorporated city or village.

(2)(a) On or before January 1, 2013, all such equipment installed prior to July 15, 2010, shall be either lighted, marked with balls at least twenty-one inches in diameter, painted, or modified in some other manner so it is recognizable in clear air during daylight hours from a distance of not less than two thousand feet.

(b) All such equipment installed on or after July 15, 2010, shall be either lighted or painted.

(3) The person or firm that owns or leases equipment described in subsection (1) of this section shall register it within fifteen days after July 15, 2010, in the case of equipment installed before such date or within thirty days after

installation in the case of equipment installed on or after such date. Such registration shall include the equipment's exact location and height above the ground, the name of the person or firm registering the equipment, the method used to make the equipment recognizable as provided in subsection (2) of this section, and the name and telephone number of a contact person for any issues related to such equipment. Within five days after receiving such registration, the department shall make all data included in the registration available to the public.

(4) Any person or firm that removes equipment subject to the registration requirements of this section shall report the removal to the department within thirty days after such removal.

Source: Laws 2010, LB1048, § 8.

ARTICLE 20

NATURAL GAS FUEL BOARD

Section

66-2001 Natural Gas Fuel Board; established; members; terms; vacancy; meetings; duties; State Energy Office; administrative support.

(1) The Natural Gas Fuel Board is hereby established to advise the State Energy Office regarding the promotion of natural gas as a motor vehicle fuel in Nebraska. The board shall provide recommendations relating to:

(a) Distribution, infrastructure, and workforce development for natural gas to be used as a motor vehicle fuel;

(b) Loans, grants, and tax incentives to encourage the use of natural gas as a motor vehicle fuel for individuals and public and private fleets; and

(c) Such other matters as it deems appropriate.

(2) The board shall consist of eight members appointed by the Governor. The Governor shall make the initial appointments by October 1, 2012. The board shall include:

(a) One member representing a jurisdictional utility as defined in section 66-1802;

(b) One member representing a metropolitan utilities district;

(c) One member representing the interests of the transportation industry in the state;

(d) One member representing the interests of the business community in the state, specifically fueling station owners or operators;

(e) One member representing natural gas marketers or pipelines in the state;

(f) One member representing automobile dealerships or repair businesses in the state;

(g) One member representing labor interests in the state; and

(h) One member representing environmental interests in the state, specifically air quality.

(3) All appointments shall be subject to the approval of a majority of the members of the Legislature if the Legislature is in session, and if the Legislature

is not in session, any appointment to fill a vacancy shall be temporary until the next session of the Legislature, at which time a majority of the members of the Legislature may approve or disapprove such appointment.

(4) Members shall be appointed for terms of four years, except that of the initial appointees the terms of the members representing a jurisdictional utility and a metropolitan utilities district shall expire on September 30, 2015, the terms of the members representing the transportation industry, the business community, natural gas marketers or pipelines, and automobile dealerships or repair businesses shall expire on September 30, 2014, and the terms of the members representing labor and environmental interests shall expire on September 30, 2013. Members may be reappointed. A member shall serve until a successor is appointed and qualified.

(5) 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.

(6) The board shall meet at least once annually.

(7) The members shall not be reimbursed for expenses associated with carrying out their duties as members.

(8) The State Energy Office shall provide administrative support to the board as necessary so that the board may carry out its duties.

Source: Laws 2012, LB1087, § 1.
Effective date July 19, 2012.

ARTICLE 21

RURAL INFRASTRUCTURE DEVELOPMENT

Section
66-2101. Legislative declaration.
66-2102. Terms, defined.
66-2103. City; utilization of funds; powers.
66-2104. Rural infrastructure development; jurisdictional utility; powers.
66-2105. Jurisdictional utility; consider factors.
66-2106. Jurisdictional utility; applicability of other law.
66-2107. Sections; applicability.

66-2101 Legislative declaration.

The Legislature declares it is the public policy of this state to provide adequate natural gas pipeline facilities and service in order to expand and diversify the Nebraska economy resulting in increased employment, new and expanded businesses and industries, and new and expanded sources of tax revenue.

Source: Laws 2012, LB1115, § 1.
Effective date July 19, 2012.

66-2102 Terms, defined.

For purposes of sections 66-2101 to 66-2107:

(1) City means a city of the first or second class or village;

(2) Jurisdictional utility has the same meaning as in section 66-1802;

(3) Natural gas pipeline facility means a pipeline, pump, compressor, or storage or other facility, structure, or property necessary, useful, or incidental in the transportation of natural gas; and

(4) Rural infrastructure development means planning, financing, development, acquisition, construction, owning, operating, and maintaining a natural gas pipeline facility or entering into agreements with an interstate pipeline for existing, new, or expanded capacity on the interstate pipeline's system for the transportation of natural gas necessary to supply unserved or underserved areas; and

(5) Unserved or underserved area means an area in this state lacking adequate natural gas pipeline capacity to meet the demand of existing or potential end-use customers as determined by the jurisdictional utility presently serving the area. Unserved or underserved area does not include any area within a city of the primary or metropolitan class.

Source: Laws 2012, LB1115, § 2.
Effective date July 19, 2012.

66-2103 City; utilization of funds; powers.

A city that has been authorized to utilize funds pursuant to the Local Option Municipal Economic Development Act for purposes of sections 66-1868 and 66-2101 to 66-2107 shall have all necessary powers to implement and to carry out its powers and duties under such sections.

Source: Laws 2012, LB1115, § 3.
Effective date July 19, 2012.

Cross References

Local Option Municipal Economic Development Act, see section 18-2701.

66-2104 Rural infrastructure development; jurisdictional utility; powers.

A jurisdictional utility may undertake rural infrastructure development necessary to supply unserved or underserved areas in or adjacent to areas presently served by the jurisdictional utility and not served by another jurisdictional utility.

Source: Laws 2012, LB1115, § 4.
Effective date July 19, 2012.

66-2105 Jurisdictional utility; consider factors.

Prior to undertaking rural infrastructure development, a jurisdictional utility shall consider factors such as the economic impact to the area, economic feasibility, whether other options may be more in the public interest, such as utilization of any existing or planned interstate or intrastate pipeline facilities of private persons, companies, firms, or corporations, and the likelihood of successful completion and ongoing operation of the facility.

Source: Laws 2012, LB1115, § 5.
Effective date July 19, 2012.

66-2106 Jurisdictional utility; applicability of other law.

A jurisdictional utility shall not be subject to the State Natural Gas Regulation Act to the extent it is exercising power granted in section 66-2104 except as specifically provided otherwise but shall be subject to sections 75-501 to 75-503.

Source: Laws 2012, LB1115, § 6.
Effective date July 19, 2012.

Cross References

State Natural Gas Regulation Act, see section 66-1801.

66-2107 Sections; applicability.

Sections 66-2101 to 66-2106 do not apply to a natural gas utility owned or operated by a city or a metropolitan utilities district.

Source: Laws 2012, LB1115, § 7.
Effective date July 19, 2012.

CHAPTER 67
PARTNERSHIPS

ARTICLE 2
NEBRASKA UNIFORM LIMITED PARTNERSHIP ACT

PART I. GENERAL PROVISIONS

PART II. FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

PART XI. MISCELLANEOUS

PART XII. CONVERSION

PART I
GENERAL PROVISIONS

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 87-219.01;

(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; Laws 2011, LB462, § 5.

PART II

FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

67-248.02 Merger or consolidation; procedure; effect.

(a)(1) A domestic limited partnership may merge or consolidate with one or more domestic or foreign limited partnerships or other business entities pursuant to an agreement or plan of merger or consolidation adopted in accordance with this section setting forth:

(A) The name of each limited partnership or business entity that is a party to the merger or consolidation;

(B) The name, type of business entity, and jurisdiction of formation of the surviving limited partnership or business entity into which the limited partnership and such other business entities will merge or the name, type of business entity, and jurisdiction of formation of the new business entity resulting from the consolidation of the limited partnership and the other business entities that are party to a plan of consolidation;

(C) The terms and conditions of the merger or consolidation, including the manner and basis of converting the interests of the partners, members, or shareholders, as the case may be, of each limited partnership or business entity that is a party to such merger or consolidation into interests or obligations of the surviving or new limited partnership or business entity resulting therefrom or into money or other property in whole or in part; and

(D) Such other provisions as the merging or consolidating limited partnerships or business entities may desire.

(2) Notwithstanding the provisions of section 67-450, an agreement or plan of merger or consolidation shall be approved (A) by each domestic limited partnership that is a party thereto in accordance with the voting provisions of its partnership agreement or, if not so provided, by each general partner and by limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the 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 in the aggregate more than fifty percent of the then current percentage of other

interest in the profits of such limited partnership owned by all of the limited partners in each such class or group and (B) by each other business entity that is a party thereto in accordance with the laws under which such business entity was formed and in accordance with the applicable requirements of its organizational documents. Notwithstanding such approval, at any time before the articles of merger or consolidation are filed, an agreement or plan of merger or of consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in such agreement or plan of merger or of consolidation.

(b) As used in this section:

(1) Business entity means a domestic or foreign corporation; a domestic or foreign partnership; a domestic or foreign limited partnership; or a domestic or foreign limited liability company; and

(2) Organizational documents includes:

(A) For a domestic or foreign corporation, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute or comparable records as provided in its governing statute;

(B) For a domestic or foreign partnership, its partnership agreement;

(C) For a domestic or foreign limited partnership, its certificate of limited partnership and partnership agreement; and

(D) For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement or comparable records as provided in its governing statute.

(c) After a plan of merger or consolidation with respect to a domestic limited partnership is approved in accordance with this section, the surviving or resulting business entity shall deliver to the Secretary of State for filing articles of merger or consolidation setting forth:

(1) The plan of merger or consolidation;

(2) A statement to the effect that the requisite approval was obtained by the partners, members, or shareholders, as the case may be, of each business entity that is a party to such plan of merger or consolidation; and

(3) If the surviving or resulting business entity of a merger or consolidation is not a domestic business entity, an agreement by the surviving or resulting business entity 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) If the surviving or resulting business entity of a merger or consolidation under this section is a domestic corporation, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-20,128 to 21-20,134. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic limited liability company, then the merger or consolidation shall become effective and shall have the effects provided in sections 21-170 to 21-174 or 21-2647 to 21-2652, as the case may be. If the surviving or resulting business entity of a merger or consolidation under this section is a domestic partnership other than a limited partnership, then the merger or consolidation shall become effective and shall have the effects provided in sections 67-450 to 67-452. If the surviving or resulting

business entity of a merger or consolidation is a domestic limited partnership, then:

(1) The merger or consolidation shall take effect on the later of:

(A) The approval of the plan or agreement of merger or consolidation as provided in this section;

(B) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger or consolidation; or

(C) Any effective date specified in the plan or agreement of merger or consolidation;

(2) The several limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation shall be a single limited partnership which, in the case of a merger, shall be that limited partnership designated in the merger plan or agreement as the surviving limited partnership and, in the case of a consolidation, shall be the new limited partnership provided for in the consolidation plan or agreement;

(3) The separate existence of all limited partnerships and other business entities which are parties to the plan or agreement of merger or consolidation, except the surviving or new limited partnership, shall cease;

(4) The surviving or new limited partnership 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;

(5) 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 other business entities, subject to the Nebraska Uniform Limited Partnership Act. 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 and other business entities, 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 business entities. The title to any real property or any interest in such property vested in any of such merging or consolidating business entities shall not revert or be in any way impaired by reason of such merger or consolidation;

(6) Such surviving or new limited partnership shall be responsible and liable for all the liabilities and obligations of each of the limited partnerships and other business entities so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such limited partnerships or other business entities 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 or other business entities shall be impaired by such merger or consolidation; and

(7) The equity interests or securities of each limited partnership or other business entity which is a party to the plan or agreement of 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

interests or securities shall thereafter be entitled only to the cash, property interests, or securities into which they shall have been converted in accordance with the terms of the plan or agreement of merger or consolidation, subject to any rights under sections 21-20,137 to 21-20,150, the Limited Liability Company Act, or the Nebraska Uniform Limited Liability Company Act or other applicable law.

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; Laws 2010, LB888, § 101; Laws 2012, LB1018, § 9.
Effective date July 19, 2012.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

PART XI

MISCELLANEOUS

67-296 Act, how cited.

Sections 67-233 to 67-2,100 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; Laws 2012, LB1018, § 14.
Effective date July 19, 2012.

PART XII

CONVERSION

67-297 Conversion; plan.

(a) A domestic limited partnership may convert into a domestic partnership pursuant to sections 67-446 to 67-453. A domestic limited partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic limited partnership into such other type of entity shall be made pursuant to a plan of conversion setting forth the information required in subdivision (b)(1) of this section and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic limited partnership by each general partner and by the limited partners who own in the aggregate more than a fifty percent interest in the profits of such limited partnership owned by all of the 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 in the aggregate more than fifty percent of the then current percentage of other interest in the profits of such limited partnership owned by all of the limited partners in each such class or group. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion.

(b)(1) A plan of conversion shall be in a record and shall include all of the following:

(A) The name of the domestic limited partnership before conversion;

(B) The name and form of the converted entity after conversion;

(C) The terms and conditions of the conversion, including the manner and basis for converting the interests of the limited partnership into any combination of obligations, interests, or rights in the converted organization or other consideration; and

(D) The organizational documents of the converted business entity.

(2) For purposes of this section, record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Source: Laws 2012, LB1018, § 10.
Effective date July 19, 2012.

67-298 Conversion; articles of conversion.

(a) After a plan of conversion is approved, a domestic limited partnership that is being converted shall deliver to the Secretary of State for filing articles of conversion which shall include all of the following:

(1) A statement that the domestic limited partnership has been converted into another entity;

(2) The name and form of the other entity and the jurisdiction of its governing statute;

(3) The date the conversion is effective under the governing statute of the converted entity;

(4) A statement that the conversion was approved as required by sections 67-446 to 67-453;

(5) A statement that the conversion was approved as required by the governing statute of the converted entity; and

(6) A domestic limited partnership converting into a foreign limited liability company shall deliver to the office of the Secretary of State for filing (A) a certificate which sets forth all of the information required to be in the certificate or other instrument of conversion filed pursuant to the laws under which the resulting foreign limited liability company is formed and (B) an agreement that the resulting foreign limited liability company 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 the former domestic corporation.

(b) The conversion shall become effective as provided by the Limited Liability Company Act, the Nebraska Uniform Limited Liability Company Act, the Uniform Partnership Act of 1998, or the governing statute of the foreign limited liability company.

Source: Laws 2012, LB1018, § 11.
Effective date July 19, 2012.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Uniform Limited Liability Company Act, see section 21-101.
Uniform Partnership Act of 1998, see section 67-401.

67-299 Effect of conversion.

(a) A domestic limited partnership that has been converted pursuant to the Nebraska Uniform Limited Partnership Act is for all purposes the same domestic limited partnership that existed before the conversion.

(b) When a conversion takes effect, all of the following apply:

(1) All property owned by the converting entity remains vested in the converted entity. The converting entity shall file a certificate of conversion in the office of the register of deeds for each county in which the converting entity owns real property. Such certificate of conversion shall be indexed against the real property owned;

(2) All debts, liabilities, and other obligations of the converting entity continue as obligations of the converted entity;

(3) An action or proceeding pending by or against the converting entity may be continued as if the conversion had not occurred;

(4) The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests, or other securities, or into cash or other property in accordance with the plan of conversion and the partners, limited partners, or interest holders of the converting entity are entitled only to the rights provided to them under the terms of the conversion and to any appraisal rights they may have under the organic law of the converting entity; and

(5) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting entity remain vested in the converted entity and, except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

(c) A converted entity that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting corporation if, before the conversion, the converting corporation was subject to suit in this state on the obligation.

Source: Laws 2012, LB1018, § 12.
Effective date July 19, 2012.

67-2,100 Existing conversion; effect.

Any conversion of a limited partnership to a limited liability company filed with the Secretary of State's office and existing on or before July 19, 2012, shall continue to be valid.

Source: Laws 2012, LB1018, § 13.
Effective date July 19, 2012.

ARTICLE 4

UNIFORM PARTNERSHIP ACT OF 1998

PART IX. CONVERSIONS AND MERGERS

PART X. LIMITED LIABILITY PARTNERSHIP

PART IX

CONVERSIONS AND MERGERS

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 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.

(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; Laws 2012, LB1018, § 15.
Effective date July 19, 2012.

PART X

LIMITED LIABILITY PARTNERSHIP

67-455 Name.

(1) The name of a limited liability partnership shall:

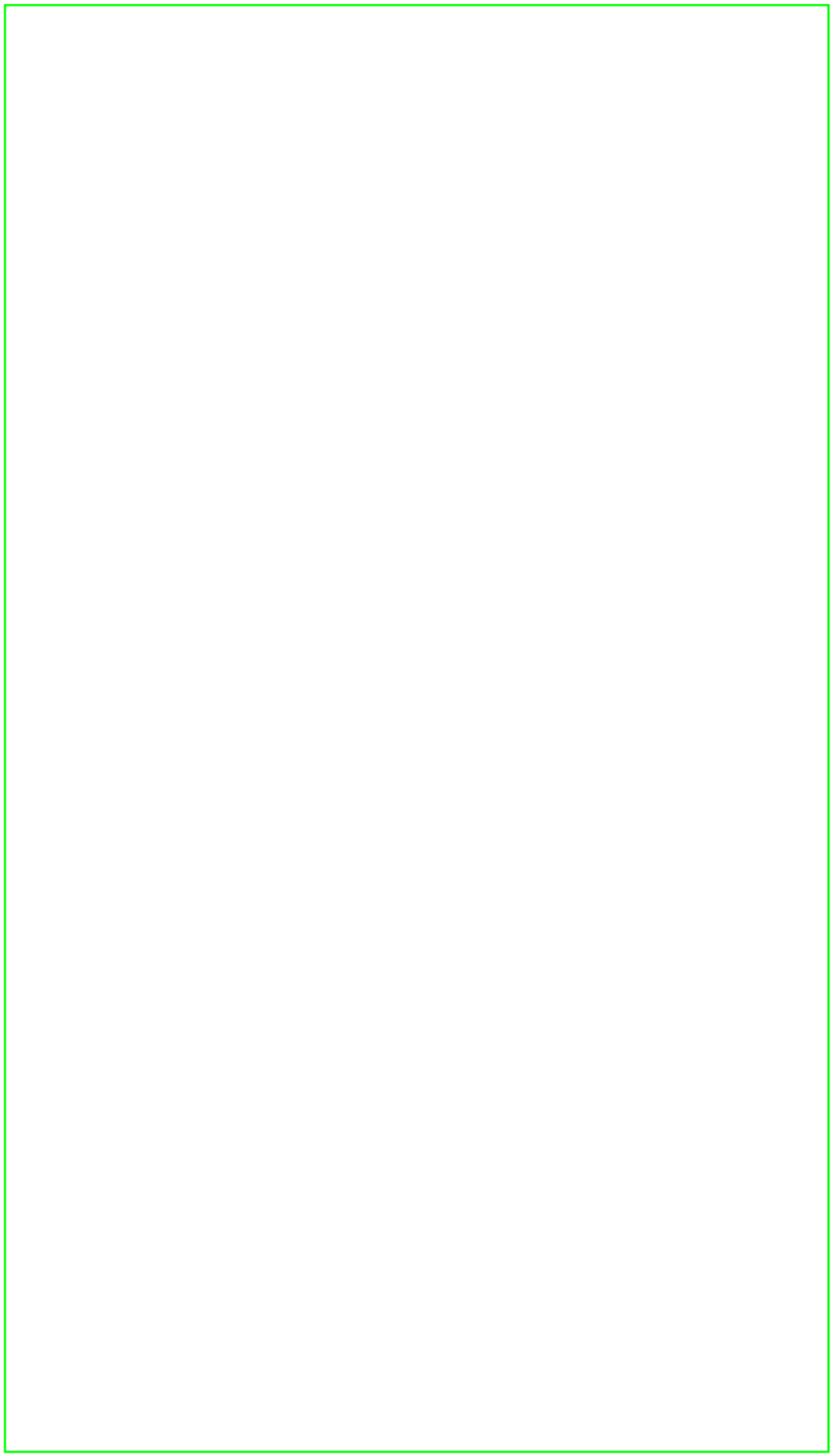
(a) End with ''registered limited liability partnership'', ''limited liability partnership'', ''R.L.L.P.'', ''RLLP'', ''L.L.P.'', or ''LLP'';

(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 87-219.01; 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; Laws 2011, LB462, § 6.



CHAPTER 68
PUBLIC ASSISTANCE

Article.
1. Miscellaneous Provisions. 68-130.
6. Social Security. 68-601 to 68-631.
7. Department Duties. 68-721.
9. Medical Assistance Act. 68-901 to 68-974.
10. Assistance, Generally.
(b) Procedure and Penalties. 68-1017 to 68-1017.02.
(h) Non-United-States Citizens. 68-1070. Repealed.
12. Social Services. 68-1202 to 68-1212.
15. Disabled Persons and Family Support.
(a) Disabled Persons and Family Support Act. 68-1518.
17. Welfare Reform.
(a) Welfare Reform Act. 68-1708 to 68-1735.04.
18. ICF/MR Reimbursement Protection Act. 68-1804.
19. Nursing Facility Quality Assurance Assessment Act. 68-1901 to 68-1930.
20. Children's Health and Treatment Act. 68-2001 to 68-2005.

ARTICLE 1
MISCELLANEOUS PROVISIONS

Section
68-130. Counties; maintain office and service facilities; review by department.

68-130 Counties; maintain office and service facilities; review by department.

(1) 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.

(2) The county board of any county may request in writing that the department review office and service facilities provided by the county for the department to determine if the department is able to reduce or eliminate office and service facilities within the county. The department shall respond in writing to such request within thirty days after receiving the request. The final decision with respect to maintaining, reducing, or eliminating office and service facilities in such county shall be made by the department, and the county may reduce or eliminate office and service facilities if authorized by such final decision.

Source: Laws 1982, LB 604, § 5; Laws 1983, LB 604, § 21; Laws 1996, LB 1044, § 289; Laws 2007, LB296, § 238; Laws 2011, LB234, § 1.

ARTICLE 6
SOCIAL SECURITY

Section
68-601. Social security; policy.
68-602. Terms, defined.
68-603. Agreement with federal government; state agency; approval of Governor.
68-604. Agreement with federal government; instrumentality jointly created with other state.

Section
68-605. Contributions by state employees; amount.
68-608. Coverage by political subdivisions; plan; modification; approval by state agency.
68-610. Coverage by political subdivisions; amount; payment.
68-612. Repealed. Laws 2010, LB 684, § 13.
68-613. Repealed. Laws 2010, LB 684, § 13.
68-620. Cities and villages; special levy; addition to levy limitations; contribution to state agency.
68-621. Terms, defined.
68-622. Referendum; persons eligible to vote; Governor; powers.
68-631. Metropolitan utilities district; social security; employees; separate group; referendum; effect.

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 68-631, 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; Laws 2010, LB684, § 1.

68-602 Terms, defined.

For purposes of sections 68-601 to 68-631, 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 68-631, 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 68-631. 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; Laws 2010, LB684, § 2.

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 68-631, 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 68-631 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; Laws 2010, LB684, § 3.

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 68-631.

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; Laws 2010, LB684, § 4.

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 68-631.

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; Laws 2010, LB684, § 5.

68-608 Coverage by political subdivisions; plan; modification; approval by state agency.

Unless otherwise provided for by sections 68-601 to 68-631, 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; Laws 2010, LB684, § 6.

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 68-631, 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; Laws 2010, LB684, § 7.

68-612 Repealed. Laws 2010, LB 684, § 13.

68-613 Repealed. Laws 2010, LB 684, § 13.

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 68-631 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; Laws 2010, LB684, § 8.

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 Employees 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 administrators, who are or may be members of the School Employees 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 68-631 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; Laws 2010, LB684, § 9; Laws 2011, LB509, § 13.

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 68-631.

Source: Laws 1955, c. 264, § 16, p. 822; Laws 1990, LB 820, § 11; Laws 2000, LB 1216, § 19; Laws 2010, LB684, § 10.

68-631 Metropolitan utilities district; social security; employees; separate group; referendum; effect.

Sections 68-601 to 68-631 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; Laws 2010, LB684, § 11.

ARTICLE 7
DEPARTMENT DUTIES

Section
68-721. Prenatal services; review of case authorized.

68-721 Prenatal services; review of case authorized.

A pregnant United States citizen and Nebraska resident with an income at or below one hundred eighty-five percent of the federal poverty level who is subject to a child support enforcement sanction may ask for her case to be reviewed by the chief executive officer of the Department of Health and Human Services to obtain prenatal services from state-only funds. If the chief executive officer, upon review of the circumstances of the case, determines, in his or her discretion, that circumstances relating to domestic violence warrant an exception to the existing rules and regulations governing medicaid coverage and sanctions, he or she may authorize prenatal services to be paid from state general funds. Prenatal services provided under this section shall not include abortion counseling, referral for abortion, or funding for abortion.

This section terminates on June 30, 2011.

Source: Laws 2010, LB507, § 1.
Termination date June 30, 2011.

ARTICLE 9
MEDICAL ASSISTANCE ACT

Section

68-901 Medical Assistance Act; act, how cited.

Sections 68-901 to 68-974 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; Laws 2010, LB1106, § 1; Laws 2011, LB525, § 1; Laws 2012, LB541, § 1; Laws 2012, LB599, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB541, section 1, with LB599, section 2, to reflect all amendments.

Note: Changes made by LB541 became effective April 12, 2012. Changes made by LB599 became effective July 19, 2012.

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, 2010.

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; Laws 2010, LB849, § 13.

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;

(6) School-based health center means a health center that:

(a) Is located in or is adjacent to a school facility;

(b) Is organized through school, school district, learning community, community, and provider relationships;

(c) Is administered by a sponsoring facility;

(d) Provides school-based health services onsite during school hours to children and adolescents by health care professionals in accordance with state and local laws, rules, and regulations, established standards, and community practice;

(e) Does not perform abortion services or refer or counsel for abortion services and does not dispense, prescribe, or counsel for contraceptive drugs or devices; and

(f) Does not serve as a child's or an adolescent's medical or dental home but augments and supports services provided by the medical or dental home;

(7) School-based health services may include any combination of the following as determined in partnership with a sponsoring facility, the school district, and the community:

(a) Medical health;

(b) Behavioral and mental health;

(c) Preventive health; and

(d) Oral health;

(8) Sponsoring facility means:

(a) A hospital;

(b) A public health department as defined in section 71-1626;

(c) A federally qualified health center as defined in section 1905(l)(2)(B) of the federal Social Security Act, 42 U.S.C. 1396d(l)(2)(B), as such act and section existed on January 1, 2010;

(d) A nonprofit health care entity whose mission is to provide access to comprehensive primary health care services;

(e) A school or school district; or

(f) A program administered by the Indian Health Service or the federal Bureau of Indian Affairs or operated by an Indian tribe or tribal organization under the federal Indian Self-Determination and Education Assistance Act, or an urban Indian program under Title V of the federal Indian Health Care Improvement Act, as such acts existed on January 1, 2010; and

(9) 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; Laws 2010, LB1106, § 2.

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 services for eligible recipients, including services under the Nebraska Behavioral Health Services Act, and (e) perform such other activities as necessary and appropriate to carry out its duties under the Medical Assistance Act. A covered item or service as described in section 68-911 that is furnished through a school-based health center, furnished by a provider, and furnished under a managed care plan pursuant to a waiver does not require prior consultation or referral by a patient's primary care physician to be covered. Any federally qualified health center providing services as a sponsoring facility of a school-based health center shall be reimbursed for such services provided at a school-based health center at the federally qualified health center reimbursement rate.

(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. The report submitted to the Legislature shall be submitted electronically. 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; Laws 2010, LB1106, § 3; Laws 2012, LB782, § 91; Laws 2012, LB1158, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 91, with LB1158, section 1, to reflect all amendments.

Note: Changes made by LB1158 became effective April 12, 2012. Changes made by LB782 became operative July 19, 2012.

Cross References

Nebraska Behavioral Health Services Act, see section 71-801.

68-909 Existing contracts, agreements, rules, regulations, plan, and waivers; how treated; report required; exception; 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. The report submitted to the Legislature shall be submitted electronically. Any changes in medicaid copayments in fiscal year 2011-12 are exempt from the reporting requirement of this subsection and the requirements of section 68-912.

(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. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2006, LB 1248, § 9; Laws 2008, LB928, § 15; Laws 2011, LB468, § 1; Laws 2012, LB782, § 92.
Operative date July 19, 2012.

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 subject to subsection (5) of this section, 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.

(5) Any limitation on the amount, duration, or scope of goods and services that recipients may receive under the medical assistance program shall give full

and deliberate consideration to the role of home health services from private duty nurses in meeting the needs of a disabled family member or disabled person.

Source: Laws 1993, LB 804, § 2; Laws 1996, LB 1044, § 316; R.S.1943, (2003), § 68-1019.01; Laws 2006, LB 1248, § 12; Laws 2012, LB1122, § 1.
Effective date April 11, 2012.

68-914 Application for medical assistance; form; department; decision; appeal.

(1) An applicant for medical assistance shall file an application with the department in a manner and form prescribed by the department. The department shall process each application to determine whether the applicant is eligible for medical assistance. The department shall provide a determination of eligibility for medical assistance in a timely manner in compliance with 42 C.F.R. 435.911, including, but not limited to, a timely determination of eligibility for coverage of an emergency medical condition, such as labor and delivery.

(2) 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; Laws 2011, LB494, § 1.

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;

(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; and

(10) Persons eligible for services described in subsection (3) of section 68-972.

Except as provided in section 68-972, 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 eligibili-

ty 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; Laws 2012, LB599, § 3.
Effective date July 19, 2012.

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. The report submitted to the committee shall be submitted electronically. 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; Laws 2012, LB782, § 93.
Operative date July 19, 2012.
Termination date June 30, 2014.

68-965 Autism Treatment Program Cash Fund; created; use; investment.

(1) The Autism Treatment Program Cash Fund is created. The fund shall include 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 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 fund. No donations from a provider of services under Title XIX of the federal Social Security Act shall be deposited into the fund.

Source: Laws 2007, LB482, § 4; R.S.1943, (2008), § 85-1,141; Laws 2009, LB27, § 5; Laws 2012, LB969, § 8.
Operative date July 1, 2012.

Cross References

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

68-968 School-based health centers; School Health Center Advisory Council; members.

(1) To ensure that the interests of the school district, community, and health care provider are reflected within the policies, procedures, and scope of services of school-based health centers, each school district shall establish a School Health Center Advisory Council for each school in the district hosting a school-based health center.

(2) The School Health Center Advisory Council shall include:

(a) At least one representative of the school administration or school district administration;

(b) At least one representative of the sponsoring facility; and

(c) At least one parent recommended by a school administrator or school district administrator and approved by a majority vote of the school board. Any parent serving on a School Health Center Advisory Council shall have at least one child enrolled in the school through which the school-based health center is organized.

(3) If another institution or organization sponsors the school-based health center, at least one representative of each sponsoring institution or organization shall be included on the School Health Center Advisory Council.

(4) School Health Center Advisory Councils may also include students enrolled in the school district through which the school-based health center is organized. Any such students must be appointed by a school administrator or school district administrator.

Source: Laws 2010, LB1106, § 4.

68-969 Amendment to medicaid state plan or waiver; children eligible for medicaid and CHIP; treatment for pregnant women; department; duties.

(1) On or before July 1, 2010, 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 medicaid state plan or seeking a waiver thereto to provide for utilization of money to allow for payments for treatment for children who are lawfully residing in the United States and who are otherwise eligible for medicaid and CHIP pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010, and for treatment for pregnant women who are lawfully residing in the United States and who are otherwise eligible for medicaid pursuant to the federal Children's Health

Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) For purposes of this section, (a) CHIP means the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., and (b) medicaid means the program for medical assistance established under 42 U.S.C. 1396 et seq., as such sections existed on January 1, 2010.

Source: Laws 2010, LB1106, § 5.

68-970 Nebraska Regional Poison Center; legislative findings.

The Legislature finds that:

(1) The Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund provides a valuable service to Nebraska;

(2) The center receives over seventeen thousand calls annually, seventy-two percent of the calls involve children, and over twenty-seven percent of the calls relate to children in families whose annual household income is at or below two hundred percent of the federal poverty level;

(3) The operation of the center has resulted in over ninety percent of the calls regarding a child under six years of age being handled in a manner such that the child was able to remain at home and the child did not have to visit an emergency room or use 911 or emergency medical services; and

(4) The operation of the center results in a cost savings of one hundred seventy-five dollars per call in 1996 dollars.

Source: Laws 2011, LB525, § 2.

68-971 Amendment to medicaid state plan or waiver; Nebraska Regional Poison Center; payments; use; department; duties; University of Nebraska Medical Center; report.

(1) On or before January 1, 2012, the department shall submit an application to the federal Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to amend the medicaid state plan or seek a waiver to provide for utilization of the unused administrative cap to allow for payments to the Nebraska Regional Poison Center funded through the University of Nebraska Medical Center Cash Fund to help offset the cost for treatment of children who are eligible for assistance under the medical assistance program and the Children's Health Insurance Program established pursuant to 42 U.S.C. 1397aa et seq., pursuant to the federal Children's Health Insurance Program Reauthorization Act of 2009, Public Law 111-3, as such act existed on January 1, 2010.

(2) Upon approval of the amendment to the medicaid state plan or the granting of the waiver, the University of Nebraska Medical Center shall transfer an amount, not to exceed two hundred fifty thousand dollars, to the Health and Human Services Cash Fund for the Nebraska Department of Health and Human Services to meet the state match to maximize the use of the unused administrative cap money. At the time the department receives the transferred amount or any portion thereof and the corollary federal funds, the department shall transfer the combined funds to the University of Nebraska Medical Center Cash Fund for operation of the Nebraska Regional Poison Center. If no amendment is approved nor waiver granted or if less than two hundred fifty thousand dollars is needed for the match, then the University of Nebraska

Medical Center may use the remaining state appropriation for the operation of the Nebraska Regional Poison Center.

(3) The University of Nebraska Medical Center shall report electronically to the Legislative Fiscal Analyst on or before October 1 of every year the amount transferred to the department in the prior fiscal year and the amount of matching funds received under this section for the Nebraska Regional Poison Center in the prior fiscal year.

Source: Laws 2011, LB525, § 3; Laws 2012, LB782, § 94.
Operative date July 19, 2012.

68-972 Prenatal care; legislative findings; creation of separate program; benefits provided; department; submit state plan amendment or waiver; eligibility.

(1) The Legislature finds that:

(a) Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, authorize the State Children's Health Insurance Program to assist state efforts to initiate and expand provisions of child health assistance to uninsured, low-income children;

(b) As defined in Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child means an individual under the age of nineteen years, including any period of time from conception to birth, up to age nineteen years;

(c) Pursuant to Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, eligibility can only be conferred to a targeted low-income child, including an unborn child, under a separate child health program;

(d) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance is available to benefit unborn children independent of the mother's eligibility and immigration status;

(e) Under Title XXI of the federal Social Security Act, as amended, and the rules and regulations promulgated pursuant thereto, child health assistance expressly includes prenatal care that connects to the health of the unborn child;

(f) Prenatal care has been clearly shown to reduce the likelihood of premature delivery or low birth weight, both of which are associated with a wide range of congenital disabilities as well as infant mortality, and such care can detect a great number of serious and even life-threatening disabilities, many of which can now be successfully treated in utero;

(g) Ensuring prenatal care for more children will significantly help reduce infant mortality and morbidity rates and will spare many infants from the burden of congenital disabilities and reduce the cost of treating those congenital disabilities after birth;

(h) It is well established that access to prenatal care can improve health outcomes during infancy as well as over a child's life. Since healthy babies and children require less medical care than babies and children with health problems, provision of prenatal care will result in lower medical expenditures for the affected children in the long run; and

(i) Adopting federal law to provide for medical services related to unborn children before birth will result in healthier infants, better long-term child growth and development, and ultimate cost savings to the state through reduced expenditures for high cost neonatal and potential long-term medical rehabilitation.

(2) Such coverage shall be implemented through the creation of a separate program as allowed under Title XXI of the federal Social Security Act, as amended, and 42 C.F.R. 457.10, solely for the unborn children of mothers who are ineligible for coverage under Title XIX of the federal Social Security Act. All other aspects of the medical assistance program relating to the State Children's Health Insurance Program remain a medicaid expansion program as defined in 42 C.F.R. 457.10.

(3) The benefits provided pursuant to this subsection, unless the recipient qualifies for coverage under Title XIX of the federal Social Security Act, as amended, shall be prenatal care and pregnancy-related services connected to the health of the unborn child, including: (a) Professional fees for labor and delivery, including live birth, fetal death, miscarriage, and ectopic pregnancy; (b) pharmaceuticals and prescription vitamins; (c) outpatient hospital care; (d) radiology, ultrasound, and other necessary imaging; (e) necessary laboratory testing; (f) hospital costs related to labor and delivery; (g) services related to conditions that could complicate the pregnancy, including those for diagnosis or treatment of illness or medical conditions that threaten the carrying of the unborn child to full term or the safe delivery of the unborn child; and (h) other pregnancy-related services approved by the department. Services not covered under this subsection include medical issues separate to the mother and unrelated to pregnancy.

(4) The department shall receive the state and federal funds appropriated or provided for benefits provided pursuant to this section. Within thirty days after July 19, 2012, the department shall submit a state plan amendment or waiver for approval by the federal Centers for Medicare and Medicaid Services to provide coverage under the medical assistance program to persons eligible under this section.

(5) Eligibility shall be determined under this section using an income budgetary methodology that determines children's eligibility at no greater than one hundred eighty-five percent of the Office of Management and Budget income poverty guideline.

Source: Laws 2012, LB599, § 4.
Effective date July 19, 2012.

68-973 Improper payments; postpayment reimbursement; legislative findings.

The Legislature finds that the medical assistance program would benefit from increased efforts to (1) prevent improper payments to service providers, including, but not limited to, enforcement of eligibility criteria for recipients of benefits, enforcement of enrollment criteria for providers of benefits, determination of third-party liability for benefits, review of claims for benefits prior to payment, and identification of the extent and cause of improper payment, (2) identify and recoup improper payments, including, but not limited to, identification and investigation of questionable payments for benefits, administrative recoupment of payments for benefits, and referral of cases of fraud to the state

medicaid fraud control unit for prosecution, and (3) collect postpayment reimbursement, including, but not limited to, maximizing prescribed drug rebates and maximizing recoveries from estates for paid benefits.

Source: Laws 2012, LB541, § 2.
Effective date April 12, 2012.

68-974 Recovery audit contractors; contracts; contents; health insurance premium assistance payment program; contract; department; powers and duties; report.

(1) The department shall contract with one or more recovery audit contractors to promote the integrity of the medical assistance program and to assist with cost-containment efforts and recovery audits. The contract or contracts shall include services for (a) cost-avoidance through identification of third-party liability, (b) cost recovery of third-party liability through postpayment reimbursement, (c) casualty recovery of payments by identifying and recovering costs for claims that were the result of an accident or neglect and payable by a casualty insurer, and (d) reviews of claims submitted by providers of services or other individuals furnishing items and services for which payment has been made to determine whether providers have been underpaid or overpaid and take actions to recover any overpayments identified.

(2) The department shall contract with one or more persons to support a health insurance premium assistance payment program.

(3) The department may enter into any other contracts deemed to increase the efforts to promote the integrity of the medical assistance program.

(4) Contracts entered into under the authority of this section may be on a contingent fee basis. Contracts entered into on a contingent fee basis shall provide that contingent fee payments are based upon amounts recovered, not amounts identified, and that contingent fee payments are not to be paid on amounts subsequently repaid due to determinations made in appeal proceedings. Contracts shall be in compliance with federal law and regulations when pertinent, including a limit on contingent fees of no more than twelve and one-half percent of amounts recovered, and initial contracts shall be entered into as soon as practicable under such federal law and regulations.

(5) All amounts recovered and savings generated as a result of this section shall be returned to the medical assistance program.

(6) The department shall by December 1, 2012, report to the Legislature the status of the contracts, including the parties, the programs and issues addressed, the estimated cost recovery, and the savings accrued as a result of the contracts.

(7) For purposes of this section:

(a) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(b) Recovery audit contractor means private entities with which the department contracts to audit claims for medical assistance, identify underpayments and overpayments, and recoup overpayments.

Source: Laws 2012, LB541, § 3.
Effective date April 12, 2012.

ARTICLE 10
ASSISTANCE, GENERALLY

(b) PROCEDURE AND PENALTIES

(b) PROCEDURE AND PENALTIES

68-1017 Assistance; violations; penalties.

(1) 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 (a) an assistance certificate of award to which he or she is not entitled, (b) any commodity, any foodstuff, any food instrument, any Supplemental Nutrition Assistance Program 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, (c) any payment made on behalf of a recipient of medical assistance or social services, or (d) 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.

(2) Any person who commits an offense under subsection (1) of this section 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; Laws 2010, LB849, § 14.

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 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 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 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 benefits or electronic benefit cards when he or she is not authorized by law to redeem them, or (c) redeems Supplemental Nutrition Assistance Program 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 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.

(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 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; Laws 2010, LB849, § 15.

68-1017.02 Supplemental Nutrition Assistance Program; department; duties; state outreach plan; 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 submit electronically an annual report 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 subsec-

tion, shall issue recommendations to the department on any further action necessary by the department to meet the requirements of this section.

(2)(a) The department shall develop a state outreach plan to promote access by eligible persons to benefits of the Supplemental Nutrition Assistance Program. The plan shall meet the criteria established by the Food and Nutrition Service of the United States Department of Agriculture for approval of state outreach plans. The Department of Health and Human Services may apply for and accept gifts, grants, and donations to develop and implement the state outreach plan.

(b) For purposes of developing and implementing the state outreach plan, the department shall partner with one or more counties or nonprofit organizations. If the department enters into a contract with a nonprofit organization relating to the state outreach plan, the contract may specify that the nonprofit organization is responsible for seeking sufficient gifts, grants, or donations necessary for the development and implementation of the state outreach plan and may additionally specify that any costs to the department associated with the award and management of the contract or the implementation or administration of the state outreach plan shall be paid out of private or federal funds received for development and implementation of the state outreach plan.

(c) The department shall submit the state outreach plan to the Food and Nutrition Service of the United States Department of Agriculture for approval on or before August 1, 2011, and shall request any federal matching funds that may be available upon approval of the state outreach plan. It is the intent of the Legislature that the State of Nebraska and the Department of Health and Human Services use any additional public or private funds to offset costs associated with increased caseload resulting from the implementation of the state outreach plan.

(d) The department shall be exempt from implementing or administering a state outreach plan under this subsection, but not from developing such a plan, if it does not receive private or federal funds sufficient to cover the department's costs associated with the implementation and administration of the plan, including any costs associated with increased caseload resulting from the implementation of the plan.

(3)(a)(i) On or before October 1, 2011, the department shall create a TANF-funded program or policy that, in compliance with federal law, establishes categorical eligibility for federal food assistance benefits pursuant to the Supplemental Nutrition Assistance Program to maximize the number of Nebraska residents being served under such program in a manner that does not increase the current gross income eligibility limit.

(ii) Such TANF-funded program or policy shall eliminate all asset limits for eligibility for federal food assistance benefits, except that the total of liquid assets which includes cash on hand and funds in personal checking and savings accounts, money market accounts, and share accounts shall not exceed twenty-five thousand dollars pursuant to the Supplemental Nutrition Assistance Program, as allowed under federal law and under 7 C.F.R. 273.2(j)(2).

(iii) This subsection becomes effective only if the department receives funds pursuant to federal participation that may be used to implement this subsection.

(b) For purposes of this subsection:

(i) Federal law means the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., and regulations adopted under the act; and

(ii) TANF means the federal Temporary Assistance for Needy Families program established in 42 U.S.C. 601 et seq.

(4)(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; Laws 2011, LB543, § 1; Laws 2012, LB782, § 95.
Operative date July 19, 2012.

(h) NON-UNITED-STATES CITIZENS

68-1070 Repealed. Laws 2011, LB 465, § 2.

ARTICLE 12
SOCIAL SERVICES

Section

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 amended, 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; Laws 2011, LB177, § 10.

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 amended. 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 amended, 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; Laws 2011, LB177, § 11.

68-1207 Department of Health and Human Services; public child welfare services; supervise; department; pilot project; caseload requirements; case plan developed.

(1) The Department of Health and Human Services shall supervise all public child welfare services as described by law. The department and the pilot project described in section 68-1212 shall maintain caseloads to carry out child welfare services which provide for adequate, timely, and indepth investigations and services to children and families. Caseloads shall range between twelve and seventeen cases as determined pursuant to subsection (2) of this section. In establishing the specific caseloads within such range, the department and the pilot project shall (a) 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 (b) utilize the workload criteria of the standards established as of January 1, 2012, by the Child Welfare League of America. The average caseload shall be reduced by the department in all service areas as designated pursuant to section 81-3116 and by the pilot project to comply with the caseload range described in this subsection by September 1, 2012. Beginning September 15, 2012, the department shall include in its

annual report required pursuant to section 68-1207.01 a report on the attainment of the decrease according to such caseload standards. The department's annual report shall also include changes in the standards of the Child Welfare League of America or its successor.

(2) Caseload size shall be determined in the following manner: (a) If children are placed in the home, the family shall count as one case regardless of how many children are placed in the home; (b) if a child is placed out of the home, the child shall count as one case; (c) if, within one family, one or more children are placed in the home and one or more children are placed out of the home, the children placed in the home shall count as one case and each child placed out of the home shall count as one case; and (d) any child receiving services from the department or a private entity under contract with the department shall be counted as provided in subdivisions (a) through (c) of this subsection whether or not such child is a ward of the state. For purposes of this subsection, a child is considered to be placed in the home if the child is placed with his or her biological or adoptive parent or a legal guardian and a child is considered to be placed out of the home if the child is placed in foster care, group home care, or any other setting which is not the child's planned permanent home.

(3) To insure appropriate oversight of noncourt and voluntary cases when any child welfare services are provided, either by the department or by a lead agency participating in the pilot project, as a result of a child safety assessment, the department or lead agency shall develop a case plan that specifies the services to be provided and the actions to be taken by the department or lead agency and the family in each such case.

(4) 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; Laws 2012, LB961, § 3.
Effective date April 10, 2012.

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. The report submitted to the Legislature shall be submitted electronically. For 2012, 2013, and 2014, the department shall also provide the report to the Health and Human Services Committee of the Legislature on or before September 15. 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 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 service area designated pursuant to section 81-3116;

(3)(a) The average caseload of child welfare 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 service area designated pursuant to section 81-3116; and

(4) The average cost of training child welfare case managers employed by the State of Nebraska and child welfare services workers, providing child welfare 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 service area as designated pursuant to section 81-3116.

Source: Laws 1990, LB 720, § 2; Laws 1996, LB 1044, § 349; Laws 2005, LB 264, § 3; Laws 2007, LB296, § 281; Laws 2012, LB782, § 96; Laws 2012, LB1160, § 14.
Operative date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 96, with LB1160, section 14, to reflect all amendments.

68-1211 Case management of child welfare services; legislative findings and declarations.

The Legislature finds and declares that:

(1) The State of Nebraska has the legal responsibility for children in its custody and accordingly should maintain the decisionmaking authority inherent in direct case management of child welfare services;

(2) Training and longevity of child welfare case managers directly impact the safety, permanency, and well-being of children receiving child welfare services;

(3) Meaningful reform of the child welfare system can occur only when competent, skilled case managers educated in evidence-based child welfare best practices are making determinations for the care of, and services to, children and families and providing first-hand, direct information for decisionmaking and high-quality evidence to the courts relating to the best interests of the children;

(4) Maintaining quality, well-trained, and experienced case managers is essential and will be a core component in child welfare reform, including statewide strategic planning and implementation. Additional resources and funds for training, support, and compensation may be required;

(5) Notwithstanding the outsourcing of case management, the Department of Health and Human Services retains legal custody of wards of the state and remains responsible for their care. Inherent in privatized case management is the loss of trained, skilled individuals employed by the state providing the stable workforce essential to fulfilling the state's responsibilities for children who are wards of the state, resulting in the risk of loss of a trained, experienced, and stable workforce;

(6) Privatization of case management of child welfare services can and has resulted in dependence on one or more private entities for the provision of an essential specialized service that is extremely difficult to replace. As a result, the risk of a private entity abandoning the contract, either voluntarily or involuntarily, creates a very high risk to the entire child welfare system, including essential child welfare services;

(7) Privatization of case management and child welfare services, including responsibilities for both service coordination and service delivery by private entities, may create conflicts of interest because the resulting financial incentives can undermine decisionmaking regarding the appropriate services that would be in the best interests of the children. Additionally, such privatization of child welfare services, including case management, can result in loss of services across the spectrum of child welfare services by reducing market competition and driving many providers out of the market;

(8) Privatization of case management and of child welfare services has resulted in issues relating to caseloads, placement, turnover, communication, and stability within the child welfare system that adversely affect outcomes and permanency for children and families; and

(9) Private lead agency contracts require complex monitoring capabilities to insure compliance and oversight of performance, including private case managers, to insure improved child welfare outcomes.

Source: Laws 2012, LB961, § 1.
Effective date April 10, 2012.

68-1212 Department of Health and Human Services; cases; case manager; employee of department; duties; case management lead agency model pilot project; contract authorized; conditions, performance outcomes, and oversight; review by Health and Human Services Committee.

(1) Except as provided in subsection (2) of this section, by April 1, 2012, for all cases in which a court has awarded a juvenile to the care of the Department of Health and Human Services according to subsection (1) of section 43-285 and for any noncourt and voluntary cases, the case manager shall be an employee of the department. Such case manager shall be responsible for and shall directly oversee: Case planning; service authorization; investigation of compliance; monitoring and evaluation of the care and services provided to children and families; and decisionmaking regarding the determination of visitation and the care, placement, medical services, psychiatric services, training, and expenditures on behalf of each juvenile under subsection (1) of section 43-285. Such case manager shall be responsible for decisionmaking and direct preparation regarding the proposed plan for the care, placement, services, and permanency of the juvenile filed with the court required under subsection (2) of section 43-285. The health and safety of the juvenile shall be the paramount concern in the proposed plan in accordance with such subsection.

(2) The department may contract with a lead agency for a case management lead agency model pilot project in the department's eastern service area as designated pursuant to section 81-3116. The department shall include in the pilot project the appropriate conditions, performance outcomes, and oversight for the lead agency, including, but not be limited to:

(a) The reporting and survey requirements of lead agencies described in sections 43-4406 and 43-4407;

(b) Departmental monitoring and functional capacities of lead agencies described in section 43-4408;

(c) The key areas of evaluation specified in subsection (3) of section 43-4409;

(d) Compliance and coordination with the development of the statewide strategic plan for child welfare program and service reform pursuant to Laws 2012, LB821; and

(e) Assurance of financial accountability and reporting by the lead agency.

(3) Prior to April 1, 2013, the Health and Human Services Committee of the Legislature shall review the pilot project and provide to the department and the Legislature recommendations, and any legislation necessary to adopt the recommendations, regarding the adaptation or continuation of the pilot project. In making the recommendations, the committee shall utilize: (a) The evaluation completed pursuant to Legislative Bill 1160, One Hundred Second Legislature, Second Session, 2012; (b) the recommendations of the statewide strategic plan pursuant to Legislative Bill 821, One Hundred Second Legislature, Second Session, 2012; (c) the department's assessment of the pilot project; and (d) any additional reports, surveys, information, and data provided to and requested by the committee. If the pilot project continues past April 1, 2013, the lead agency shall comply with the requirements of section 43-4204.

Source: Laws 2012, LB961, § 2.
Effective date April 10, 2012.

ARTICLE 15

DISABLED PERSONS AND FAMILY SUPPORT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

(a) DISABLED PERSONS AND FAMILY SUPPORT ACT

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. The report submitted to the Clerk of the Legislature shall be submitted electronically. Such report shall include:

(1) The number of families and disabled persons applying for support pursuant to the Disabled Persons and Family Support Act and the number of families and disabled persons receiving support pursuant to the act;

(2) The types of services and programs being applied for and those being provided through the act;

(3) The effects of the support provided under the act on the disabled and their families; and

(4) Any proposals for amendment of the act.

Source: Laws 1981, LB 389, § 18; Laws 2012, LB782, § 97.
Operative date July 19, 2012.

ARTICLE 17
WELFARE REFORM

(a) WELFARE REFORM ACT

(a) WELFARE REFORM ACT

68-1708 Act, how cited.

Sections 68-1708 to 68-1735.04 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; Laws 2012, LB507, § 1.
Effective date July 19, 2012.

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 December 31, 2016.

Source: Laws 1994, LB 1224, § 21; Laws 1995, LB 455, § 14; Laws 2006, LB 994, § 78; Laws 2007, LB351, § 8; Laws 2009, LB458, § 1; Laws 2012, LB842, § 1.
Effective date July 19, 2012.

68-1735 Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty years of age; activities authorized.

For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant who is under twenty years of age and is married or a single head of household is deemed to have met the work activity requirement in a month if he or she:

(1) Maintains satisfactory attendance during such month at secondary school, a general education development program, or the equivalent; or

(2) Participates in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

Source: Laws 2012, LB507, § 2.
Effective date July 19, 2012.
Termination date December 31, 2016.

68-1735.01 Creating self-sufficiency contract and meeting work activity requirement; applicant under twenty-four years of age; activities authorized.

(1) For purposes of this section, target work rate means fifty percent less the caseload reduction credit submitted by the Nebraska Department of Health and Human Services to the United States Department of Health and Human Services for the fiscal year.

(2) For purposes of creating the self-sufficiency contract and meeting the applicant's work activity requirement, an applicant under twenty-four years of age shall be deemed to have met the work activity requirement in a month if he or she is engaged in education directly related to employment for an average of at least twenty hours per week during such month. Education directly related to employment includes, but is not limited to, Adult Basic Education, English as a Second Language, and a general education development program.

(3) No state funds shall be used to carry out this section unless such state funds meet the definition of qualified state expenditures under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 609(a)(7)(B)(i).

(4) If Nebraska's work participation rate under the federal Temporary Assistance for Needy Families program, 42 U.S.C. 601 et seq., does not exceed the target work rate by ten percentage points in any month, the Department of Health and Human Services may suspend the requirements of subsection (2) of this section until the work participation rate exceeds the target work rate by ten percentage points for three consecutive months.

Source: Laws 2012, LB507, § 3.
Effective date July 19, 2012.
Termination date December 31, 2016.

68-1735.02 Department of Health and Human Services; report; contents.

The Department of Health and Human Services shall report annually to the Legislature on October 1 on the following:

(1) The number of persons on a quarterly basis participating in a self-sufficiency contract who are engaged in one of the following activities:

(a) An associate degree program;

(b) A vocational education program not leading to an associate degree;

(c) Postsecondary education other than a program described in subdivision (1)(a) or (b) of this section;

(d) Adult Basic Education;

(e) English as a Second Language; or

(f) A general education development program; and

(2) The number of persons participating in a self-sufficiency contract who obtain or maintain employment for six months, twelve months, eighteen months, and twenty-four months after such persons are no longer eligible for cash assistance due to obtaining employment.

Source: Laws 2012, LB507, § 4.
Effective date July 19, 2012.
Termination date December 31, 2016.

68-1735.03 Legislative intent.

It is the intent of the Legislature that the Department of Health and Human Services carry out the requirements of sections 68-1735 to 68-1735.02 within the limits of its annual appropriation.

Source: Laws 2012, LB507, § 5.
Effective date July 19, 2012.
Termination date December 31, 2016.

68-1735.04 Sections; termination.

Sections 68-1735 to 68-1735.03 terminate on December 31, 2016.

Source: Laws 2012, LB507, § 6.
Effective date July 19, 2012.

ARTICLE 18

ICF/MR REIMBURSEMENT PROTECTION ACT

Section

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 through FY2010-11, 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.

(4) For FY2011-12 and each fiscal year thereafter, proceeds from the tax imposed pursuant to section 68-1803 shall be remitted to the State Treasurer for credit to the ICF/MR Reimbursement Protection Fund for allocation as follows:

(a) First, fifty-five thousand dollars for administration of the fund;

(b) Second, the amount needed to reimburse intermediate care facilities for the mentally retarded for the cost of the tax;

(c) Third, three hundred twelve thousand dollars for community-based services for persons with developmental disabilities;

(d) Fourth, six hundred thousand dollars or such lesser amount as may be available in the fund for non-state-operated intermediate care facilities for the mentally retarded, in addition to any continuation appropriations percentage

increase provided by the Legislature to nongovernmental intermediate care facilities for the mentally retarded under the medical assistance program, subject to approval by the federal Centers for Medicare and Medicaid Services of the department's annual application amending the medicaid state plan reimbursement methodology for intermediate care facilities for the mentally retarded; and

(e) Fifth, the remainder of the proceeds to the General Fund.

Source: Laws 2004, LB 841, § 5; Laws 2010, LB701, § 1.

Cross References

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

ARTICLE 19

NURSING FACILITY QUALITY ASSURANCE ASSESSMENT ACT

Section

68-1901 Act, how cited.

Sections 68-1901 to 68-1930 shall be known and may be cited as the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 1.

68-1902 Definitions, where found.

For purposes of the Nursing Facility Quality Assurance Assessment Act, the definitions found in sections 68-1903 to 68-1916 apply.

Source: Laws 2011, LB600, § 2.

68-1903 Bed-hold day, defined.

Bed-hold day means a day during which a bed is kept open pursuant to the bed-hold policy of the nursing facility or skilled nursing facility which permits a resident to return to the facility and resume residence in the facility after a transfer to a hospital or therapeutic leave.

Source: Laws 2011, LB600, § 3.

68-1904 Continuing care retirement community, defined.

Continuing care retirement community means an operational entity or related organization which, under a life care contract, provides a continuum of services, including, but not limited to, independent living, assisted-living, nursing facility, and skilled nursing facility services within the same or a contiguous municipality as defined in section 18-2410.

Source: Laws 2011, LB600, § 4.

68-1905 Department, defined.

Department means the Department of Health and Human Services.

Source: Laws 2011, LB600, § 5.

68-1906 Gross inpatient revenue, defined.

Gross inpatient revenue means the revenue paid to a nursing facility or skilled nursing facility for inpatient resident care, room, board, and services less contractual adjustments, bad debt, and revenue from sources other than operations, including, but not limited to, interest, guest meals, gifts, and grants.

Source: Laws 2011, LB600, § 6.

68-1907 Hospital, defined.

Hospital has the meaning found in section 71-419.

Source: Laws 2011, LB600, § 7.

68-1908 Life care contract, defined.

Life care contract means a contract between a continuing care retirement community and a resident of such community or his or her legal representative which:

(1) Includes each of the following express promises:

(a) The community agrees to provide services at any level along the continuum of care levels offered by the community;

(b) The base room fee will not increase as a resident transitions among levels of care, excluding any services or items upon which both parties initially agreed; and

(c) If the resident outlives and exhausts resources to pay for services, the community will continue to provide services at a reduced price or free of charge to the resident, excluding any payments from medicare, the medical

assistance program, or a private insurance policy for which the resident is eligible and the community is certified or otherwise qualified to receive; and

(2) Requires the resident to agree to pay an entry fee to the community and to remain in the community for a minimum length of time subject to penalties against the entry fee.

Source: Laws 2011, LB600, § 8.

68-1909 Medical assistance program, defined.

Medical assistance program means the medical assistance program established pursuant to the Medical Assistance Act.

Source: Laws 2011, LB600, § 9.

Cross References

Medical Assistance Act, see section 68-901.

68-1910 Medicare day, defined.

Medicare day means any day of resident stay funded by medicare as the payment source and includes a day funded under Medicare Part A, under a Medicare Advantage or special needs plan, or under medicare hospice.

Source: Laws 2011, LB600, § 10.

68-1911 Medicare upper payment limit, defined.

Medicare upper payment limit means the limitation established by 42 C.F.R. 447.272 establishing a maximum amount of payment for services under the medical assistance program to nursing facilities, skilled nursing facilities, and hospitals.

Source: Laws 2011, LB600, § 11.

68-1912 Nursing facility, defined.

Nursing facility has the meaning found in section 71-424.

Source: Laws 2011, LB600, § 12.

68-1913 Quality assurance assessment, defined.

Quality assurance assessment means the assessment imposed under section 68-1917.

Source: Laws 2011, LB600, § 13.

68-1914 Resident day, defined.

Resident day means the calendar day in which care is provided to an individual resident of a nursing facility or skilled nursing facility that is not reimbursed under medicare, including the day of admission but not including the day of discharge, unless the dates of admission and discharge occur on the same day, in which case the resulting number of resident days is one resident day.

Source: Laws 2011, LB600, § 14.

68-1915 Skilled nursing facility, defined.

Skilled nursing facility has the meaning found in section 71-429.

Source: Laws 2011, LB600, § 15.

68-1916 Total resident days, defined.

Total resident days means the total number of residents residing in the nursing facility or skilled nursing facility between July 1 and June 30, multiplied by the number of days each such resident resided in that nursing facility or skilled nursing facility. If a resident is admitted and discharged on the same day, the resident shall be considered to be a resident for that day.

Source: Laws 2011, LB600, § 16.

68-1917 Quality assurance assessment; payment; computation.

Except for facilities which are exempt under section 68-1918 and facilities referred to in section 68-1919, each nursing facility or skilled nursing facility licensed under the Health Care Facility Licensure Act shall pay a quality assurance assessment based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state. The assessment shall be three dollars and fifty cents for each resident day for the preceding calendar quarter. The assessment in the aggregate shall not exceed the amount stated in section 68-1920.

Source: Laws 2011, LB600, § 17.

Cross References

Health Care Facility Licensure Act, see section 71-401.

68-1918 Providers exempt.

The department shall exempt the following providers from the quality assurance assessment:

(1) State-operated veterans homes listed in section 80-315;

(2) Nursing facilities and skilled nursing facilities with twenty-six or fewer licensed beds; and

(3) Continuing care retirement communities.

Source: Laws 2011, LB600, § 18.

68-1919 Reduction of quality assurance assessment; when.

The department shall reduce the quality assurance assessment for either certain high-volume medicaid nursing facilities or skilled nursing facilities with high patient volumes to meet the redistribution tests in 42 C.F.R. 433.68(e)(2). Under this section, the assessment shall be based on total resident days, including bed-hold days, less medicare days, for the purpose of improving the quality of nursing facility or skilled nursing facility care in this state.

Source: Laws 2011, LB600, § 19.

68-1920 Aggregate quality assurance assessment; limitation.

The aggregate quality assurance assessment shall not exceed the lower of the amount necessary to accomplish the uses specified in section 68-1926 or the maximum amount of gross inpatient revenue that may be assessed pursuant to

the indirect guarantee threshold as established pursuant to 42 C.F.R. 433.68(f)(3)(i). The aggregate quality assurance assessment shall be imposed on a per-nonmedicare-day basis.

Source: Laws 2011, LB600, § 20.

68-1921 Quality assurance assessment; payments; form.

Each nursing facility or skilled nursing facility shall pay the quality assurance assessment to the department on a quarterly basis after the medical assistance payment rates of the facility are adjusted pursuant to section 68-1926. The department shall prepare and distribute a form on which a nursing facility or skilled nursing facility shall calculate and report the quality assurance assessment. A nursing facility or skilled nursing facility shall submit the completed form with the quality assurance assessment no later than thirty days following the end of each calendar quarter.

Source: Laws 2011, LB600, § 21.

68-1922 Department; collect quality assurance assessment; remit to State Treasurer.

The department shall collect the quality assurance assessment and remit the assessment to the State Treasurer for credit to the Nursing Facility Quality Assurance Fund. No proceeds from the quality assurance assessment, including the federal match, shall be placed in the General Fund unless otherwise provided in the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 22.

68-1923 Quality assurance assessment; report; medicaid cost report; how treated.

A nursing facility or skilled nursing facility shall report the quality assurance assessment on a separate line of the medicaid cost report of the nursing facility or skilled nursing facility. The quality assurance assessment shall be treated as a separate component in developing rates paid to nursing facilities or skilled nursing facilities and shall not be included with existing rate components. In developing a rate component for the quality assurance assessment, the assessment shall be treated as a direct pass-through to each nursing facility and skilled nursing facility, retroactive to July 1, 2011. The quality assurance assessment shall not be subject to any cost limitation or revenue offset.

Source: Laws 2011, LB600, § 23.

68-1924 Underpayment or overpayment; notice.

If the department determines that a nursing facility or skilled nursing facility has underpaid or overpaid the quality assurance assessment, the department shall notify the nursing facility or skilled nursing facility of the unpaid quality assurance assessment or refund due. Such payment or refund shall be due or refunded within thirty days after the issuance of the notice.

Source: Laws 2011, LB600, § 24.

68-1925 Failure to pay; penalty; waiver; when; withholding authorized; collection methods authorized.

(1) A nursing facility or skilled nursing facility that fails to pay the quality assurance assessment within the timeframe specified in section 68-1921 or 68-1924, whichever is applicable, shall pay, in addition to the outstanding quality assurance assessment, a penalty of one and one-half percent of the quality assurance assessment amount owed for each month or portion of a month that the assessment is overdue. If the department determines that good cause is shown for failure to pay the quality assurance assessment, the department shall waive the penalty or a portion of the penalty.

(2) If a quality assurance assessment has not been received by the department within thirty days following the quarter for which the assessment is due, the department shall withhold an amount equal to the quality assurance assessment and penalty owed from any payment due such nursing facility or skilled nursing facility under the medical assistance program.

(3) The quality assurance assessment shall constitute a debt due the state and may be collected by civil action, including, but not limited to, the filing of tax liens, and any other method provided for by law.

(4) The department shall remit any penalty collected pursuant to this section to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 2011, LB600, § 25.

68-1926 Nursing Facility Quality Assurance Fund; created; use; investment.

(1) The Nursing Facility Quality Assurance Fund is created. Interest and income earned by the fund shall be credited 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.

(2) The department shall use the Nursing Facility Quality Assurance Fund, including the matching federal financial participation under Title XIX of the federal Social Security Act, as amended, for the purpose of enhancing rates paid under the medical assistance program to nursing facilities and skilled nursing facilities, exclusive of the reimbursement paid under the medical assistance program, and, except for the purpose of reimbursement for retroactive compensation as provided in subsection (2) of section 68-1927 or reimbursement for rate enhancements in anticipation of receipt of quality assurance assessments or related matching federal financial participation pursuant to the Nursing Facility Quality Assurance Assessment Act, shall not use the fund to replace or offset existing state funds paid to nursing facilities and skilled nursing facilities for providing services under the medical assistance program.

(3) The Nursing Facility Quality Assurance Fund shall also be used as follows:

(a) To pay the department a reasonable administrative fee for enforcing and collecting the quality assurance assessment out of the Nursing Facility Quality Assurance Fund in addition to any federal medical assistance matching funds;

(b) To pay the share under the medical assistance program of a quality assurance assessment as an add-on to the rate under the medical assistance program for costs incurred by a nursing facility or skilled nursing facility. This rate add-on shall account for the cost incurred by a nursing facility or skilled nursing facility in paying the quality assurance assessment but only with respect to the pro rata portion of the assessment that correlates with the

resident days in the nursing facility or skilled nursing facility that are attributable to residents funded by the medical assistance program;

(c) To rebase rates under the medical assistance program in accordance with the medicaid state plan as defined in section 68-907. In calculating rates, the proceeds of the quality assurance assessments and federal match not utilized under subdivisions (3)(a) and (b) of this section shall be used to enhance rates by increasing the annual inflation factor to the extent allowed by such proceeds and any funds appropriated by the Legislature; and

(d) To increase quality assurance payments to fund covered services to recipients of benefits from the medical assistance program within medicare upper payment limits as determined by the department following consultation with nursing facilities and skilled nursing facilities.

Source: Laws 2011, LB600, § 26.

Cross References

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

68-1927 Application for amendment to medicaid state plan; approval; effect; resubmission of waiver application.

(1) On or before September 30, 2011, or after that date if allowable by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services, the Nebraska Department of Health and Human Services shall submit an application to the Centers for Medicare and Medicaid Services amending the medicaid state plan as defined in section 68-907 by requesting a waiver of the uniformity requirement pursuant to 42 C.F.R. 433.68(e) to exempt certain facilities from the quality assurance assessment and to permit other facilities to pay the quality assurance assessment at lower rates.

(2) The quality assurance assessment is not due and payable until an amendment to the medicaid state plan which increases the rates paid to nursing facilities and skilled nursing facilities is approved by the Centers for Medicare and Medicaid Services and the nursing facilities and skilled nursing facilities have been compensated retroactively for the increased rate for services pursuant to section 68-1926.

(3) If the waiver requested under this section is not approved by the Centers for Medicare and Medicaid Services, the department may resubmit the waiver application to address any changes required by the Centers for Medicare and Medicaid Services in the rejection of such application, including the classes of facilities exempt and the rates or amounts for quality assurance assessments, if such changes do not exceed the authority and purposes of the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 27.

68-1928 Department; discontinue collection of quality assurance assessments; when; return of money.

(1) The department shall discontinue collection of the quality assurance assessments:

(a) If the waiver requested pursuant to section 68-1927 or the medicaid state plan amendment reflecting the payment rates in section 68-1926 is given final

disapproval by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services;

(b) If, in any fiscal year, the state appropriates funds for nursing facility or skilled nursing facility rates at an amount that reimburses nursing facilities or skilled nursing facilities at a lesser percentage than the median percentage appropriated to other classes of providers of covered services under the medical assistance program;

(c) If money in the Nursing Facility Quality Assurance Fund is appropriated, transferred, or otherwise expended for any use other than uses permitted pursuant to the Nursing Facility Quality Assurance Assessment Act; or

(d) If federal financial participation to match the quality assurance assessments made under the act becomes unavailable under federal law. In such case, the department shall terminate the collection of the quality assurance assessments beginning on the date the federal statutory, regulatory, or interpretive change takes effect.

(2) If collection of the quality assurance assessment is discontinued as provided in this section, the money in the Nursing Facility Quality Assurance Fund shall be returned to the nursing facilities or skilled nursing facilities from which the quality assurance assessments were collected on the same basis as the assessments were assessed.

Source: Laws 2011, LB600, § 28.

68-1929 Aggrieved party; hearing; petition.

A nursing facility or skilled nursing facility aggrieved by an action of the department under the Nursing Facility Quality Assurance Assessment Act may file a petition for hearing with the director of the Division of Medicaid and Long-Term Care of the department. The hearing shall be conducted pursuant to the Administrative Procedure Act and rules and regulations of the department.

Source: Laws 2011, LB600, § 29.

Cross References

Administrative Procedure Act, see section 84-920.

68-1930 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out the Nursing Facility Quality Assurance Assessment Act.

Source: Laws 2011, LB600, § 30.

ARTICLE 20
CHILDREN'S HEALTH AND TREATMENT ACT

Section
68-2001. Act, how cited.
68-2002. Purposes of act.
68-2003. Terms, defined.
68-2004. Department; report; contents.
68-2005. Rules and regulations.

68-2001 Act, how cited.

Sections 68-2001 to 68-2005 shall be known and may be cited as the Children's Health and Treatment Act.

Source: Laws 2012, LB1063, § 1.
Effective date July 19, 2012.

68-2002 Purposes of act.

The purposes of the Children's Health and Treatment Act are to:

(1) Require that the guidelines and criteria that the Department of Health and Human Services utilizes to determine medical necessity for services under the medical assistance program be published by the department on its web site and web sites of its contractors for managed care and administrative services. The treating guidelines and criteria shall be referenced specifically to providers when utilized as a determination of medical necessity under the medical assistance program. Treating guidelines and criteria in effect on July 19, 2012, shall be published on such web sites within thirty days after July 19, 2012. Notice of changes to treating guidelines and criteria shall be given to providers and time for public comment provided at least sixty days prior to implementation of such changes; and

(2) Require that the department collect and report on authorization and denial rates for behavioral health services for children under nineteen years of age.

Source: Laws 2012, LB1063, § 2.
Effective date July 19, 2012.

68-2003 Terms, defined.

For purposes of the Children's Health and Treatment Act:

(1) Department means the Department of Health and Human Services; and

(2) Medical assistance program means the program established pursuant to section 68-903.

Source: Laws 2012, LB1063, § 3.
Effective date July 19, 2012.

68-2004 Department; report; contents.

The department shall report to the Health and Human Services Committee of the Legislature on utilization controls, including, but not limited to, the rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age. The first report shall be due on October 1, 2012, and shall contain such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the first three quarters of 2012. Thereafter, on January 1, April 1, and July 1 of each year, the department shall report such rates of initial service authorizations, reauthorizations subsequent to initial service authorizations, and denials for behavioral health services for children under nineteen years of age for the previous calendar quarter.

Source: Laws 2012, LB1063, § 4.
Effective date July 19, 2012.

68-2005 Rules and regulations.

The department shall adopt and promulgate rules and regulations to carry out the Children's Health and Treatment Act. On and after April 1, 2013, the department shall not apply medical necessity criteria to determine medical

necessity for children under nineteen years of age that have not been adopted and promulgated as rules and regulations pursuant to the Administrative Procedure Act.

Source: Laws 2012, LB1063, § 5.
Effective date July 19, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

CHAPTER 69
PERSONAL PROPERTY

Article.
2. Pawnbrokers and Junk Dealers. 69-206.
4. Scrap Metal Recycling. 69-401 to 69-409.
5. Reduced Cigarette Ignition Propensity Act. 69-502, 69-503.
13. Disposition of Unclaimed Property.
(a) Uniform Disposition of Unclaimed Property Act. 69-1301 to 69-1329.
21. Consumer Rental Purchase Agreements. 69-2103 to 69-2112.
23. Disposition of Personal Property Landlord and Tenant Act. 69-2304, 69-2308.
24. Guns.
(a) Handguns. 69-2402 to 69-2423.
(c) Concealed Handgun Permit Act. 69-2427 to 69-2449.
27. Tobacco. 69-2702 to 69-2711.

ARTICLE 2

PAWNBROKERS AND JUNK DEALERS

Section
69-206. Pawned or secondhand goods; restrictions on disposition; jewelry defined.

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 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 fourteen days 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; Laws 2012, LB941, § 1.
Effective date July 19, 2012.

ARTICLE 4
SCRAP METAL RECYCLING

Section
69-401. Terms, defined.
69-404. Secondary metals recycler; limitations on payment.
69-406.01. Manhole cover or sewer grate; purchase or receipt; limitations; payment.
69-407. Exemptions.
69-408. Violation; penalty.
69-409. Sections; how construed.

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, manhole covers, sewer grates, 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; Laws 2012, LB1049, § 1.
Effective date July 19, 2012.

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, and if the purchase total for copper is more than one hundred dollars, the check shall be sent by United States mail, postage prepaid.

Source: Laws 2008, LB766, § 4; Laws 2012, LB1049, § 3.
Effective date July 19, 2012.

69-406.01 Manhole cover or sewer grate; purchase or receipt; limitations; payment.

No secondary metals recycler shall purchase or receive any manhole cover or sewer grate except from (1) an authorized representative of the political subdivision that owns the manhole cover or sewer grate as is evidenced by the stamping or engraving on the cover or grate or (2) a third party who has a legitimate bill-of-sale, letter of authorization, or similar approval from the political subdivision evidencing the third party's right to possess and sell the

cover or grate. Payment for a manhole cover or sewer grate shall be by draft or check and sent by United States mail, postage prepaid, to the official address of the finance department of such political subdivision or to the third-party seller. Such draft or check shall be made payable only to the political subdivision or to the third-party seller.

Source: Laws 2012, LB1049, § 2.
Effective date July 19, 2012.

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; Laws 2012, LB1049, § 4.
Effective date July 19, 2012.

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; Laws 2012, LB1049, § 5.
Effective date July 19, 2012.

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; Laws 2012, LB1049, § 6.
Effective date July 19, 2012.

ARTICLE 5

REDUCED CIGARETTE IGNITION PROPENSITY ACT

Section
69-502. Terms, defined.
69-503. Cigarettes; testing; requirements; performance standard; manufacturer; duties; civil penalty; State Fire Marshal; powers and duties.

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 Reduced Cigarette Ignition Propensity 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; Laws 2011, LB590, § 3.

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 effectiveness of this section. The report and legislative recommendations shall be submitted electronically 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; Laws 2012, LB782, § 98.
Operative date July 19, 2012.

ARTICLE 13

DISPOSITION OF UNCLAIMED PROPERTY

(a) UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

(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) Military medal means any decoration or award that may be presented or awarded to a member of a unit of the United States Armed Forces or National Guard.

(h) 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.

(i) 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.

(j) 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; Laws 2012, LB819, § 1.
Effective date July 19, 2012.

69-1307.06 Military medal; report and delivery to State Treasurer.

Any military medal that is removed from a safe deposit box or any other safekeeping repository or agency or collateral deposit box on which the lease or rental period has expired due to nonpayment of rental charges or other reasons shall not be sold or otherwise disposed of but shall be retained by the holder for the lessee of the box until reported and delivered to the State Treasurer in accordance with this section. Such report shall be made in compliance with section 69-1310. The holder shall, at the time of filing the report and with the report, deliver the military medal to the State Treasurer for safekeeping by the State Treasurer in accordance with section 69-1307.07.

Source: Laws 2012, LB819, § 2.
Effective date July 19, 2012.

69-1307.07 Military medals; State Treasurer; duties.

The State Treasurer, upon receiving military medals, shall hold and maintain the military medals for ten years or until the original owner or the owners' respective heirs or beneficiaries can be identified and the military medals

returned. After ten years, the State Treasurer may designate a veteran's organization, an awarding agency, or a governmental entity as the custodian of the military medals. Once the military medals are turned over to a veteran's organization, an awarding agency, or a governmental entity, the State Treasurer will no longer be responsible for the safekeeping of the military medals.

Source: Laws 2012, LB819, § 3.
Effective date July 19, 2012.

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, 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) On or before November 1 of each year, 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.

(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; Laws 2012, LB1026, § 1. Effective date July 19, 2012.

Cross References

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

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; Laws 2012, LB819, § 4.
Effective date July 19, 2012.

ARTICLE 21
CONSUMER RENTAL PURCHASE AGREEMENTS

Section
69-2103. Terms, defined.
69-2104. Lessor; disclosures required.
69-2112. Advertisement; requirements.

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 January 1, 2011, and 15 U.S.C. 1602(g), as such section existed on January 1, 2011, or a lease which constitutes a consumer lease as defined in 12 C.F.R. 213.2(e), as such regulation existed on January 1, 2011. 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; Laws 2011, LB76, § 6.

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. 1601 et seq., as such act existed on January 1, 2011, 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 January 1, 2011, with respect to a consumer rental purchase agreement entered into with a consumer.

Source: Laws 1989, LB 681, § 4; Laws 2001, LB 641, § 2; Laws 2011, LB76, § 7.

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. 1601 et seq., as such act existed on January 1, 2011, compliance with such act shall satisfy the requirements of this section.

Source: Laws 1989, LB 681, § 12; Laws 2001, LB 641, § 7; Laws 2011, LB76, § 8.

ARTICLE 23

DISPOSITION OF PERSONAL PROPERTY LANDLORD AND TENANT ACT

Section
69-2304. Notice; statement required.
69-2308. Sale of personal property; when required; notice of sale; requirements; disposition of proceeds.

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 one thousand 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; Laws 2010, LB712, § 44.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

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 one thousand 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; Laws 2010, LB712, § 45.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

ARTICLE 24
GUNS

(a) HANDGUNS

(c) CONCEALED HANDGUN PERMIT ACT

(a) HANDGUNS

69-2402 Terms, defined.

For purposes of sections 69-2401 to 69-2425:

(1) Antique handgun or pistol means 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 includes 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;

(3) Firearm-related disability means a person is not permitted to (a) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (b) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (c) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act; and

(4) 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.

Source: Laws 1991, LB 355, § 25; Laws 1996, LB 1055, § 2; Laws 2006, LB 1227, § 1; Laws 2011, LB512, § 2.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2403 Sale, lease, rental, and transfer; certificate required; exceptions.

(1) Except as provided in this section and 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 this section and section 69-2409, a person shall not sell, lease, rent, or transfer a handgun to a person who has not obtained a certificate.

(2) The certificate shall not be required if:

(a) The person acquiring the handgun is a licensed firearms dealer under federal law;

(b) The handgun is an antique handgun;

(c) The person acquiring the handgun is authorized to do so on behalf of a law enforcement agency;

(d) The transfer is a temporary transfer of a handgun and the transferee remains (i) in the line of sight of the transferor or (ii) within the premises of an established shooting facility;

(e) The transfer is between a person and his or her spouse, sibling, parent, child, aunt, uncle, niece, nephew, or grandparent;

(f) The person acquiring the handgun is a holder of a valid permit under the Concealed Handgun Permit Act; or

(g) The person acquiring the handgun is a peace officer as defined in section 69-2429.

Source: Laws 1991, LB 355, § 2; Laws 2010, LB817, § 4.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

69-2409 Automated criminal history files; legislative intent; system implementation; Nebraska State Patrol; superintendent; duties; purchase, lease, rental, or transfer; election.

(1) 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.

(2) 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 report submitted to the Clerk of the Legislature shall be submitted electronically. 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.

(3) 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; Laws 2012, LB782, § 99.
Operative date July 19, 2012.

69-2409.01 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 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 law or is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4). 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 and Nebraska State Patrol, as soon as practicable but within thirty days after an order of commitment or discharge is issued or after removal of firearm-related disabilities pursuant to section 71-963, 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, (b) information regarding those persons who have been committed to treatment pursuant to section 29-3702, and (c) information regarding those persons who have had firearm-related disabilities

removed pursuant to section 71-963. The mental health board shall notify the Department of Health and Human Services and the Nebraska State Patrol when such disabilities have been removed. 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. To ensure the accuracy of the data base, any information maintained or disclosed under this subsection shall be updated, corrected, modified, or removed, as appropriate, and as soon as practicable, from any data base that the state or federal government maintains and makes available to the National Instant Criminal Background Check System. The procedures for furnishing the 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; Laws 2011, LB512, § 3.

69-2423 Nebraska State Patrol; annual report; contents.

The Nebraska State Patrol shall provide electronically 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; Laws 2012, LB782, § 100. Operative date July 19, 2012.

(c) CONCEALED HANDGUN PERMIT ACT

69-2427 Act, how cited.

Sections 69-2427 to 69-2449 shall be known and may be cited as the Concealed Handgun Permit Act.

Source: Laws 2006, LB 454, § 1; Laws 2009, LB430, § 9; Laws 2010, LB817, § 5.

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. In order to insure continuing compliance with sections 69-2430 and 69-2433 and compliance for renewal pursuant to section 69-2436, a check shall be made of a permitholder's criminal history record information through the National Instant Criminal Background Check System.

Source: Laws 2006, LB 454, § 5; Laws 2010, LB817, § 7.

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 been convicted of a felony under the laws of this state or under the laws of any other jurisdiction;

(5) Not have been convicted of a misdemeanor crime of violence under the laws of this state or under the laws of any other jurisdiction within the ten years immediately preceding the date of application;

(6) 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;

(7)(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) or (c) of this subdivision;

(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; or

(c) If an applicant is a new Nebraska resident and possesses a valid permit to carry a concealed handgun issued by his or her previous state of residence that is recognized by this state pursuant to section 69-2448, such applicant shall be considered a resident of this state for purposes of this section;

(8) Not have had a conviction 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 within the ten years preceding the date of application. This subdivision does not apply to any conviction under Chapter 37 or under any similar law of another jurisdiction, except for a conviction under section 37-509, 37-513, or 37-522 or under any similar law of another jurisdiction;

(9) Not be on parole, probation, house arrest, or work release;

(10) Be a citizen of the United States; and

(11) Provide proof of training.

Source: Laws 2006, LB 454, § 7; Laws 2009, LB430, § 11; Laws 2010, LB817, § 8; Laws 2011, LB512, § 4; Laws 2012, LB807, § 2. Effective date April 19, 2012.

Cross References

Nebraska Mental Health Commitment Act, see section 71-901.

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, except as provided in subsection (4) of section 69-2443. 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; Laws 2012, LB807, § 3. Effective date April 19, 2012.

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, except as provided in subsection (4) of section 69-2443. 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; Laws 2012, LB807, § 4.
Effective date April 19, 2012.

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, except as provided in subsection (4) of section 69-2443, 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, except as provided in subsection (4) of section 69-2443.

(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; Laws 2012, LB807, § 5.
Effective date April 19, 2012.

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 of section 69-2440 or 69-2442 may also have his or her permit revoked.

(4) A permitholder convicted of a violation of section 69-2441 that occurred on property owned by the state or any political subdivision of the state may also have his or her permit revoked. A permitholder convicted of a violation of section 69-2441 that did not occur on property owned by the state or any political subdivision of the state shall not have his or her permit revoked for a first offense but may have his or her permit revoked for any second or subsequent offense.

Source: Laws 2006, LB 454, § 17; Laws 2007, LB97, § 2; Laws 2012, LB807, § 6.
Effective date April 19, 2012.

69-2449 Information to permitholder regarding lost or stolen handgun or firearm.

The Nebraska State Patrol shall inform each permitholder, upon the issuance or renewal of a permit to carry a concealed handgun, that if a handgun, or other firearm, owned by such permitholder is lost or stolen, the permitholder should notify his or her county sheriff or local police department of that fact.

Source: Laws 2010, LB817, § 6.

ARTICLE 27

TOBACCO

Section

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, a partnership, a committee, an association, a 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) Days means calendar days unless specified otherwise;

(6) Importer means any person in the United States to whom non-federal-excise-tax-paid cigarettes manufactured in a foreign country are shipped or consigned, any person who removes cigarettes for sale or consumption in the United States from a customs bonded manufacturing warehouse, or any person who smuggles or otherwise unlawfully brings cigarettes into the United States;

(7) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments;

(8) Indian tribe means any Indian tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians under the laws of the United States;

(9) 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;

(10) 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;

(11) Released claims means released claims as that term is defined in the Master Settlement Agreement;

(12) Releasing parties means releasing parties as that term is defined in the Master Settlement Agreement;

(13) 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 (13)(a) or (13)(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 (13)(a) through (13)(c) of this section; and

(14) 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, in packs required to bear a stamp pursuant to section 77-2603 or 77-2603.01 or, in the case of roll-your-own tobacco, on which a tax is due pursuant to section 77-4008.

Source: Laws 1999, LB 574, § 1; Laws 2003, LB 572, § 8; Laws 2011, LB590, § 4.

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 on a quarterly basis, no later than thirty days after the end of each calendar quarter in which sales are made, 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;

(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; or

(iv) An Indian tribe may seek release of escrow deposited pursuant to this section on cigarettes sold on an Indian tribe's Indian country to its tribal members pursuant to an agreement entered into between the state and the Indian tribe pursuant to section 77-2602.06. Amounts the state collects on a bond under section 69-2707.01 shall not be subject to release under this section.

(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 calendar quarter 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 remitted to the State Treasurer for distribution 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.

(d) An importer shall be jointly and severally liable for escrow deposits due from a nonparticipating manufacturer with respect to nonparticipating manufacturer cigarettes that it imported and which were then sold in this state, except as provided for by an agreement entered into pursuant to section 77-2602.06.

(e) Each failure to make a quarterly deposit required under this section constitutes a separate violation.

Source: Laws 1999, LB 574, § 2; Laws 2004, LB 944, § 1; Laws 2011, LB590, § 5.

69-2705 Terms, defined.

For purposes of sections 69-2704 to 69-2711:

(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) Cigarette inputs means any machinery or other component parts typically used in the manufacture of cigarettes, including, without limitation, tobacco whether processed or unprocessed, cigarette papers and tubes, cigarette filters or any component parts intended for use in the making of cigarette filters, and any machinery typically used in the making of cigarettes;

(4) Days has the same meaning as in section 69-2702;

(5) Directory means the directory compiled by the Tax Commissioner under section 69-2706 or, in the case of references to another state's directory, the directory compiled under the similar law in that other state;

(6) Importer has the same meaning as in section 69-2702;

(7) Indian country has the same meaning as in section 69-2702;

(8) Indian tribe has the same meaning as in section 69-2702;

(9) Master Settlement Agreement has the same meaning as in section 69-2702;

(10) Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer;

(11) Nonparticipating manufacturer cigarettes means cigarettes (a) of a brand family that is not included in the certification of a participating manufacturer under subsection (1) of section 69-2706, (b) that are subject to the escrow requirement under subdivision (2) of section 69-2703 because the participating manufacturer in whose certification the brand family is included is not generally performing its financial obligations under the Master Settlement Agreement, or (c) of a brand family of a participating manufacturer that is not otherwise listed on the directory under subsection (2) of section 69-2706;

(12) Package means any pack or other container on which a state stamp or tribal stamp could be applied consistent with and as required by sections 69-2701 to 69-2711 and 77-2601 to 77-2622 that contains one or more individual cigarettes for sale. Nothing in such sections shall alter any other applicable requirement with respect to the minimum number of cigarettes that may be contained in a pack or other container of cigarettes. References to package do not include a container of multiple packages;

(13) Participating manufacturer has the same meaning as in section II(jj) of the Master Settlement Agreement;

(14) Person means any natural person, trustee, company, partnership, corporation, or other legal entity, including any Indian tribe or instrumentality thereof;

(15) Purchase means any acquisition in any manner or by any means for any consideration. The term includes transporting or receiving product in connection with a purchase;

(16) Qualified escrow fund has the same meaning as in section 69-2702;

(17) Retailer includes retail dealers as defined in section 77-2601 or anyone who is licensed under sections 28-1420 to 28-1422;

(18) Sale or sell means any transfer, exchange, or barter in any manner or by any means for any consideration. Sale or sell includes distributing or shipping product in connection with a sale;

(19) Shortfall amount means the difference between (a) the full amount of the deposit required to be made by a nonparticipating manufacturer for a calendar quarter under section 69-2703 and (b) the sum of (i) any amounts precollected by a stamping agent and deposited into escrow for that calendar quarter on behalf of the nonparticipating manufacturer under section 69-2708.01, (ii) the amount deposited into escrow by the nonparticipating manufacturer for that calendar quarter under section 69-2703, (iii) any amounts deposited into escrow for that calendar quarter under subdivision (2)(d) of section 69-2703 by an importer on such nonparticipating manufacturer's cigarettes, and (iv) any amounts collected by the state for that calendar quarter under the bond posted by the nonparticipating manufacturer under section 69-2707.01. The shortfall amount, if any, for a nonparticipating manufacturer for a calendar quarter shall be calculated by the Attorney General within fifteen days following the date on which the state determines the amount it will collect on the bond posted by the nonparticipating manufacturer as provided in section 69-2707.01;

(20) Stamping agent means a person that is authorized to affix stamps to packages or other containers of cigarettes under section 77-2603 or 77-2603.01 or any person that is required to pay the tobacco tax imposed pursuant to section 77-4008 on roll-your-own cigarettes;

(21) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(22) Tobacco product manufacturer has the same meaning as in section 69-2702;

(23) Units sold has the same meaning as in section 69-2702; and

(24) Unstamped cigarettes means any cigarettes that are not contained in a package bearing a stamp required under section 77-2603 or 77-2603.01.

Source: Laws 2003, LB 572, § 2; Laws 2011, LB590, § 6.

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 manufac-

turer either is a participating manufacturer in compliance with subdivision (1) of section 69-2703 or is a nonparticipating manufacturer in full compliance with subdivision (2) of section 69-2703.

(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 in Nebraska 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;

(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 69-2711 and any rules and regulations

adopted and promulgated thereunder or (B) bringing a released claim as defined in section 69-2702; and

(vi) The information required to establish that such nonparticipating manufacturer has posted the appropriate bond or cash equivalent required under section 69-2707.01.

(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, and:

(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 subsection (1) 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 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) As a condition to being listed and having its brand families listed in the directory, a tobacco product manufacturer shall also (i) certify annually that such manufacturer or its importer holds a valid permit under 26 U.S.C. 5713 and provide a copy of such permit to the Tax Commissioner and the Attorney General, (ii) upon request of the Tax Commissioner or Attorney General, provide documentary proof that it is not in violation of subdivision (1) of

section 59-1520, and (iii) certify that it is in compliance with all reporting and registration requirements of 15 U.S.C. 376 and 376a;

(d) 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 69-2711;

(e) 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 (8) 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

(f) 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 69-2711.

(3) The failure of the Tax Commissioner to provide notice of any intended removal from the directory as required under subdivision (2)(e) 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 69-2711.

(4) It shall be unlawful for any person (a) to affix a Nebraska stamp pursuant to section 77-2603 to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory, (b) to affix a tribal stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory except as authorized by an agreement pursuant to section 77-2602.06, or (c) 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; Laws 2011, LB590, § 7.

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 Nebraska 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 69-2711, 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; Laws 2011, LB590, § 8.

69-2707.01 Nonparticipating manufacturers; bond; amount; failure to make escrow deposits; execution upon bond.

(1) All nonparticipating manufacturers shall post a bond or its cash equivalent for the benefit of the state which is subject to execution under subsection (3) of this section. The bond shall be posted by corporate surety located within the United States, or the cash equivalent of the bond shall be posted by the nonparticipating manufacturer in an account approved by the state. The bond or its cash equivalent shall be posted and evidence of such posting shall be provided to the Tax Commissioner at least ten days in advance of each calendar quarter as a condition to the nonparticipating manufacturer and its brand families being included in the directory for that quarter.

(2) The amount of the bond shall be determined as follows:

(a) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have been listed on any state's directory for at least three years or for any nonparticipating manufacturer whose sales are authorized pursuant to an agreement under section 77-2602.06, the amount of the bond required shall be twenty-five thousand dollars;

(b) Unless subdivision (c) of this subsection is applicable, for a nonparticipating manufacturer or its affiliates which have not been listed on any state's directory for at least three years, the amount of the bond required shall be fifty thousand dollars; and

(c) For a nonparticipating manufacturer or its affiliates which have failed, in the past three years, to make a full and timely escrow deposit due under section 69-2703, unless the failure was not knowing or intentional and was promptly cured upon notice, or for any nonparticipating manufacturer or its affiliates which were involuntarily removed from any state's directory, unless the remov-

al was determined to have been erroneous or illegal, the amount of the bond required shall be the greater of (i) fifty thousand dollars or (ii) the greatest amount of escrow owed by the nonparticipating manufacturer or its predecessor in any calendar year in Nebraska within the preceding five calendar years.

(3) If a nonparticipating manufacturer that posted a bond has failed to make, or have made on its behalf by an entity with joint and several liability, escrow deposits equal to the full amount owed for a quarter within fifteen days following the due date for the quarter under section 69-2703, the state may execute upon the bond, first to recover delinquent escrow, which amount shall be deposited into a qualified escrow account under section 69-2703, and then to recover civil penalties and costs authorized under such section. Escrow obligations above the amount collected on the bond remain due from that nonparticipating manufacturer and, as provided in subdivision (2)(d) of section 69-2703 and section 69-2708.01, from the importers and stamping agents that sold its cigarettes during that calendar quarter.

Source: Laws 2011, LB590, § 9.

69-2708 Stamping agent; duties; Tax Commissioner; Attorney General; powers.

(1) Not later than fifteen days following the end of each month, each stamping agent shall submit, in the manner directed by the Tax Commissioner, such information as the Tax Commissioner requires to facilitate compliance with sections 69-2704 to 69-2711, including, but not limited to (a) 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 month or otherwise paid the total due for such cigarettes, the total number of cigarettes contained in the packages to which it affixed each respective type of stamp, and by name and number of cigarettes, the tobacco product manufacturers and brand families of the packages to which it affixed each respective type of stamp or similar information for roll-your-own on which tax was paid and (b) the total number of cigarettes acquired by the stamping agent during that month for sale in or into the state or for sale from this state into another state, sold in or into the state by the stamping agent during that month and held in inventory in the state or for sale into the state by the stamping agent as of the last business day of that month, in each case identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes and (ii) the brand families of those cigarettes. In the case of a stamping agent that is a retailer, reports under subdivision (1)(a) of this section do not have to include cigarettes contained in packages that bore a stamp required under section 77-2603 or 77-2603.01 at the time the stamping agent received them and that the stamping agent then sold at retail. The stamping agent shall also submit a certification stating that the information provided to the Tax Commissioner is complete and accurate. 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. The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state or other states. The Tax Commissioner may also share with a nonparticipating manufacturer information reported under this section pertaining to such nonparticipating manufacturer's cigarettes.

(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 69-2711.

(4) The Tax Commissioner or the Attorney General may require production of information sufficient to enable the Tax Commissioner or Attorney General to determine the adequacy of the amount of a quarterly escrow deposit under subdivision (2) of section 69-2703. The Tax Commissioner may adopt and promulgate rules and regulations implementing how tobacco product manufacturers subject to subdivision (2) of section 69-2703 make quarterly payments.

Source: Laws 2003, LB 572, § 5; Laws 2007, LB580, § 3; Laws 2011, LB590, § 10.

69-2708.01 Stamping agent; responsible for escrow deposits; when; liability; calculation.

(1) A stamping agent shall be responsible for escrow deposits required under subdivision (2) of section 69-2703 in the event it receives notice from the Attorney General that there is a shortfall amount with respect to nonparticipating manufacturer cigarettes stamped by it.

(2) The liability of a stamping agent for escrow deposits shall be calculated as follows: If there is a shortfall amount for a nonparticipating manufacturer for a calendar quarter, each stamping agent that sold cigarettes of that nonparticipating manufacturer during the calendar quarter shall deposit into such escrow account as shall be designated by the state an amount equal to the applicable shortfall amount multiplied by a fraction, the numerator of which is the number of cigarettes of that nonparticipating manufacturer sold in or into the state by the stamping agent during that calendar quarter and the denominator of which is the total number of cigarettes of that nonparticipating manufacturer sold by all stamping agents in or into the state during that calendar quarter, except that any nonparticipating manufacturer cigarettes sold in or into the state by a stamping agent during the calendar quarter in which the stamping agent collected and deposited the required escrow deposit amount on or before the due date for deposits for that quarter under subdivision (2) of section 69-2703 shall be excluded from both the numerator and the denominator of the fraction. To the extent a stamping agent makes payments with respect to a shortfall amount under this subsection, such stamping agent shall have a claim against the nonparticipating manufacturer for such amount.

(3) A stamping agent shall not be liable for escrow deposits under subsections (1) and (2) of this section if, at the time of purchase of such nonparticipating manufacturer's cigarettes:

(a) The nonparticipating manufacturer is on the directory pursuant to section 69-2706; and

(b) The state denotes on the directory that the nonparticipating manufacturer has posted the appropriate bond required under section 69-2707.01.

Source: Laws 2011, LB590, § 11.

69-2709 Revocation or suspension of stamping agent license; civil penalty; termination of license; grounds; violations; penalties; effect of termination; eligibility for reinstatement; directory license; termination; procedure; 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 of subsection (4) of section 69-2706 or the rules and regulations, 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) The license of a stamping agent shall be subject to termination if the stamping agent:

(a) Fails to provide a report required under section 69-2708, 69-2710.01, or 77-2604.01;

(b) Files an incomplete or inaccurate report required under section 69-2708, 69-2710.01, or 77-2604.01 or files an inaccurate certification required under section 69-2708, subsection (2) of section 77-2603, or section 69-2710.01;

(c) Fails to pay taxes as provided in section 77-2602 or deposit escrow as provided in section 69-2708.01;

(d) Sells cigarettes in or into the state in a package that bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp;

(e) Sells unstamped cigarettes in, into, or from the state or possesses unstamped cigarettes in the state except as provided in section 77-2607;

(f) Purchases, sells in or into the state, or affixes a stamp to a package containing cigarettes of a manufacturer or brand family that is not at the time listed in the directory, or possesses such cigarettes more than ten days after receiving notice that the manufacturer or brand family is not in the directory, unless such stamping agent possesses a directory license under section 77-2603 or unless expressly permitted under sections 69-2701 to 69-2711 or sections 77-2601 to 77-2622; or

(g) Purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.02.

(3) In the case of a violation under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional, the stamping agent shall be entitled to cure the violation within ten days after receipt of notice of such

violation. The license of a stamping agent that fully cures the violation during that period shall not be terminated on account of that violation.

(4) In the case of a knowing or intentional violation under subdivision (2)(a), (b), (c), or (d) of this section, or of any violation described in subdivision (2)(e) or (f) of this section, the stamping agent shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. In the case of violations described in subdivision (2)(d), (e), or (f) of this section, each sale constitutes a separate offense.

(5) The Tax Commissioner shall promptly remove any stamping agent whose license is terminated from the list required by subsection (4) of section 77-2603 and shall publish a notice of the termination on the Tax Commissioner's web site and send notice of the termination to all stamping agents and to all persons listed in the directory. Beginning ten days following the publication and sending of such notice, no person may sell cigarettes to, or purchase cigarettes from, the stamping agent whose license has been terminated.

(6) If a stamping agent whose license has been terminated is a tobacco product manufacturer, the tobacco product manufacturer and its brand families shall be removed from the directory.

(7) A stamping agent whose license is terminated shall be eligible for reinstatement:

(a) Ninety days following the termination, in the case of a first failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(b) One hundred eighty days following the termination, in the case of a second failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(c) One year following the termination, in the case of a third or subsequent failure under subdivision (2)(a), (b), (c), or (d) of this section that was not knowing or intentional;

(d) One year following the termination, in the case of a first knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a first violation described in subdivision (2)(e), (f), or (g) of this section; and

(e) Three years following the termination, in the case of a second or subsequent knowing or intentional failure under subdivision (2)(a), (b), (c), or (d) of this section or a second or subsequent violation described in subdivision (2)(e), (f), or (g) of this section.

(8) 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.

(9) 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 section 69-2708 by a stamping agent and to compel the stamping agent to comply with subsection (4) of section 69-2706 or section 69-2708. 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. This subsection shall not apply to a stamping agent purchasing cigarettes which are not in violation of subsection (4) of section 69-2706 or section 69-2708.

(10) 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 subsection is a Class III misdemeanor.

(11) If a court determines that a person has violated any portion of sections 69-2704 to 69-2711, 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 69-2711 are cumulative to each other and to the remedies or penalties available under all applicable laws of this state.

(12) It is unlawful for any manufacturer, importer, or stamping agent to knowingly submit any false information required pursuant to sections 69-2703 to 69-2711. A violation of this subsection is a Class IV felony. Knowing submission of false information shall also be grounds for removal of a tobacco product manufacturer from the directory.

(13) A tobacco product manufacturer that knowingly or intentionally sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 and its brand families shall be removed from the directory.

(14) A nonparticipating manufacturer whose total nationwide reported sales on which federal excise tax is paid exceed the sum of its nationwide reports under 15 U.S.C. 375 et seq. and any intrastate sales reports under 15 U.S.C. 375 et seq. by more than five percent of its total sales or one million cigarettes, whichever is less, shall be subject to removal from the directory unless it cures or satisfactorily explains the discrepancy within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01.

(15) Any person that is not a stamping agent or tobacco product manufacturer that fails to file a complete and accurate report required under section 69-2708, 69-2710.01, 77-2604, or 77-2604.01 shall be entitled to cure the failure within ten days after receipt of notice of the discrepancy from the Attorney General pursuant to section 69-2708.01. If the person fails to fully cure the failure within such period, it shall be subject to a civil penalty of up to one thousand dollars per violation and shall be ineligible to hold any license of the state regarding cigarette sales until the date specified by subsection (7) of this section for violations of subdivision (2)(a) of this section.

(16) A directory license shall be subject to termination if the licensee acts inconsistently with its certification under subsection (2) of section 77-2603 or violates sections 69-2701 to 69-2711.

(17) Any person that knowingly or intentionally purchases or sells cigarettes in violation of subsection (5) of this section or section 69-2710.01 or that knowingly or intentionally sells cigarettes in or into the state in a package that

bears a stamp required under section 77-2603 or 77-2603.01 that is not the correct stamp and provides for a lower level of tax than the correct stamp shall for a first violation be subject to a civil penalty of up to one thousand dollars and be guilty of a Class IV misdemeanor and for a second or subsequent violation be subject to a civil penalty of up to five thousand dollars per violation and be guilty of a Class II misdemeanor. Each sale constitutes a separate violation.

Source: Laws 2003, LB 572, § 6; Laws 2007, LB580, § 4; Laws 2011, LB590, § 12.

69-2710 Removal from directory; procedure.

(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 69-2711 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 69-2711. 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 69-2711 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.

Source: Laws 2003, LB 572, § 7; Laws 2011, LB590, § 13.

Cross References

Administrative Procedure Act, see section 84-920.

69-2710.01 Report; contents.

(1) Any person that during a month acquired, purchased, sold, possessed, transferred, transported, or caused to be transported in or into this state cigarettes of a tobacco product manufacturer or brand family that was not in the directory at the time shall, within fifteen days following the end of that month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate. The report shall contain, in addition to any further information that the Tax

Commissioner may reasonably require to assist the Tax Commissioner in enforcing sections 69-2701 to 69-2711 and 77-2601 to 77-2622 and the Tobacco Products Tax Act, the following information:

(a) The total number of those cigarettes, in each case identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, (iii) in the case of a sale or transfer, the name and address of the recipient of those cigarettes, (iv) in the case of an acquisition or purchase, the name and address of the seller or sender of those cigarettes, and (v) the other states in whose directory the manufacturer and brand family of those cigarettes were listed at the time and whose stamps the person is authorized to affix; and

(b) In the case of acquisition, purchase, or possession, the details of the person's subsequent sale or transfer of those cigarettes, identifying by name and number of cigarettes (i) the brand families of those cigarettes, (ii) the date of the sale or transfer, (iii) the name and address of the recipient, (iv) the number of stamps of each other state that the person affixed to the packages containing those cigarettes during that month, (v) the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp, (vi) the manufacturers and brand families of the packages to which it affixed each respective other state's stamp, and (vii) a certification that it reported each sale or transfer to the taxing authority of the other state by fifteen days following the end of the month in which the sale or transfer was made and attaching a copy of all such reports. If the subsequent sale or transfer is from this state into another state in packages not bearing a stamp of the other state, the report shall also contain the information described in subdivision (2)(c) of section 77-2604.01.

(2) Reports under this section shall be in addition to reports under sections 69-2708, 77-2604, and 77-2604.01.

Source: Laws 2011, LB590, § 14.

Cross References

Tobacco Products Tax Act, see section 77-4001.

69-2710.02 License of stamping agent; termination; grounds; cure; notice; reinstatement; removal from directory; grounds; cure; notice; procedure.

(1) The license of a stamping agent may be subject to termination if its similar license is terminated in any other state based on acts or omissions that would be grounds for license termination under subsection (2) of section 69-2709, unless the stamping agent demonstrates that its termination in the other state was effected without due process. If a stamping agent's license is terminated in another state for a violation similar to a violation listed in subdivision (2)(a), (b), (c), or (d) of section 69-2709 that was not knowing or intentional, the stamping agent shall not be subject to license termination if the stamping agent fully cures such violation and provides notice of such cure to the Department of Revenue within ten days after receipt of notice of such violation. A stamping agent whose license is terminated under this subsection shall be eligible for reinstatement upon the earlier of the date specified by subsection (7) of section 69-2709 for the act or omission in question or reinstatement of its license by the other state.

(2) A tobacco product manufacturer and its brand families may be removed from the directory if it is removed from the directory of another state based on

acts or omissions that would, if done in this state, be grounds for removal from the directory under section 69-2706, 69-2707, 69-2707.01, or 69-2710 or subsection (6) of section 69-2709, unless the tobacco product manufacturer demonstrates that its removal from the other state's directory was effected without due process, that it fully cured such violation and provided notice of such cure to the Department of Revenue within thirty days after receipt of notice of the violation, or that it secured a temporary injunction against removal from the directory in the district court of Lancaster County. For purposes of a 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. A manufacturer that is removed from the directory under this subsection shall be eligible for reinstatement upon the earlier of the date on which it cures the violation or is reinstated to the directory in the other state.

(3) The applicable procedures under section 77-2615.01 shall apply to terminations and removals under this section.

Source: Laws 2011, LB590, § 15.

69-2710.03 Rules and regulations.

The Tax Commissioner may adopt and promulgate rules and regulations necessary to effect the purposes of sections 69-2703 to 69-2711.

Source: Laws 2011, LB590, § 16.

69-2711 Conflict of laws; how treated.

If a court of competent jurisdiction finds that the provisions of sections 69-2704 to 69-2711 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 69-2711 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 69-2711 shall not be valid.

Source: Laws 2003, LB 572, § 13; Laws 2011, LB590, § 17.

CHAPTER 70
POWER DISTRICTS AND CORPORATIONS

Article.
3. Right-of-Way for Pole Lines. 70-311.
6. Public Power and Irrigation Districts. 70-651.04, 70-655.
10. Nebraska Power Review Board. 70-1001 to 70-1020.
16. Denial or Discontinuance of Utility Service. 70-1603, 70-1605.
19. Rural Community-Based Energy Development Act. 70-1903.

ARTICLE 3
RIGHT-OF-WAY FOR POLE LINES

Section
70-311. Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.

70-311 Electric transmission or electric distribution lines; notice of road, road ditch improvement, or other projects; when given.

(1) Whenever any county or township road construction, widening, repair, or grading project or any road ditch improvement project requires, or can reasonably be expected to require, the performance of any work within ten 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 ninety days prior to the start of any work when, because of road construction, widening, repair, or grading or a road ditch improvement project, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

(2) If a natural resources district will be altering a road structure or grading or moving earth for a flood control, recreation, or other project that requires, or can reasonably be expected to require, the performance of any work within ten 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 natural resources district in charge of such projects. Such notice shall be given at least ninety days prior to the start of any work when, because of such road structure alteration or grading or moving earth, or for any other reason, it is necessary to relocate such line, poles, or anchors or if such work will compromise the structural integrity of the line, poles, or anchors.

Source: Laws 2002, LB 1105, § 474; Laws 2010, LB643, § 1.

ARTICLE 6
PUBLIC POWER AND IRRIGATION DISTRICTS

Section
70-651.04. Districts; gross revenue tax; distribution.
70-655. Reasonable rates required; negotiated rates authorized; conditions.

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, to any learning community 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, except that the only learning community levies to be included are the common levies for which the proceeds are distributed to member school districts pursuant to sections 79-1073 and 79-1073.01.

Source: Laws 1959, c. 317, § 4, p. 1164; Laws 1979, LB 187, § 183; Laws 1993, LB 346, § 6; Laws 1995, LB 732, § 1; Laws 2010, LB1070, § 2.

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 include a production component that is less than the incremental production 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. 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, any agency created pursuant to the Municipal Cooperative Financing Act, and any municipality engaged in furnishing electrical service to customers at retail or wholesale.

(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; Laws 2012, LB1043, § 1.
Effective date March 8, 2012.

Cross References

Electric Cooperative Corporation Act, see section 70-701.
Municipal Cooperative Financing Act, see section 18-2401.
Nebraska Nonprofit Corporation Act, see section 21-1901.

ARTICLE 10
NEBRASKA POWER REVIEW BOARD

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 to monitor whether the conditions necessary for its citizens to benefit from retail competition exist.

It is also the policy of the state to encourage and allow opportunities for private developers to develop, own, and operate renewable energy facilities intended primarily for export from the state under a statutory framework which protects the ratepayers of consumer-owned utility systems operating in the state from subsidizing the costs of such export facilities through their rates.

Source: Laws 1963, c. 397, § 1, p. 1259; Laws 1971, LB 349, § 4; Laws 1981, LB 181, § 42; Laws 2000, LB 901, § 6; Laws 2010, LB1048, § 2.

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) Certified renewable export facility means a facility approved under section 70-1014.02 that (a) will generate electricity using solar, wind, biomass, or landfill gas, (b) will be constructed and owned by an entity other than 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, and (c) has a power purchase or similar agreement or agreements with an initial term of ten years or more for the sale of at least ninety percent of the output of the facility with a customer or customers located outside the State of Nebraska and maintains such an agreement or agreements for the life of the facility. Output sold pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be included when calculating such ninety percent. Certified renewable export facility includes all generating equipment, easements, and interconnection equipment within the facility and connecting the facility to the transmission grid;

(3) Except as expressly provided in section 70-1014.02, electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail;

(4) 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;

(5) 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;

(6) State means the State of Nebraska;

(7) Stranded asset means a generation or transmission facility owned by an electric supplier as defined in subsection (1) of section 70-1014.02 which cannot earn a favorable economic return due to regulatory or legislative actions or changes in the market and, at the time an application is filed with the board under such section, either exists or has been approved by the board or the governing body of an electric supplier as defined in such subsection; and

(8) 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; Laws 2010, LB1048, § 3; Laws 2011, LB208, § 1.

70-1003 Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; expenses; 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. Upon expiration of the terms of the members first appointed, 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 report submitted to the Clerk of the Legislature shall be submitted electronically. 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 may, in its discretion, hold 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. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.

(6) The board may, at any time deemed beneficial by the board, submit a 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 filed with the Clerk of the Legislature and the committee shall be filed electronically. The report may 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 establish working groups of interested parties to assist the board in carrying out the powers 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 181, § 46; Laws 1981, LB 204, § 107; Laws 2000, LB 901, § 8; Laws 2010, LB797, § 1; Laws 2012, LB782, § 101.
Operative date July 19, 2012.

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 power suppliers as it deems to be affected by the application. The hearing shall be held within sixty days unless for good cause shown the applicant requests in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not more than one hundred twenty days after the filing of the application and the board shall give its decision within sixty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. 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 or subdivision (2)(a) of section 70-1014.02 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; Laws 2010, LB1048, § 4; Laws 2011, LB208, § 2.

70-1014 Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.

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 and except as provided in section 70-1014.02, 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.

If the application involves a transmission line or related facilities planned and approved by a regional transmission organization and the regional transmission organization has issued a notice to construct or similar notice or order to a utility to construct the line or related facilities, the board shall also consider information from the regional transmission organization's planning process and may consider the benefits to the region, which shall include

Nebraska, provided by the proposed line or related facilities as part of the board's process in determining whether to approve or deny the application.

Source: Laws 1963, c. 397, § 14, p. 1265; Laws 1981, LB 181, § 51; Laws 2003, LB 65, § 2; Laws 2010, LB1048, § 5; Laws 2012, LB742, § 1.
Effective date July 19, 2012.

70-1014.01 Special generation application; approval; findings required; eminent domain.

(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 filed under subdivision (2)(a) of this section 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) A community-based energy development project organized pursuant to the Rural Community-Based Energy Development Act or any privately developed project 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 this subsection if (i) the purchasing electric utilities conduct a public hearing described in subdivision (2)(a) of this section, (ii) the power and energy from the renewable energy sources is sold exclusively to such electric utilities for a term of at least twenty years, and (iii) the total production from all such renewable projects, excluding sales from such projects to other electric-generation entities, does not exceed ten percent of total energy sales of such purchasing electric utilities as shown in such utilities' Annual Electric Power Industry Report to the United States Department of Energy or the successor to such report.

(b) The application filed under subdivision (3)(a) of this section shall be approved by the board if the board finds that the purchasing electric utilities have met the conditions described in subdivision (3)(a) of this section.

(4) No facility or part of a facility which is approved pursuant to this section is subject to eminent domain by any electric supplier, or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

Source: Laws 2003, LB 65, § 3; Laws 2009, LB561, § 2; Laws 2010, LB1048, § 7; Laws 2012, LB742, § 2.
Effective date July 19, 2012.

Cross References

Rural Community-Based Energy Development Act, see section 70-1901.

70-1014.02 Certified renewable export facilities; approval of application; board; powers and duties; conditional approval; final approval; failure to commence construction; effect; application fee; eminent domain; revocation of certification; procedure; recertification.

(1) For purposes of this section:

(a) Electric supplier means a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; and

(b) Electric supplier does not have the same meaning as in section 70-1001.01.

(2)(a) The board shall conditionally approve an application for a certified renewable export facility if it finds that only the criteria described in subdivisions (a)(i) through (iv) of this subsection are met: (i) The facility will provide reasonably identifiable and quantifiable public benefits, including economic development, to the residents of Nebraska or the local area where the facility will be located; (ii) the facility meets the requirements of subdivisions (2)(a) and (b) of section 70-1001.01; (iii) the facility has a memorandum of understanding or other written evidence of mutual intent to negotiate a power purchase agreement or agreements with a purchaser or purchasers outside the State of Nebraska for at least ninety percent of the output of the facility for ten years or more; and (iv) the applicant offers electric suppliers serving loads greater than fifty megawatts at the time the initial application is filed an option to purchase in the aggregate an amount of power up to ten percent of the output of any facility with greater than eighty megawatts of nameplate capacity contingent upon the applicant and electric suppliers negotiating in good faith a power purchase agreement and any other necessary agreements. Such electric suppli-

ers shall be entitled to a minimum of their pro rata share based on the load ratio share of Nebraska electric load served among those electric suppliers eligible under this subdivision (iv). If an electric supplier declines to contract for some or all of its pro rata share, the remaining eligible electric suppliers may share the balance on a pro rata basis. The ten percent may be above the total generation amount proposed in the application for a certified renewable export facility and shall require no separate approval by the board. Any transmission studies, additions, or upgrades due to participation by electric suppliers serving loads greater than fifty megawatts shall be the responsibility of the participating electric supplier. Upon receiving the initial application under this section, the board shall notify electric suppliers identified in this subdivision (iv) of a pending application with a nameplate capacity greater than eighty megawatts. Such suppliers shall have forty-five days following the date of the board's notice to notify the applicant of an interest in exercising the option to purchase power, except that such suppliers may withdraw their option to purchase power once the costs of the transmission additions and upgrades are determined. Electric suppliers withdrawing their option to purchase power are responsible for their pro rata share of any costs resulting from their participation in and withdrawal from the generation interconnection and transmission delivery studies.

(b) Following the board's conditional approval of an application under subdivision (a) of this subsection, the applicant shall notify the board within eighteen months that it is prepared to proceed to consideration of the criteria in subdivision (c) of this subsection. The board may extend such eighteen-month deadline not more than twelve additional months for good cause shown. If the applicant fails to notify the board within such time that it is so prepared, the conditional approval granted under this subdivision is void.

(c) Upon finding that the criteria described in subdivisions (c)(i) through (viii) of this subsection have also been met by the applicant and after the board has fulfilled the requirements of subsection (3) of section 37-807, the board shall grant final approval of an application for a certified renewable export facility:

(i) The facility will not have a materially detrimental effect on the retail electric rates paid by any Nebraska ratepayers, except that, notwithstanding subdivisions (c)(v) and (vi) of this subsection, the determination of a materially detrimental effect on rates shall not include regional transmission improvements dictated by a regional transmission operator or transmission improvements required due to participation by an eligible entity pursuant to subdivision (2)(a)(iv) of this section;

(ii) The applicant has obtained the necessary generation interconnection and transmission service approvals from and has executed agreements for such generation interconnection and transmission service with the appropriate regional transmission organization, transmission owner, or transmission provider;

(iii) There has been no demonstration that the proposed facility will result in a substantial risk of creating stranded assets;

(iv) The applicant has certified that it has applied for and is actively pursuing the required approvals from any other federal, state, or local entities with jurisdiction or permitting authority over the certified renewable export facility;

(v) The applicant and the electric supplier owning the transmission facilities to which the certified renewable export facility will be interconnected, along

with any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, have entered into a joint transmission development agreement on reasonable terms and conditions consistent with and subject to the notice to construct or other directives of any regional transmission organization with jurisdiction over the addition or upgrade to transmission facilities or, for any electric supplier that is not a member of a regional transmission organization with which the facility will interconnect, covers the addition or upgrade to transmission facilities required as a result of the certified renewable export facility. Such joint transmission development agreement shall include provisions addressing construction, ownership, operation, and maintenance of such additions or upgrades to transmission facilities. The electric supplier or suppliers shall have the right to purchase and own transmission facilities as set forth in the joint transmission development agreement;

(vi) The applicant agrees to reimburse any costs that are not covered by a regional transmission organization tariff or that are allocated through the tariff to the electric suppliers as a result of the certified renewable export facility or not covered by the tariff of a transmission owner or transmission provider that is not a member of a regional transmission organization, costs incurred by any electric supplier as a result of adding the certified renewable export facility, including, but not limited to, renewable integration costs, and costs which allow the interconnected electric supplier to operate and maintain the transmission facilities under reasonable terms and conditions agreed to by the parties within the joint transmission development agreement;

(vii) The applicant shall submit a decommissioning plan. The applicant or owner of the facility shall establish decommissioning security by posting an instrument, a copy of which is given to the board, no later than the tenth year following final approval of the facility to ensure sufficient funding is available for removal of the facility and reclamation at the end of the useful life of such facility pursuant to the decommissioning plan. The owner of the certified renewable export facility shall be solely responsible for decommissioning. If the applicant or any subsequent owner of the facility intends to transfer ownership of the facility, the proposed new owner shall provide the board with adequate evidence demonstrating that substitute decommissioning security has been posted or given prior to transfer of ownership. The requirements of this subdivision (vii) shall be waived if a local governmental entity with authority to create requirements for decommissioning has enacted decommissioning requirements for the applicable jurisdiction; and

(viii) The facility meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01.

(3) If the applicant does not commence construction of the certified renewable export facility within eighteen months after receiving final approval from the board under subsection (2) of this section, the approval is void. Upon written request filed by the applicant, the board may, for good cause shown, extend the time period during which an approval will remain valid. Good cause includes, but is not limited to, national or regional economic conditions, lack of transmission infrastructure, or an applicant's inability to obtain authorization from other required governmental regulatory authorities despite the applicant's exercise of a good-faith effort to obtain such approvals.

(4) The applicant shall remit an application fee of five thousand dollars with the application. The fee shall be remitted to the State Treasurer for credit to the Nebraska Power Review Fund. The board shall use the application fee to defray the board's reasonable expenses associated with reviewing and acting upon the application, including the costs of the hearing. If the board incurs expenses of more than five thousand dollars associated with the application, the board shall provide written notification to the applicant of the additional sum needed or already expended, after which the applicant shall promptly submit an additional sum sufficient to cover the board's anticipated or incurred expenses or shall file an objection with the board. If, after completion of the application process and any subsequent legal action, including appeal of the board's decision, the board's expenses associated with processing and acting upon the application do not equal the amount submitted by the applicant, the board shall return the unused funds to the applicant if the amount is fifty dollars or more. The applicant shall reimburse the board for any reasonable expenses the board incurs as a result of an appeal of the board's decision or shall file an objection with the board. The board shall rule on any objection brought pursuant to this subsection within thirty days. The applicant may request a hearing on its objection, in which case the board shall hold such hearing within thirty days after the request and shall rule within forty-five days after the hearing.

(5) No facility or part of a facility which is a certified renewable export facility is subject to eminent domain by an electric supplier or by any other entity if the purpose of the eminent domain proceeding is to acquire the facility for electric generation or transmission.

(6) Except as provided in subsection (5) of this section, only an electric supplier may exercise its eminent domain authority to acquire the land rights necessary for the construction of transmission lines and related facilities to provide transmission services for a certified renewable export facility. The exercise of eminent domain to provide needed transmission lines and related facilities for a certified renewable export facility is a public use. Nothing in this section shall be construed to grant the power of eminent domain to a private entity.

(7) If any transmission facilities serving a certified renewable export facility are proposed to cross the service area of any electric supplier which owns transmission facilities of one hundred fifteen thousand volts or more and is required to receive notice pursuant to section 70-1013, then such electric supplier may elect to be a party to a joint transmission development agreement for such transmission facilities.

(8) If a certified renewable export facility no longer meets the requirements of subdivisions (2)(a) through (c) of section 70-1001.01, the owner of the facility shall notify the board. An electric supplier or a governmental entity with regulatory jurisdiction over the certified renewable export facility may apply to the board or the board may file its own motion to have the certification of a certified renewable export facility revoked upon a showing by the applicant for decertification that the facility no longer meets the requirements of such subdivisions. Upon the filing of such application and making of a prima facie showing by the applicant for decertification that the facility no longer meets the requirements of such subdivisions, the board shall set the matter for hearing. The hearing shall be held within forty-five days unless an extension is necessary for good cause shown. The applicant for decertification shall have the burden of proof. Within forty-five days after the conclusion of the hearing, the board shall

enter an order to either reaffirm the facility's status as a certified renewable export facility or to revoke the certification. During the pendency of the application for decertification and before the board's final order on decertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the State of Nebraska, or to an electric supplier pursuant to a power purchase agreement or similar agreement. The board shall retain jurisdiction over the decertification action for at least thirty days after entry of such an order. Within thirty days after a final order revoking certification, the owner of the facility may apply for recertification, with the time period for recertification being no longer than one year unless the board extends the time period for good cause shown. Such application for recertification shall extend the board's jurisdiction over the decertification action until the board completes its review of the application for recertification and enters an order granting or denying the application. If the applicant for recertification demonstrates to the board that it is working diligently and in good faith to restore its compliance with subdivisions (2)(a) through (c) of section 70-1001.01, the board shall not terminate the application for recertification. During the pendency of the application for recertification and before the board's final order on recertification, the facility may continue to operate if the electricity generated at the facility is sold to customers outside the state, or to an electric supplier pursuant to a power purchase agreement or similar agreement. If the board retains jurisdiction over the decertification action, the prohibition on eminent domain set forth in subsection (5) of this section shall remain in full force and effect. If the board enters an order decertifying a certified renewable export facility and such order becomes final due to a failure to timely seek recertification or judicial review, the prohibition on eminent domain set forth in subsection (5) of this section shall no longer apply. Nothing in this section shall prohibit a decertified facility from being recertified in the same manner as a new facility.

Source: Laws 2010, LB1048, § 6; Laws 2011, LB208, § 3.

70-1015 Suppliers; electric generation facilities and transmission lines; unauthorized construction, acquisition, or service; injunction; violation; actions authorized.

(1) If any supplier commences the construction or finalizes or attempts 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.

(2) If any person owning or operating a certified renewable export facility violates any provision of Chapter 70, article 10, or violates or disobeys any requirement imposed by the board pursuant to the board's jurisdiction established in section 70-1014.02 or the board enters an order decertifying the facility and the order becomes final, further operation of the facility may be enjoined or otherwise limited or have conditions put upon it in an action brought in the name of the State of Nebraska until such person rectifies the violation or disobedience of the order or the facility becomes recertified.

Source: Laws 1963, c. 397, § 15, p. 1265; Laws 1967, c. 426, § 1, p. 1302; Laws 1981, LB 181, § 52; Laws 2011, LB208, § 4.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Power Review 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; Laws 2009, First Spec. Sess., LB3, § 43.

Cross References

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

ARTICLE 16

DENIAL OR DISCONTINUANCE OF UTILITY SERVICE

Section
70-1603. Municipal utility; owned and operated by a village; discontinuance of service; notice; procedure.
70-1605. Discontinuance of service; notice; procedure.

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.

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; Laws 2010, LB849, § 17.

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.

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; Laws 2010, LB849, § 18.

ARTICLE 19

RURAL COMMUNITY-BASED ENERGY DEVELOPMENT ACT

Section
70-1903. Terms, defined.

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 or the Nebraska Uniform 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; Laws 2010, LB888, § 102.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

CHAPTER 71
PUBLIC HEALTH AND WELFARE

Article
2. Practice of Barbering. 71-202.01 to 71-222.02.
4. Health Care Facilities. 71-401 to 71-468.
5. Diseases.
   (b) Alzheimer's Special Care Disclosure Act. 71-516.04.
   (e) Immunization and Vaccines. 71-529.
   (f) Human Immunodeficiency Virus Infection. 71-531.
   (h) Exchange of Immunization Information. 71-539 to 71-544.
   (k) Syndromic Surveillance Program. 71-552.
6. Vital Statistics. 71-605, 71-615.
7. Women's Health. 71-707.
8. Behavioral Health Services. 71-801 to 71-831.
9. Nebraska Mental Health Commitment Act. 71-901 to 71-963.
11. Developmental Disabilities Court-Ordered Custody Act. 71-1134.
15. Housing.
   (c) Modular Housing Units. 71-1559.
16. Local Health Services.
   (b) Local Public Health Departments. 71-1628.05 to 71-1631.02.
17. Nurses.
   (h) Nebraska Center for Nursing Act. 71-1796, 71-17,100.
   (j) Nursing Faculty Student Loan Act. 71-17,115.
19. Care of Children.
   (a) Foster Care Licensure. 71-1902, 71-1904.
20. Hospitals.
   (d) Medical and Hospital Care. 71-2046 to 71-2048.01.
   (f) Cooperative Ventures by Public Hospitals. 71-2057 to 71-2061.
   (l) Nonprofit Hospital Sale Act. 71-20,104.
24. Drugs.
   (e) Return of Dispensed Drugs and Devices. 71-2421.
   (k) Correctional Facilities and Jails Relabeling and Redispensing. 71-2453.
   (l) Prescription Drug Monitoring Program. 71-2454, 71-2455.
25. Poisons.
   (b) Lead Poisoning. 71-2516.
   (c) Lead Poisoning Prevention Program. 71-2518.
33. Fluoridation. 71-3305.
34. Reduction in Morbidity and Mortality.
   (b) Child Deaths. 71-3407.
35. Radiation Control and Radioactive Waste.
   (a) Radiation Control Act. 71-3503.
46. Manufactured Homes, Recreational Vehicles, and Mobile Home Parks.
   (a) Manufactured Homes and Recreational Vehicles. 71-4603, 71-4604.01.
47. Hearing.
   (b) Commission for the Deaf and Hard of Hearing. 71-4728, 71-4732.
   (c) Infant Hearing Act. 71-4741.
48. Anatomical Gifts.
   (a) Uniform Anatomical Gift Act. 71-4801 to 71-4812.
   (b) Miscellaneous Provisions. 71-4813 to 71-4818.
   (d) Donor Registry of Nebraska. 71-4822.
   (e) Revised Uniform Anatomical Gift Act. 71-4824 to 71-4845.
51. Emergency Medical Services.
   (e) Nebraska Emergency Medical System Operations Fund. 71-51,103.
52. Resident Physician Education and Dental Education Programs.
   (a) Family Practice Residency. 71-5206.01.

ARTICLE 2

PRACTICE OF BARBERING

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 pole shall mean a cylinder or pole with alternating stripes of red, white, and blue or any combination of them which run diagonally along the length of the cylinder or pole;

(3) 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;

(4) Barber school or college shall mean an establishment properly licensed and operated for the teaching and training of barber students;

(5) Board shall mean the Board of Barber Examiners;

(6) Manager shall mean a licensed barber having control of the barber shop and of the persons working or employed therein;

(7) License shall mean a certificate of registration issued by the board;

(8) Barber instructor shall mean a teacher of the barber trade as provided in the act;

(9) Assistant barber instructor shall mean a teacher of the barbering trade registered as an assistant barber instructor as required by the act;

(10) 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;

(11) Secretary of the board shall mean the director appointed by the board who shall keep a record of the proceedings of the board; and

(12) 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; Laws 2011, LB46, § 1.

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 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; Laws 2011, LB46, § 2.

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. The report submitted to the Legislative Fiscal Analyst shall be submitted electronically.

Source: Laws 1975, LB 66, § 7; Laws 2012, LB782, § 102.
Operative date July 19, 2012.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Board of Barber Examin-

ers 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; Laws 2009, First Spec. Sess., LB3, § 44.

Cross References

Fees, see sections 33-151 and 33-152.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

ARTICLE 4
HEALTH CARE FACILITIES

Section
71-401. Act, how cited.
71-403. Definitions, where found.
71-408.01. Children's day health service, defined.
71-415. Health care service, defined.
71-448. License; disciplinary action; grounds.
71-465. Repealed. Laws 2012, LB 782, § 253.
71-466. Religious residential facility; exemption from licensure and regulation.
71-467. General acute hospital; employees; influenza vaccinations; duties; record.
71-468. Onsite vaccinations for influenza and pneumococcal disease.

71-401 Act, how cited.

Sections 71-401 to 71-468 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; Laws 2010, LB849, § 19; Laws 2010, LB999, § 1; Laws 2011, LB34, § 1; Laws 2011, LB542, § 1; Laws 2012, LB1077, § 1. Effective date July 19, 2012.

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; Laws 2010, LB849, § 20.

71-408.01 Children's day health service, defined.

(1) Children's day health service means a person or any legal entity which provides specialized care and treatment, including an array of social, medical, rehabilitation, or other support services for a period of less than twenty-four consecutive hours in a community-based group program to twenty or more persons under twenty-one years of age who require such services due to medical dependence, birth trauma, congenital anomalies, developmental disorders, or functional impairment.

(2) Children's day health service does not include services provided under the Developmental Disabilities Services Act.

Source: Laws 2010, LB849, § 21.

Cross References

Developmental Disabilities Services Act, see section 83-1201.

71-415 Health care service, defined.

Health care service means an adult day service, a home health agency, a hospice or hospice service, a respite care service, or beginning January 1, 2011, a children's day health 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; Laws 2010, LB849, § 22.

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 or 71-552;

(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; Laws 2011, LB591, § 4.

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.

71-465 Repealed. Laws 2012, LB 782, § 253.

Operative date July 19, 2012.

71-466 Religious residential facility; exemption from licensure and regulation.

Any facility which is used as a residence by members of an organization, association, order, or society organized and operated for religious purposes, which is not operated for financial gain or profit for the organization, association, order, or society, and which serves as a residence only for such members who in the exercise of their duties in the organization, association, order, or society are required to participate in congregant living within such a facility is exempt from the provisions of the Health Care Facility Licensure Act relating to licensure or regulation of assisted-living facilities, intermediate care facilities, and nursing facilities.

Source: Laws 2011, LB34, § 2.

71-467 General acute hospital; employees; influenza vaccinations; duties; record.

(1) Each general acute hospital shall take all of the following actions in accordance with the guidelines of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the guidelines existed on January 1, 2011:

(a) Annually offer onsite influenza vaccinations to all hospital employees when no national vaccine shortage exists; and

(b) Require all hospital employees to be vaccinated against influenza, except that an employee may elect not to be vaccinated.

(2) The hospital shall keep a record of which employees receive the annual vaccination against influenza and which employees do not receive such vaccination.

Source: Laws 2011, LB542, § 2.

71-468 Onsite vaccinations for influenza and pneumococcal disease.

In order to prevent, detect, and control pneumonia and influenza outbreaks in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall annually, beginning no later than

October 1 and ending on the following April 1 when no national vaccine shortage exists, offer onsite vaccinations for influenza and pneumococcal disease to all residents and to all inpatients prior to discharge, pursuant to procedures of the facility and in accordance with the recommendations of the advisory committee on immunization practices of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the recommendations existed on January 1, 2012. Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section.

Source: Laws 2012, LB1077, § 2.
Effective date July 19, 2012.

ARTICLE 5
DISEASES

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

(b) ALZHEIMER'S SPECIAL CARE DISCLOSURE ACT

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 which shall include, but not be limited to, four hours annually for direct care staff. Such training shall include topics pertaining to the form of care or treatment set forth in the disclosure described in this section. The requirement in this subdivision shall not be construed to increase the aggregate hourly training requirements of the Alzheimer's special care unit;

(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; Laws 2010, LB849, § 23.

(e) IMMUNIZATION AND VACCINES

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. The report submitted to the Legislature shall be submitted electronically;

(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; Laws 2011, LB591, § 5; Laws 2012, LB782, § 103.
Operative date July 19, 2012.

(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 Revised 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; Laws 2010, LB1036, § 35.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

(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 health care professionals, health care facilities, health care services, schools, postsecondary educational institutions, licensed child care facilities, electronic health-record systems, public health departments, health departments of other states, Indian health services, and tribes for the purpose of protecting the public health by facilitating age-appropriate immunizations which will minimize the risk of outbreak of vaccine-preventable diseases.

Source: Laws 1998, LB 1063, § 11; Laws 2011, LB591, § 6.

71-540 Immunization information; nondisclosure.

All immunization information may be shared with the Department of Health and Human Services and entered into the central data base created pursuant to section 71-541.01. 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 and with the department. 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; Laws 2011, LB591, § 8.

71-541 Immunization information system; immunization information; access; fee.

Any person or entity authorized under section 71-541.01 to access immunization information in the immunization information system established pursuant to section 71-541.01 may access such information pursuant to rules and regulations of the Department of Health and Human Services for purposes of direct patient care, public health activities, or enrollment in school or child care services. The unrestricted immunization information shared may include, but is not limited to, the patient's name and date of birth, the dates and vaccine types administered, and any immunization information obtained from other sources. A person or entity listed in section 71-539 which provides immunization information to a licensed child care program, a school, or a postsecondary educational institution may charge a reasonable fee to recover the cost of providing such immunization information.

Source: Laws 1998, LB 1063, § 13; Laws 2000, LB 1115, § 25; Laws 2005, LB 256, § 34; Laws 2007, LB296, § 398; Laws 2011, LB591, § 9.

71-541.01 Immunization information system; established; purpose; access to records authorized.

The Department of Health and Human Services shall establish an immunization information system for the purpose of providing a central data base of

immunization information which can be accessed pursuant to rules and regulations of the department by any person or entity listed in section 71-539, by a patient, and by a patient's parent or legal guardian if the patient is a minor or under guardianship. In order to facilitate operation of the immunization information system, the department shall provide the system with access to all records of the department, including, but not limited to, vital records.

Source: Laws 2011, LB591, § 7.

71-542 Immunization information system; immunization information; confidentiality; violation; penalty.

Immunization information in the immunization information system established pursuant to section 71-541.01 is confidential, and unrestricted immunization information may only be accessed pursuant to rules and regulations of the Department of Health and Human Services. Unauthorized public disclosure of such confidential information is a Class III misdemeanor.

Source: Laws 1998, LB 1063, § 14; Laws 2004, LB 1005, § 54; Laws 2011, LB591, § 10.

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 and limitations on access to and security and confidentiality of the immunization information.

Source: Laws 1998, LB 1063, § 15; Laws 2007, LB296, § 399; Laws 2011, LB591, § 11.

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; Laws 2011, LB591, § 12.

(k) SYNDROMIC SURVEILLANCE PROGRAM

71-552 Syndromic surveillance program; development; department set standards for reporting by hospitals; additional powers of department; use, confidentiality, and immunity; failure to make report; grounds for discipline.

(1) For purposes of protecting the public health and tracking the impact of disease prevention strategies intended to lower the cost of health care, the Department of Health and Human Services shall develop a syndromic surveillance program that respects patient privacy and benefits from advances in both electronic health records and electronic health information exchange. The syndromic surveillance program shall include the monitoring, detection, and investigation of public health threats from (a) intentional or accidental use or misuse of chemical, biological, radiological, or nuclear agents, (b) clusters or outbreaks of infectious or communicable diseases, and (c) noninfectious causes of illness.

(2) The department shall adopt and promulgate rules and regulations setting standards for syndromic surveillance reporting by hospitals. The standards

shall specify (a) the syndromic surveillance data elements required to be reported for all encounters, which shall include at a minimum the date of the encounter and the patient's gender, date of birth, chief complaint or reason for encounter, home zip code, unique record identifier, and discharge diagnoses and (b) the manner of reporting.

(3) The department may require, by rule and regulation, syndromic surveillance reporting by other health care facilities or any person issued a credential by the department.

(4) The department shall establish, by rule and regulation, a schedule for the implementation of full electronic reporting of all syndromic surveillance data elements. The schedule shall take into consideration the number of data elements already reported by the facility or person, the capacity of the facility or person to electronically report the remaining elements, the funding available for implementation, and other relevant factors, including improved efficiencies and resulting benefits to the reporting facility or person.

(5) The use, confidentiality, and immunity provisions of section 71-503.01 apply to syndromic surveillance data reports.

(6) Failure to provide a report under this section or the rules and regulations is grounds for discipline of a credential issued by the department.

Source: Laws 2011, LB591, § 1.

ARTICLE 6
VITAL STATISTICS

Section

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, physician assistant, or nurse practitioner 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, physician assistants, or nurse practitioners for the purpose of filing with the department and providing child support enforcement information pursuant to section 43-3340.

(2) The physician, physician assistant, or nurse practitioner 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, physician assistant, or nurse practitioner 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, nurse practitioner, 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; Laws 2012, LB1042, § 4.
Effective date July 19, 2012.

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.

71-615 Annulments or dissolutions of marriage; monthly reports; duty of clerk of district court.

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 requested by the department shall be furnished by the plaintiff or his or her legal representative and presented to the clerk of the court with the complaint. If, after reasonable attempts are made by the plaintiff or his or her legal representative to attain such information, the information is unavailable, the designation unknown

shall be accepted by the department. 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.

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; Laws 2012, LB904, § 1.
Effective date July 19, 2012.

ARTICLE 7

WOMEN'S HEALTH

Section
71-707. Report.

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 submitted to the Legislature shall be submitted electronically. 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; Laws 2012, LB782, § 104.
Operative date July 19, 2012.

ARTICLE 8

BEHAVIORAL HEALTH SERVICES

Section
71-801. Nebraska Behavioral Health Services Act; act, how cited.
71-806. Division; powers and duties; rules and regulations.
71-809. Regional behavioral health authority; behavioral health services; powers and duties.
71-810. Division; community-based behavioral health services; duties; reduce or discontinue regional center behavioral health services; powers and duties.
71-816. Legislative findings; State Committee on Problem Gambling; created; members; duties; division; duties; joint report.
71-825. Annual report; contents.
71-827. Children's Behavioral Health Oversight Committee of the Legislature; created; members; duties; meetings; report.
71-830. Behavioral Health Education Center; created; administration; duties; report.
71-831. Contracts and agreements; department; duties.

71-801 Nebraska Behavioral Health Services Act; act, how cited.

Sections 71-801 to 71-831 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; Laws 2012, LB1158, § 3. Effective date April 12, 2012.

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; reimbursement methodologies for behavioral health services; methodologies to be used by regional behavioral health authorities in determining a consumer's financial eligibility as provided in subsection (2) of section 71-809; and fees and copays 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; Laws 2012, LB871, § 1.
Effective date July 19, 2012.

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) Each regional behavioral health authority shall adopt a policy for use in determining the financial eligibility of all consumers and shall adopt a uniform schedule of fees and copays, based on the policy and schedule developed by the division, to be assessed against consumers utilizing community-based behavioral health services in the region. The methods used to determine the financial eligibility of all consumers shall take into account taxable income, the number of family members dependent on the consumer's income, liabilities, and other factors as determined by the division. The policy and the schedule of fees and copays shall be approved by the regional governing board and included with the budget plan submitted to the division annually. Providers shall charge fees consistent with the schedule of fees and copays in accordance with the financial eligibility of all consumers but not in excess of the actual cost of the service. Each regional behavioral health authority shall assure that its policy and schedule of fees and copays are applied uniformly by the providers in the region.

(3) 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.

(4) 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; Laws 2012, LB871, § 2.
Effective date July 19, 2012.

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. The notification submitted to the Legislature shall be submitted electronically. 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. The notification submitted to the Legislature shall be submitted electronically. 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. The report submitted to the Legislature shall be submitted electronically.

(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; Laws 2012, LB782, § 105. Operative date July 19, 2012.

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. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2004, LB 1083, § 16; Laws 2005, LB 551, § 6; Laws 2006, LB 994, § 95; Laws 2008, LB1058, § 1; Laws 2009, LB189, § 1; Laws 2012, LB782, § 106.
Operative date July 19, 2012.

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, except that for 2012, 2013, and 2014, the department shall also provide the report to the Health and Human Services Committee of the Legislature on or before September 15. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2009, LB603, § 9; Laws 2012, LB782, § 107; Laws 2012, LB1160, § 15.
Operative date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 107, with LB1160, section 15, to reflect all amendments.

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 submitted to the Legislature shall be submitted electronically. 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. The final report of the committee shall be provided to the Health and Human Services Committee of the Legislature on or before September 15, 2012.

Source: Laws 2009, LB603, § 11; Laws 2012, LB782, § 108; Laws 2012, LB1160, § 16.
Operative date July 19, 2012.
Termination date December 31, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 108, with LB1160, section 16, to reflect all amendments.

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 electronically with the Clerk of the Legislature and shall be provided electronically to any member of the Legislature upon request.

Source: Laws 2009, LB603, § 14; Laws 2012, LB782, § 109.
Operative date July 19, 2012.

71-831 Contracts and agreements; department; duties.

All contracts and agreements relating to the medical assistance program governing at-risk managed care service delivery for behavioral health services entered into by the department on or after July 1, 2012, shall:

(1) Provide a definition and cap on administrative spending that (a) shall not exceed seven percent unless the implementing department includes detailed requirements for tracking administrative spending to ensure (i) that administrative expenditures do not include additional profit and (ii) that any administrative spending is necessary to improve the health status of the population to be served and (b) shall not under any circumstances exceed ten percent;

(2) Provide a definition of annual contractor profits and losses and restrict such profits and losses under the contract so that (a) profit shall not exceed three percent per year and (b) losses shall not exceed three percent per year, as a percentage of the aggregate of all income and revenue earned by the contractor and related parties, including parent and subsidy companies and risk-bearing partners, under the contract;

(3) Provide for reinvestment of (a) any profits in excess of the contracted amount, (b) performance contingencies imposed by the department, and (c) any unearned incentive funds, to fund additional behavioral health services for children, families, and adults according to a plan developed with input from stakeholders, including consumers and their family members, the office of consumer affairs within the division, and the regional behavioral health authority and approved by the department. Such plan shall address the behavioral health needs of adults and children, including filling service gaps and providing system improvements;

(4) Provide for a minimum medical loss ratio of eighty-five percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(5) Provide that contractor incentives, in addition to potential profit, be at least one and one-half percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract;

(6) Provide that a minimum of one-quarter percent of the aggregate of all income and revenue earned by the contractor and related parties under the contract be at risk as a penalty if the contractor fails to meet the minimum performance metrics defined in the contract, and such penalties, if charged,

shall be accounted for in a manner that shall not reduce or diminish service delivery in any way; and

(7) Be reviewed and awarded competitively and in full compliance with the procurement requirements of the State of Nebraska.

Source: Laws 2012, LB1158, § 2.
Effective date April 12, 2012.

ARTICLE 9

NEBRASKA MENTAL HEALTH COMMITMENT ACT

Section
71-901. Act, how cited.
71-903. Definitions, where found.
71-904.01. Firearm-related disability, defined.
71-915. Mental health boards; created; powers; duties; compensation.
71-963. Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.

71-901 Act, how cited.

Sections 71-901 to 71-963 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; Laws 2011, LB512, § 5.

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; Laws 2011, LB512, § 6.

71-904.01 Firearm-related disability, defined.

Firearm-related disability means a person is not permitted to (1) purchase, possess, ship, transport, or receive a firearm under either state or federal law, (2) obtain a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404, or (3) obtain a permit to carry a concealed handgun under the Concealed Handgun Permit Act.

Source: Laws 2011, LB512, § 7.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

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 nurse, a licensed clinical social worker or a licensed independent clinical social worker, a licensed independent mental health practitioner who is not a 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; Laws 2011, LB111, § 1.

71-963 Firearm-related disabilities; petition to remove; mental health board; review hearing; evidence; decision; appeal; petition granted; effect.

(1) Upon release from commitment or treatment, a person who, because of a mental health-related commitment or adjudication occurring under the laws of this state, is subject to the disability provisions of 18 U.S.C. 922(d)(4) and (g)(4) or is disqualified from obtaining a certificate to purchase, lease, rent, or receive transfer of a handgun under section 69-2404 or a permit to carry a concealed handgun under the Concealed Handgun Permit Act may petition the mental health board to remove such disabilities.

(2)(a) Upon the filing of the petition, the subject may request and, if the request is made, shall be entitled to, a review hearing by the mental health board. The mental health board shall grant a petition filed under subsection (1) of this section if the mental health board determines that:

(i) The subject will not be likely to act in a manner dangerous to public safety; and

(ii) The granting of the relief would not be contrary to the public interest.

(b) In determining whether to remove the subject's firearm-related disabilities, the mental health board shall receive and consider evidence upon the following:

(i) The circumstances surrounding the subject's mental health commitment or adjudication;

(ii) The subject's record, which shall include, at a minimum, the subject's mental health and criminal history records;

(iii) The subject's reputation, developed, at a minimum, through character witness statements, testimony, or other character evidence; and

(iv) Changes in the subject's condition, treatment, treatment history, or circumstances relevant to the relief sought.

(3) If a decision is made by the mental health board to remove the subject's firearm-related disabilities, the clerks of the various courts shall immediately send as soon as practicable but within thirty days an order to the Nebraska State Patrol and the Department of Health and Human Services, in a form and in a manner prescribed by the Department of Health and Human Services and the Nebraska State Patrol, stating its findings, which shall include a statement that, in the opinion of the mental health board, (a) the subject is not likely to act in a manner that is dangerous to public safety and (b) removing the subject's firearm-related disabilities will not be contrary to the public interest.

(4) The subject may appeal a denial of the requested relief to the district court, and review on appeal shall be de novo.

(5) If a petition is granted under this section, the commitment or adjudication for which relief is granted shall be deemed not to have occurred for purposes of section 69-2404 and the Concealed Handgun Permit Act and, pursuant to section 105(b) of Public Law 110-180, for purposes of 18 U.S.C. 922(d)(4) and (g)(4).

Source: Laws 2011, LB512, § 8.

Cross References

Concealed Handgun Permit Act, see section 69-2427.

ARTICLE 11

DEVELOPMENTAL DISABILITIES COURT-ORDERED CUSTODY ACT

Section
71-1134. Reports.

71-1134 Reports.

(1) 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.

(2) The department shall submit electronically 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; Laws 2012, LB782, § 110.
Operative date July 19, 2012.

ARTICLE 15
HOUSING

(c) MODULAR HOUSING UNITS

Section
71-1559. Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.

(c) MODULAR HOUSING UNITS

71-1559 Modular housing unit; compliance assurance program; exception; purpose; inspection; seal; when issued; fee; Public Service Commission Housing and Recreational Vehicle Cash Fund.

(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 Public Service Commission Housing and Recreational Vehicle Cash Fund.

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; Laws 2010, LB849, § 24.

ARTICLE 16

LOCAL HEALTH SERVICES

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

Section
71-1628.05. Report.
71-1628.07. Satellite office of minority health; duties.
71-1631.02. Local boards of health; retirement plan; reports.

(b) LOCAL PUBLIC HEALTH DEPARTMENTS

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 electronically 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; Laws 2012, LB782, § 111.
Operative date July 19, 2012.

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 electronically 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; Laws 2012, LB782, § 112.
Operative date July 19, 2012.

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 Auditor of Public Accounts. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. 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 Auditor of Public Accounts a copy of such report. The Auditor of Public Accounts may prepare a review of such report pursuant to section 84-304.02 but is not required to do so. 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; Laws 2011, LB474, § 12.

ARTICLE 17

NURSES

(h) NEBRASKA CENTER FOR NURSING ACT

(j) NURSING FACULTY STUDENT LOAN ACT

(h) NEBRASKA CENTER FOR NURSING ACT

71-1796 Act, how cited.

Sections 71-1796 to 71-1799 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; Laws 2010, LB849, § 25.

71-17,100 Repealed. Laws 2010, LB 849, § 41.

(j) NURSING FACULTY STUDENT LOAN ACT

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. The report submitted to the Clerk of the Legislature shall be submitted electronically. 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; Laws 2012, LB782, § 113. Operative date July 19, 2012.

ARTICLE 19

CARE OF CHILDREN

(a) FOSTER CARE LICENSURE

(a) FOSTER CARE LICENSURE

71-1902 Foster care; license required; training required; license renewal; fees; license revocation; procedure.

(1) Except as otherwise provided in this section, no person shall furnish or offer to furnish foster care for one or more children not related to such person by blood, marriage, or adoption 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.

(2) 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.

(3) For purposes of this section:

(a) Foster family home means any home which provides twenty-four-hour care to children who are not related to the foster parent by blood, marriage, or adoption;

(b) 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;

(c) Child-caring agency means an organization which is organized as a corporation or a limited liability company for the purpose of providing care for children in buildings maintained by the organization for that purpose; and

(d) 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; Laws 2011, LB648, § 3; Laws 2012, LB820, § 7.
Operative date July 1, 2012.

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 submit electronically an annual report to the Health and Human Services Committee of the Legislature on the number of waivers granted under this subsection and the total number of children placed in relative foster homes. For 2012, 2013, and 2014, the department shall provide the report to the Health and Human Services Committee of the Legislature on or before September 15.

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; Laws 2012, LB782, § 114; Laws 2012, LB1160, § 17.
Operative date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 114, with LB1160, section 17, to reflect all amendments.

ARTICLE 20
HOSPITALS

(d) MEDICAL AND HOSPITAL CARE

Section
71-2046. Repealed. Laws 2011, LB 431, § 17.
71-2047. Repealed. Laws 2011, LB 431, § 17.
71-2048. Repealed. Laws 2011, LB 431, § 17.
71-2048.01. Clinical privileges; standards and procedures.

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

71-2057. Terms, defined.
71-2059. Governmental body; powers.

(d) MEDICAL AND HOSPITAL CARE

71-2046 Repealed. Laws 2011, LB 431, § 17.

71-2047 Repealed. Laws 2011, LB 431, § 17.

71-2048 Repealed. Laws 2011, LB 431, § 17.

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, certified nurse midwives, licensed psychologists, or dentists solely by reason of the credential 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; Laws 2011, LB68, § 1.

Cross References

Health Care Facility Licensure Act, see section 71-401.

(f) COOPERATIVE VENTURES BY PUBLIC HOSPITALS

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, (c) reasonable expectation of

prompt payment for any service rendered, or (d) activity that promotes health or furthers the provider's mission.

Source: Laws 1985, LB 61, § 2; Laws 1995, LB 366, § 5; Laws 2012, LB995, § 13.
Effective date April 6, 2012.

71-2059 Governmental body; powers.

A political subdivision, state agency, or other governmental entity which owns or operates a hospital or hospital health service may, relative to the delivery of health care services:

(1) Enter into agreements with other health care providers, both governmental and nongovernmental, 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 contractual joint ventures with other governmental hospitals and health care organizations or nonprofit hospitals and health care organizations when entering into such a joint venture provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(4) Hold a membership interest in a nonprofit corporation when holding such interest provides a tangible benefit to the residents of the political subdivision, state agency, or other governmental entity that owns or operates a hospital or health service;

(5) Have members of its governing authority or its officers or administrators serve without pay as directors or officers of any such venture;

(6) Offer, directly or indirectly, products and services of the hospital or any such venture to the general public; and

(7) Acquire, erect, staff, equip, or operate one or more medical office buildings, clinic buildings, or other buildings or parts thereof for medical services both within and outside the jurisdiction of the political subdivision, state agency, or other governmental entity. Such buildings or parts may be freestanding facilities or additions to or parts of an existing hospital or health care facility. Unless the political subdivision, state agency, or other governmental entity declares otherwise, the building or parts shall be considered an addition or improvement to the existing facilities. The political subdivision, state agency, or other 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 political subdivision, state agency, or other 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; Laws 2012, LB995, § 14.
Effective date April 6, 2012.

71-2061 Public hospital; indebtedness, how construed; expenditures, limitation; membership interests and contractual joint ventures; how construed.

(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.

(3) Membership interests and contractual joint ventures permitted by section 71-2059 that further the purposes of the political subdivision, state agency, or other governmental entity shall not be considered to cause the political subdivision, state agency, or other governmental entity to become a subscriber or owner of capital stock or any interest in a private corporation or association within the meaning of Nebraska law.

Source: Laws 1985, LB 61, § 6; Laws 2012, LB995, § 15.
Effective date April 6, 2012.

(l) NONPROFIT HOSPITAL SALE ACT

71-20,104 Acquisition of hospital; approval required; exception; notice; application; procedure.

(1) 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: (a) The lease or sale of a county hospital approved under subdivision (3) of section 23-3504; or (b) 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.

(2) Any person not required to obtain the approval of the department under 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.

(3) 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; Laws 2012, LB995, § 16.
Effective date April 6, 2012.

ARTICLE 24

DRUGS

(e) RETURN OF DISPENSED DRUGS AND DEVICES

(e) RETURN OF DISPENSED DRUGS AND DEVICES

71-2421 Collection or return of dispensed drugs and devices; conditions; fee; liability; professional disciplinary action.

(1) To protect the public safety, dispensed drugs or devices:

(a) May be collected in a pharmacy for disposal;

(b) May be returned to a pharmacy in response to a recall by the manufacturer, packager, or distributor or if a device is defective or malfunctioning;

(c) Shall not be returned to saleable inventory nor made available for subsequent relabeling and redispensing, except as provided in subdivision (1)(d) of this section; or

(d) May be returned from a long-term care facility to the pharmacy from which they were dispensed for credit or for relabeling and redispensing, 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 pharmacist. 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 container which is impermeable to moisture and approved by the Board of Pharmacy.

(2) Pharmacies may charge a fee for collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing.

(3) Any person or entity which exercises reasonable care in collecting dispensed drugs or devices for disposal or from a long-term care facility for credit or for relabeling and redispensing pursuant to 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.

(4) A drug manufacturer which exercises reasonable care shall be immune from civil or criminal liability for any injury, death, or loss to persons or property relating to the relabeling and redispensing of drugs returned from a long-term care facility.

(5) Notwithstanding subsection (4) of this section, the relabeling and redispensing of drugs returned from a long-term care facility does not absolve a drug manufacturer of any criminal or civil liability that would have existed but for the relabeling and redispensing and such relabeling and redispensing does not increase the liability of such drug manufacturer that would have existed but for the relabeling and redispensing.

(6) For purposes of this section:

(a) Calculated expiration date means the expiration date on the manufacturer's, packager's, or distributor's container or one year from the date the drug or device is repackaged, whichever is earlier;

(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; Laws 2011, LB274, § 1.

Cross References

Pharmacy Practice Act, see section 38-2801.

(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 pharmacy from which they were dispensed 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 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 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; Laws 2011, LB274, § 2.

(l) PRESCRIPTION DRUG MONITORING PROGRAM

71-2454 Prescription drug monitoring; legislative intent.

It is the intent of the Legislature that an entity described in section 71-2455 establish a system of prescription drug monitoring for the purposes of (1) preventing the misuse of prescription drugs in an efficient and cost-effective manner and (2) allowing doctors and pharmacists to monitor the care and treatment of patients for whom a prescription drug is prescribed to ensure that prescription drugs are used for medically appropriate purposes and that the State of Nebraska remains on the cutting edge of medical information technology.

Source: Laws 2011, LB237, § 1.

71-2455 Prescription drug monitoring; Department of Health and Human Services; duties; powers.

The Department of Health and Human Services, in collaboration with the Nebraska Health Information Initiative or any successor public-private statewide health information exchange, shall enhance or establish technology for prescription drug monitoring to carry out the purposes of section 71-2454. No state funding shall be used to implement or operate the prescription drug monitoring system provided for in this section. The department may adopt and promulgate rules and regulations to authorize use of electronic health information, if necessary to carry out the purposes of this act.

Source: Laws 2011, LB237, § 2.

ARTICLE 25

POISONS

(b) LEAD POISONING

(b) LEAD POISONING

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 organi-

zations 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 electronically 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; Laws 2012, LB782, § 115.
Operative date July 19, 2012.

(c) LEAD POISONING PREVENTION PROGRAM

71-2518 Lead poisoning prevention program; established; components; results of tests; reports required; department; reports; payment of costs.

(1) The Division of Public Health of the Department of Health and Human Services shall establish a lead poisoning prevention program that has the following components:

(a) A coordinated plan to prevent childhood lead poisoning and to minimize exposure of the general public to lead-based paint hazards. Such plan shall:

(i) Provide a standard, stated in terms of micrograms of lead per deciliter of whole blood, to be used in identifying elevated blood-lead levels;

(ii) Require that a child be tested for an elevated blood-lead level in accordance with the medicaid state plan as defined in section 68-907 if the child is a participant in the medical assistance program established pursuant to the Medical Assistance Act; and

(iii) Recommend that a child be tested for elevated blood-lead levels if the child resides in a zip code with a high prevalence of children with elevated blood-lead levels as demonstrated by previous testing data or if the child meets one of the criteria included in a lead poisoning prevention screening questionnaire developed by the department; and

(b) An educational and community outreach plan regarding lead poisoning prevention that shall, at a minimum, include the development of appropriate educational materials targeted to health care providers, child care providers, public school personnel, owners and tenants of residential dwellings, and parents of young children. Such educational materials shall be made available to the general public via the department's web site.

(2) The results of all blood-lead level tests conducted in Nebraska shall be reported to the department. When the department receives notice of a child with an elevated blood-lead level as stated in the plan required pursuant to

subdivision (1)(a) of this section, it shall initiate contact with the local public health department or the physician, or both, of such child and offer technical assistance, if necessary.

(3) The department shall report to the Legislature by January 1, 2013, and each January 1 thereafter, the number of children from birth through age six who were screened for elevated blood-lead levels during the preceding fiscal year and who were confirmed to have elevated blood-lead levels as stated in the plan required pursuant to subdivision (1)(a) of this section. The report shall compare such results with those of previous fiscal years and shall identify any revisions to the plan required by subdivision (1)(a) of this section.

(4) This section does not require the department to pay the cost of elevated-blood-lead-level testing in accordance with this section except in cases described in subdivision (1)(a)(ii) of this section.

Source: Laws 2012, LB1038, § 1.
Effective date July 19, 2012.

Cross References

Medical Assistance Act, see section 68-901.

ARTICLE 33
FLUORIDATION

Section
71-3305. Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

71-3305 Political subdivision; fluoride added to water supply; exception; ordinance to prohibit addition of fluoride; ballot; vote.

(1) Except as otherwise provided in subsection (2) or (3) of this section, any city or village having a population of one thousand or more inhabitants shall 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) Subsection (1) of this section does not apply if the voters of the city or village adopted an ordinance, after April 18, 2008, but before June 1, 2010, to prohibit the addition of fluoride to such water supply.

(3) If any city or village reaches a population of one thousand or more inhabitants after June 1, 2010, and is required to add fluoride to its water supply under subsection (1) of this section, the city or village may adopt an ordinance 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. Such proposed ordinance shall be voted upon at the next statewide general election after the population of the city or village reaches one thousand or more inhabitants.

(4) 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; Laws 2011, LB36, § 1.

ARTICLE 34

REDUCTION IN MORBIDITY AND MORTALITY

(b) CHILD DEATHS

(b) CHILD DEATHS

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 reports which shall include the team's findings and recommendations for each of its duties. For 2012, 2013, and 2014, the team shall also provide the report to the Health and Human Services Committee of the Legislature on or before September 15. The reports submitted to the Legislature shall be submitted electronically; 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; Laws 2012, LB782, § 116; Laws 2012, LB1160, § 18.
Operative date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 116, with LB1160, section 18, to reflect all amendments.

ARTICLE 35

RADIATION CONTROL AND RADIOACTIVE WASTE

(a) RADIATION CONTROL ACT

(a) RADIATION CONTROL ACT

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;

(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;

(c)(i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

(ii) Any material that (A) has been made radioactive by use of a particle accelerator and (B) is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The United States Nuclear Regulatory Commission, in consultation with the Administrator of the United States Environmental Protection Agency, the United States Secretary of Energy, the United States Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity;

(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; Laws 2012, LB794, § 1.
Effective date July 19, 2012.

Cross References

Low-Level Radioactive Waste Disposal Act, see section 81-1578.

ARTICLE 46

MANUFACTURED HOMES, RECREATIONAL VEHICLES, AND MOBILE HOME PARKS

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

(a) MANUFACTURED HOMES AND RECREATIONAL VEHICLES

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 the Motor Vehicle Industry Regulation Act 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 thirty 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 thirty 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 thirty 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; Laws 2010, LB816, § 90; Laws 2012, LB751, § 48.
Operative date July 19, 2012.

Cross References

Motor Vehicle Industry Regulation Act, see section 60-1401.

71-4604.01 Manufactured home or recreational vehicle; seals certifying compliance with standards; exemption; rules and regulations; fees; Public Service Commission Housing and Recreational Vehicle Cash Fund.

(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 in an amount 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 Public Service Commission Housing and Recreational Vehicle Cash Fund.

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; Laws 2010, LB849, § 26.

ARTICLE 47

HEARING

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

(c) INFANT HEARING ACT

(b) COMMISSION FOR THE DEAF AND HARD OF HEARING

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. The recommendations submitted to the Legislature shall be submitted electronically;

(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; Laws 2012, LB782, § 117.
Operative date July 19, 2012.

Cross References

Telecommunications Relay System Act, see section 86-301.

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, (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, and (3) transfers may be made from the Commission for the Deaf and Hard of Hearing Fund to the General Fund at the direction of the Legislature. 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; Laws 2009, First Spec. Sess., LB3, § 45.

Cross References

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

(c) INFANT HEARING ACT

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 submit electronically an annual report to the Legislature stating 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; Laws 2012, LB782, § 118.
Operative date July 19, 2012.

ARTICLE 48

ANATOMICAL GIFTS

(a) UNIFORM ANATOMICAL GIFT ACT

Section
71-4801. Repealed. Laws 2010, LB 1036, § 42.
71-4802. Repealed. Laws 2010, LB 1036, § 42.
71-4803. Repealed. Laws 2010, LB 1036, § 42.
71-4804. Repealed. Laws 2010, LB 1036, § 42.
71-4805. Repealed. Laws 2010, LB 1036, § 42.
71-4806. Repealed. Laws 2010, LB 1036, § 42.
71-4807. Repealed. Laws 2010, LB 1036, § 42.
71-4809. Repealed. Laws 2010, LB 1036, § 42.
71-4810. Repealed. Laws 2010, LB 1036, § 42.
71-4811. Repealed. Laws 2010, LB 1036, § 42.
71-4812. Repealed. Laws 2010, LB 1036, § 42.

(b) MISCELLANEOUS PROVISIONS

71-4813. Eye tissue; pituitary gland; removal; when authorized.
71-4814. Organ and tissue donations; legislative findings; protocol; development.
71-4815. Repealed. Laws 2010, LB 1036, § 42.
71-4816. Certificate of death; attestation required; statistical information.
71-4817. Repealed. Laws 2010, LB 1036, § 42.
71-4818. Repealed. Laws 2010, LB 1036, § 42.

(d) DONOR REGISTRY OF NEBRASKA

71-4822. Donor Registry of Nebraska; establishment; duties; restriction on information.

(e) REVISED UNIFORM ANATOMICAL GIFT ACT

71-4824. Act, how cited.
71-4825. Terms, defined.
71-4826. Applicability of act.
71-4827. Who may make anatomical gift before donor's death.
71-4828. Manner of making anatomical gift before donor's death.
71-4829. Amending or revoking anatomical gift before donor's death.
71-4830. Refusal to make anatomical gift; effect of refusal.
71-4831. Preclusive effect of anatomical gift, amendment, or revocation.
71-4832. Who may make anatomical gift of decedent's body or part.
71-4833. Manner of making, amending, or revoking anatomical gift of decedent's body or part.
71-4834. Persons that may receive anatomical gift; purpose of anatomical gift.

(a) UNIFORM ANATOMICAL GIFT ACT

71-4801 Repealed. Laws 2010, LB 1036, § 42.

71-4802 Repealed. Laws 2010, LB 1036, § 42.

71-4803 Repealed. Laws 2010, LB 1036, § 42.

71-4804 Repealed. Laws 2010, LB 1036, § 42.

71-4805 Repealed. Laws 2010, LB 1036, § 42.

71-4806 Repealed. Laws 2010, LB 1036, § 42.

71-4807 Repealed. Laws 2010, LB 1036, § 42.

71-4809 Repealed. Laws 2010, LB 1036, § 42.

71-4810 Repealed. Laws 2010, LB 1036, § 42.

71-4811 Repealed. Laws 2010, LB 1036, § 42.

71-4812 Repealed. Laws 2010, LB 1036, § 42.

(b) MISCELLANEOUS PROVISIONS

71-4813 Eye tissue; pituitary gland; removal; when authorized.

(1) 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 this section, 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:

(a) Autopsy was authorized by the county coroner;

(b) County coroner receives permission from the person having control of the disposition of the decedent's remains pursuant to section 38-1425; and

(c) Removal of eye tissue or of the pituitary gland will not interfere with the course of any subsequent investigation or alter the decedent's post mortem facial appearance.

(2) 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 of the University of Nebraska Medical Center may enucleate the eyes of the donor.

(3) 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; Laws 2010, LB1036, § 36.

Cross References

Funeral Directing and Embalming Practice Act, see section 38-1401.

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 in coordination with the Revised Uniform Anatomical Gift Act. 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. This section and section 71-4816 are for the immediate preservation of the public health and welfare.

Source: Laws 1987, LB 74, § 1; Laws 2010, LB1036, § 37.

Cross References

Revised Uniform Anatomical Gift Act, see section 71-4824.

71-4815 Repealed. Laws 2010, LB 1036, § 42.

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 under the protocol of the hospital.

(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; Laws 2010, LB1036, § 38.

71-4817 Repealed. Laws 2010, LB 1036, § 42.

71-4818 Repealed. Laws 2010, LB 1036, § 42.

(d) DONOR REGISTRY OF NEBRASKA

71-4822 Donor Registry of Nebraska; establishment; duties; restriction on information.

(1) The federally designated organ procurement organization for 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. A procurement organization located outside of Nebraska may obtain information from the Donor Registry of Nebraska 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 for 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 Donor Registry of Nebraska.

(2) It is the intent of the Legislature that the Donor Registry of Nebraska facilitate organ and tissue donations and not inhibit such donations. A person does not need to be listed on the Donor Registry of Nebraska to be an organ and tissue donor.

(3) No person shall obtain information from the Donor Registry of Nebraska for the purpose of fundraising or other commercial use. Information obtained from the Donor Registry of Nebraska 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 for Nebraska.

Source: Laws 2004, LB 559, § 7; Laws 2010, LB1036, § 39.

(e) REVISED UNIFORM ANATOMICAL GIFT ACT

71-4824 Act, how cited.

Sections 71-4824 to 71-4845 shall be known and may be cited as the Revised Uniform Anatomical Gift Act.

Source: Laws 2010, LB1036, § 1.

71-4825 Terms, defined.

For purposes of the Revised Uniform Anatomical Gift Act:

(1) Adult means an individual who is at least eighteen years of age;

(2) Agent means an individual:

(A) Authorized to make health care decisions on the principal's behalf by a power of attorney for health care; or

(B) Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;

(3) Anatomical gift means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;

(4) Decedent means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than the Revised Uniform Anatomical Gift Act, a fetus. The term decedent does not include a blastocyst, embryo, or fetus that is the subject of an induced abortion;

(5) Disinterested witness means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under section 71-4834;

(6) Document of gift means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry;

(7) Donor means an individual whose body or part is the subject of an anatomical gift;

(8) Donor registry means a data base that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;

(9) Driver's license means a license or permit issued by the Department of Motor Vehicles to operate a vehicle, whether or not conditions are attached to the license or permit;

(10) Eye bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;

(11) Guardian means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;

(12) Hospital means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;

(13) Identification card means a state identification card issued by the Department of Motor Vehicles;

(14) Know means to have actual knowledge;

(15) Minor means an individual who is under eighteen years of age;

(16) Organ procurement organization means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization;

(17) Parent means a parent whose parental rights have not been terminated;

(18) Part means an organ, an eye, or tissue of a human being. The term does not include the whole body;

(19) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(20) Physician means an individual authorized to practice medicine or osteopathy under the law of any state;

(21) Procurement organization means an eye bank, organ procurement organization, or tissue bank;

(22) Prospective donor means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;

(23) Reasonably available means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;

(24) Recipient means an individual into whose body a decedent's part has been or is intended to be transplanted;

(25) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(26) Refusal means a record created under section 71-4830 that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;

(27) Sign means, with the present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process;

(28) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

(29) Technician means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an enucleator;

(30) Tissue means a portion of the human body other than an organ or an eye. The term does not include blood unless the blood is donated for the purpose of research or education;

(31) Tissue bank means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and

(32) Transplant hospital means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Source: Laws 2010, LB1036, § 2.

71-4826 Applicability of act.

The Revised Uniform Anatomical Gift Act applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

Source: Laws 2010, LB1036, § 3.

71-4827 Who may make anatomical gift before donor's death.

Subject to section 71-4831, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in section 71-4828 by:

(1) The donor, if the donor is an adult or if the donor is a minor and is:

(A) Emancipated; or

(B) Authorized under state law to apply for a driver's license and the donor is at least sixteen years of age;

(2) An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;

(3) A parent of the donor, if the donor is an unemancipated minor; or

(4) The donor's guardian.

Source: Laws 2010, LB1036, § 4.

71-4828 Manner of making anatomical gift before donor's death.

(a) A donor may make an anatomical gift:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;

(2) In a will;

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness; or

(4) As provided in subsection (b) of this section.

(b) A donor or other person authorized to make an anatomical gift under section 71-4827 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.

(d) An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

Source: Laws 2010, LB1036, § 5.

71-4829 Amending or revoking anatomical gift before donor's death.

(a) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may amend or revoke an anatomical gift by:

(1) A record signed by:

(A) The donor;

(B) The other person; or

(C) Subject to subsection (b) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

(b) A record signed pursuant to subdivision (a)(1)(C) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) Subject to section 71-4831, a donor or other person authorized to make an anatomical gift under section 71-4827 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

(d) A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(e) A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (a) of this section.

Source: Laws 2010, LB1036, § 6.

71-4830 Refusal to make anatomical gift; effect of refusal.

(a) An individual may refuse to make an anatomical gift of the individual's body or part by:

(1) A record signed by:

(A) The individual; or

(B) Subject to subsection (b) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or

(3) Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

(b) A record signed pursuant to subdivision (a)(1)(B) of this section must:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual; and

(2) State that it has been signed and witnessed as provided in subdivision (1) of this subsection.

(c) An individual who has made a refusal may amend or revoke the refusal:

(1) In the manner provided in subsection (a) of this section for making a refusal;

(2) By subsequently making an anatomical gift pursuant to section 71-4828 that is inconsistent with the refusal; or

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(d) Except as otherwise provided in subsection (h) of section 71-4831, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

Source: Laws 2010, LB1036, § 7.

71-4831 Preclusive effect of anatomical gift, amendment, or revocation.

(a) Except as otherwise provided in subsection (g) of this section and subject to subsection (f) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829.

(b) A donor's revocation of an anatomical gift of the donor's body or part under section 71-4829 is not a refusal and does not bar another person specified in section 71-4827 or 71-4832 from making an anatomical gift of the donor's body or part under section 71-4828 or 71-4833.

(c) If a person other than the donor has made an unrevoked anatomical gift of the donor's body or part under section 71-4828 or an amendment to an anatomical gift of the donor's body or part under section 71-4829, another person who is not the donor may not make, amend, or revoke the gift of the donor's body or part under section 71-4833.

(d) A revocation of an anatomical gift of a donor's body or part under section 71-4829 by a person other than the donor does not bar another person from making an anatomical gift of the body or part under section 71-4828 or 71-4833.

(e) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.

(f) In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under section 71-4827, an anatomical gift of a part for one or more of the purposes set forth in section 71-4827 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under section 71-4828 or 71-4833.

(g) If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

(h) If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

Source: Laws 2010, LB1036, § 8.

71-4832 Who may make anatomical gift of decedent's body or part.

(a) Subject to subsections (b) and (c) of this section and unless barred by section 71-4830 or 71-4831, an anatomical gift of a decedent's body or part for

purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (2) of section 71-4827 immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) The persons who were acting as the guardians of the person of the decedent at the time of death;

(9) An adult who exhibited special care and concern for the decedent other than any medical personnel caring for the decedent at the time of or immediately leading up to the decedent's death; and

(10) Any other person having the authority to dispose of the decedent's body.

(b) If there is more than one member of a class listed in subdivision (a)(1), (3), (4), (5), (6), (7), or (8) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under section 71-4834 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

(c) A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (a) of this section is reasonably available to make or to object to the making of an anatomical gift.

Source: Laws 2010, LB1036, § 9.

71-4833 Manner of making, amending, or revoking anatomical gift of decedent's body or part.

(a) A person authorized to make an anatomical gift under section 71-4832 may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.

(b) Subject to subsection (c) of this section, an anatomical gift by a person authorized under section 71-4832 may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under section 71-4832 may be:

(1) Amended only if a majority of the reasonably available members agree to the amending of the gift; or

(2) Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

(c) A revocation under subsection (b) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

Source: Laws 2010, LB1036, § 10.

71-4834 Persons that may receive anatomical gift; purpose of anatomical gift.

(a) An anatomical gift may be made to the following persons named in the document of gift:

(1) A hospital; the State Anatomical Board; an accredited medical school, dental school, college, or university; an organ procurement organization; or any other appropriate person, for research or education;

(2) Subject to subsection (b) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or

(3) An eye bank or tissue bank.

(b) If an anatomical gift to an individual under subdivision (a)(2) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (g) of this section in the absence of an express, contrary indication by the person making the anatomical gift.

(c) If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (a) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:

(1) If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;

(2) If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;

(3) If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ;

(4) If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization; and

(5) If the gift is any part other than an organ, an eye, or tissue, or the gift is all parts, and the gift is for the purpose of research or education, the gift passes to the State Anatomical Board.

(d) For the purpose of subsection (c) of this section, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift must be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

(e) If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection (a) of this section and does not identify the purpose of the gift, the gift may be used only for

transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(f) If a document of gift specifies only a general intent to make an anatomical gift by words such as donor, organ donor, or body donor, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (g) of this section.

(g) For purposes of subsections (b), (e), and (f) of this section the following rules apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank;

(2) If the part is tissue, the gift passes to the appropriate tissue bank; and

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subdivision (a)(2) of this section, passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subsections (a) through (h) of this section or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person may not accept an anatomical gift if the person knows that the gift was not effectively made under section 71-4828 or 71-4833 or if the person knows that the decedent made a refusal under section 71-4830 that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in subdivision (a)(2) of this section, nothing in the Revised Uniform Anatomical Gift Act affects the allocation of organs for transplantation or therapy.

Source: Laws 2010, LB1036, § 11.

71-4835 Search and notification.

(a) The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

(1) A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and

(2) If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

(b) If a document of gift or a refusal to make an anatomical gift is located by the search required by subdivision (a)(1) of this section and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.

(c) A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

Source: Laws 2010, LB1036, § 12.

71-4836 Delivery of document of gift not required; right to examine.

(a) A document of gift need not be delivered during the donor's lifetime to be effective.

(b) Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under section 71-4834.

Source: Laws 2010, LB1036, § 13.

71-4837 Rights and duties of procurement organization and others.

(a) When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Donor Registry of Nebraska established pursuant to section 71-4822 and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

(b) A procurement organization must be allowed reasonable access to information in the records of the Donor Registry of Nebraska or any donor registry described in subsection (a) of this section to ascertain whether an individual at or near death is a donor.

(c) When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination necessary to determine the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology.

(d) Unless prohibited by law other than the Revised Uniform Anatomical Gift Act, at any time after a donor's death, the person to which a part passes under section 71-4834 may conduct any reasonable examination necessary to determine the medical suitability of the body or part for its intended purpose.

(e) Unless prohibited by law other than the act, an examination under subsection (c) or (d) of this section may include an examination of all medical and dental records of the donor or prospective donor.

(f) Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the

procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

(g) Upon referral by a hospital under subsection (a) of this section, a procurement organization shall make a reasonable search for any person listed in section 71-4832 having priority to make or object to the making of an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

(h) Subject to subsection (i) of section 71-4834 and sections 23-1825 to 23-1832, the rights of the person to which a part passes under section 71-4834 are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and the act, a person that accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under section 71-4834, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

(i) Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.

(j) A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.

Source: Laws 2010, LB1036, § 14.

71-4838 Coordination of procurement and use.

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

Source: Laws 2010, LB1036, § 15.

71-4839 Sale or purchase of parts prohibited; penalty.

(a) Except as otherwise provided in subsection (b) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation, therapy, research, or education if removal of a part from an individual is intended to occur after the individual's death commits a Class IIIA felony.

(b) A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

Source: Laws 2010, LB1036, § 16.

71-4840 Other prohibited acts; penalty.

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal commits a Class IIIA felony.

Source: Laws 2010, LB1036, § 17.

71-4841 Immunity.

(a) A person that acts with reasonable care in accordance with the Revised Uniform Anatomical Gift Act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.

(b) Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.

(c) In determining whether an anatomical gift has been made, amended, or revoked under the Revised Uniform Anatomical Gift Act, a person may rely upon representations of an individual listed in subdivision (a)(2), (3), (4), (5), (6), (7), or (9) of section 71-4832 relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.

Source: Laws 2010, LB1036, § 18.

71-4842 Law governing validity; choice of law as to execution of document of gift; presumption of validity.

(a) A document of gift is valid if executed in accordance with:

(1) The Revised Uniform Anatomical Gift Act;

(2) The laws of the state or country where it was executed; or

(3) The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

(b) If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

(c) A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

(d) The age restrictions of the Revised Uniform Anatomical Gift Act do not nullify any designation of gift made on a driver's license or state identification card prior to January 1, 2011, by a person younger than sixteen years of age which was valid when made. Such person shall be considered a donor under the act, and if such a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

Source: Laws 2010, LB1036, § 19.

71-4843 Effect of anatomical gift on advance health care directive.

(a) For purposes of this section:

(1) Advance health care directive means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health care decision for the prospective donor;

(2) Declaration means a record signed by a prospective donor specifying the circumstances under which life-sustaining treatment may be withheld or withdrawn from the prospective donor; and

(3) Health care decision means any decision regarding the health care of the prospective donor.

(b) If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than the Revised Uniform Anatomical Gift Act to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The conflict must be resolved as expeditiously as possible. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 71-4832. Before resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may not be administered if it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care or it can be anticipated by reasonable medical judgment that such measures would cause the prospective donor's death other than by the prospective donor's underlying pathology. If the conflict is not resolved expeditiously, the direction of the declaration or advanced directive controls.

Source: Laws 2010, LB1036, § 20.

71-4844 Uniformity of application and construction.

In applying and construing the Revised Uniform Anatomical Gift Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this uniform act.

Source: Laws 2010, LB1036, § 21.

71-4845 Relation to Electronic Signatures in Global and National Commerce Act.

The Revised Uniform Anatomical Gift Act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(a) of that act, 15 U.S.C. 7001, or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2010, LB1036, § 22.

ARTICLE 51

EMERGENCY MEDICAL SERVICES

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

Section

(e) NEBRASKA EMERGENCY MEDICAL SYSTEM OPERATIONS FUND

71-51,103 Nebraska Emergency Medical System Operations Fund; created; use; investment; report.

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 electronically 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; Laws 2012, LB782, § 119.
Operative date July 19, 2012.

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

Section
71-5206.01. Family practice residents; funding of stipends and benefits; report.

(c) PRIMARY CARE PROVIDER ACT

71-5210. Act, how cited.
71-5213. Repealed. Laws 2012, LB 782, § 253.

(a) FAMILY PRACTICE RESIDENCY

71-5206.01 Family practice residents; funding of stipends and benefits; report.

(1) 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.

(2) 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.

(3) At the end of the third year of the funding under this section, the sponsoring institutions and the office shall report electronically 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; Laws 2012, LB782, § 120.
Operative date July 19, 2012.

(c) PRIMARY CARE PROVIDER ACT

71-5210 Act, how cited.

Sections 71-5210 to 71-5212 shall be known and may be cited as the Primary Care Provider Act.

Source: Laws 1994, LB 1223, § 69; Laws 2012, LB782, § 121.
Operative date July 19, 2012.

71-5213 Repealed. Laws 2012, LB 782, § 253.

Operative date July 19, 2012.

ARTICLE 53

DRINKING WATER

(a) NEBRASKA SAFE DRINKING WATER ACT

(b) DRINKING WATER STATE REVOLVING FUND ACT

(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; and

(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.

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; Laws 2012, LB723, § 1.
Effective date July 19, 2012.

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 public water system serving fewer than ten thousand persons 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; Laws 2012, LB723, § 2.
Effective date July 19, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

(b) DRINKING WATER STATE REVOLVING FUND ACT

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. The report submitted to the Legislature shall be submitted electronically;

(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; Laws 2012, LB782, § 122. Operative date July 19, 2012.

71-5326 Repealed. Laws 2011, LB 383, § 9.

ARTICLE 56

RURAL HEALTH

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

(d) RURAL HEALTH SYSTEMS AND PROFESSIONAL INCENTIVE ACT

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. 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 Rural Health Professional Incentive 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; Laws 2009, First Spec. Sess., LB3, § 46.

Cross References

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

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 73-510 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; Laws 2012, LB858, § 1.
Effective date July 19, 2012.

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 73-510.

Source: Laws 1991, LB 400, § 18; Laws 1996, LB 1155, § 55; Laws 2007, LB374, § 2; Laws 2009, LB196, § 2; Laws 2012, LB858, § 2.
Effective date July 19, 2012.

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 73-510 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; Laws 2012, LB858, § 3. Effective date July 19, 2012.

ARTICLE 57

SMOKING AND TOBACCO

(b) TOBACCO PREVENTION AND CONTROL CASH FUND

Section
71-5714. Tobacco Prevention and Control Cash Fund; created; use; investment.

(d) NEBRASKA CLEAN INDOOR AIR ACT

71-5730. Exemptions.

(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. Transfers may be made from the fund to the General Fund at the direction of the Legislature. 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.

The State Treasurer shall transfer, on or before June 30, 2010, as directed by the budget administrator of the budget division of the Department of Administrative Services, one million three hundred thousand dollars from the Tobacco Prevention and Control Cash Fund to the Health and Human Services Cash Fund.

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; Laws 2009, First Spec. Sess., LB2, § 2; Laws 2009, First Spec. Sess., LB3, § 47.

Cross References

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

(d) NEBRASKA CLEAN INDOOR AIR ACT

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 53-103.08.

Source: Laws 2008, LB395, § 15; Laws 2009, LB355, § 6; Laws 2010, LB861, § 82.

ARTICLE 59

ASSISTED-LIVING FACILITY ACT

Section
71-5905. Admission or retention; conditions; health maintenance activities; requirements; written information provided to applicant for admission.

71-5905 Admission or retention; conditions; health maintenance activities; requirements; written information provided to applicant for admission.

(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.

(3) Each assisted-living facility shall provide written information about the practices of the assisted-living facility to each applicant for admission to the facility or his or her authorized representative. The information shall include:

(a) A description of the services provided by the assisted-living facility and the staff available to provide the services;

(b) The charges for services provided by the assisted-living facility;

(c) Whether or not the assisted-living facility accepts residents who are eligible for the medical assistance program under the Medical Assistance Act and, if applicable, the policies or limitations on access to services provided by

the assisted-living facility for residents who seek care paid by the medical assistance program;

(d) The circumstance under which a resident would be required to leave an assisted-living facility;

(e) The process for developing and updating the resident services agreement; and

(f) For facilities that have special care units for dementia, the additional services provided to meet the special needs of persons with dementia.

Source: Laws 2004, LB 1005, § 49; Laws 2011, LB401, § 1.

Cross References

Medical Assistance Act, see section 68-901.
Nurse Practice Act, see section 38-2201.

ARTICLE 62

NEBRASKA REGULATION OF HEALTH PROFESSIONS ACT

Section
71-6201. Act, how cited.
71-6202. Purpose of act.
71-6203. Definitions, where found.
71-6204. Applicant group, defined.
71-6206. Certificate or certification, defined.
71-6208. Director, defined.
71-6208.01. Division, defined.
71-6210. Health profession, defined.
71-6211. Health professional group not previously regulated, defined.
71-6213. License, licensing, or licensure, defined.
71-6216. Public member, defined.
71-6217. Registration, defined.
71-6218. Regulated health professions, defined.
71-6221. Regulation of health profession; change in scope of practice; when.
71-6223. Letter of intent; application; contents.
71-6223.01. Application fee; disposition; waiver.
71-6224. Technical committee; appointment; membership; meetings; duties.
71-6225. Board; review technical committee report; report to director.
71-6226. Director; prepare final report; recommendations.
71-6228. Repealed. Laws 2012, LB 834, § 23.

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; Laws 2012, LB834, § 3.
Effective date July 19, 2012.

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 which are not licensed or regulated and those licensed or regulated health professions which seek to change their scope of practice. The Legislature believes that all individuals should be permitted to provide a health service, a health-related service, or

an environmental service unless there is an overwhelming need for the state to protect the public from harm.

Source: Laws 1985, LB 407, § 2; Laws 2012, LB834, § 4.
Effective date July 19, 2012.

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; Laws 2012, LB834, § 5.
Effective date July 19, 2012.

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 by the division or which proposes to change the scope of practice of a regulated health profession.

Source: Laws 1985, LB 407, § 4; Laws 2012, LB834, § 6.
Effective date July 19, 2012.

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 tasks.

Source: Laws 1985, LB 407, § 6; Laws 2012, LB834, § 7.
Effective date July 19, 2012.

71-6208 Director, defined.

Director shall mean the Director of Public Health of the Division of Public Health of the Department of Health and Human Services.

Source: Laws 1985, LB 407, § 8; Laws 1996, LB 1044, § 758; Laws 2007, LB296, § 652; Laws 2012, LB834, § 8.
Effective date July 19, 2012.

71-6208.01 Division, defined.

Division shall mean the Division of Public Health of the Department of Health and Human Services.

Source: Laws 2012, LB834, § 9.
Effective date July 19, 2012.

71-6210 Health profession, defined.

Health profession shall mean a vocation involving health services, health-related services, or environmental services requiring specialized knowledge and

training. Health profession does not include the vocation of duly recognized members of the clergy acting in their ministerial capacity.

Source: Laws 1985, LB 407, § 10; Laws 2012, LB834, § 10.
Effective date July 19, 2012.

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;

(3) Providing rehabilitative or continuing care following injury or illness; or

(4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 11; Laws 2007, LB463, § 1241; Laws 2012, LB834, § 11.
Effective date July 19, 2012.

Cross References

Uniform Credentialing Act, see section 38-101.

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 tasks and use a particular title.

Source: Laws 1985, LB 407, § 13; Laws 2012, LB834, § 12.
Effective date July 19, 2012.

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 health profession being regulated or an activity directly related to the health profession being regulated.

Source: Laws 1985, LB 407, § 16; Laws 2012, LB834, § 13.
Effective date July 19, 2012.

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 and may 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; Laws 2012, LB834, § 14.
Effective date July 19, 2012.

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;

(3) Providing rehabilitative or continuing care following injury or illness; or

(4) Providing any other health service, health-related service, or environmental service which may be subject to regulation by the division.

Source: Laws 1985, LB 407, § 18; Laws 2007, LB463, § 1242; Laws 2012, LB834, § 15.
Effective date July 19, 2012.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6221 Regulation of health profession; change in scope of practice; when.

(1) 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;

(b) Regulation of the health 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 assurance from the state of initial and continuing professional ability; and

(d) The public cannot be protected by a more effective alternative.

(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;

(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 protected by a more effective alternative.

(3) The scope of practice of a regulated health profession shall be changed only when:

(a) The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice;

(b) Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public;

(c) The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public;

(d) The current education and training for the health profession adequately prepares practitioners to perform the new skill or service;

(e) There are appropriate postprofessional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill or service in a safe manner; and

(f) There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

(4) The division 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; Laws 2012, LB834, § 16.
Effective date July 19, 2012.

71-6223 Letter of intent; application; contents.

(1) 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.

(2) The director shall notify the applicant group as to whether it is eligible for review within fifteen days after 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 after 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.

(3) The application shall include an explanation of:

(a) The problem created by not regulating a health professional group not previously regulated or by not changing the scope of practice of a regulated health profession;

(b) If the application is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed in section 71-6222, and the impact of such methods on the public;

(c) The benefit to the public of regulating a health professional group not previously regulated or changing the scope of practice of a regulated health profession;

(d) The extent to which regulation or the change of scope of practice might harm the public;

(e) The type of standards that exist to ensure that a practitioner of a health profession would maintain competency;

(f) A description of the health professional 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;

(g) The role and availability of third-party reimbursement for the services provided by the applicant group;

(h) The experience of other jurisdictions in regulating the practitioners affected by the application;

(i) The expected costs of regulation, including (i) the impact registration, certification, or licensure will have on the costs of the services to the public and (ii) the cost to the state and to the general public of implementing the proposed legislation; and

(j) Other information relevant to the requested review as determined by the division.

Source: Laws 1985, LB 407, § 23; Laws 1988, LB 384, § 9; Laws 2012, LB834, § 17.
Effective date July 19, 2012.

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. The division shall remit all application fees to the State Treasurer for credit to the Professional and Occupational Credentialing Cash 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; Laws 2012, LB834, § 18.
Effective date July 19, 2012.

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 one member 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. The committee shall serve as a factfinding body and undertake such investigation as it deems necessary to address the issues identified in the application. As part of its investigation, each committee shall consider available scientific evidence and conduct public factfinding hearings. Each committee shall comply with the Open Meetings Act.

(3) An applicant group shall have the burden of producing evidence to support its application.

(4) 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, shall make written findings on all criteria, and shall make a recommendation for approval or denial. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding changes to the proposal or other solutions to problems identified during the review and may comment on the anticipated benefits to the health, safety, and welfare of the public. 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.

Source: Laws 1985, LB 407, § 24; Laws 1988, LB 384, § 10; Laws 2004, LB 821, § 20; Laws 2012, LB834, § 19.
Effective date July 19, 2012.

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 (4) of section 71-6224.

Source: Laws 1985, LB 407, § 25; Laws 1988, LB 384, § 11; Laws 2012, LB834, § 20.
Effective date July 19, 2012.

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 (4) of section 71-6224. The final report shall be submitted electronically 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 twelve months after the application is submitted to the director and found to be complete and shall be made available electronically 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; Laws 2012, LB782, § 123; Laws 2012, LB834, § 21.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 123, with LB834, section 21, to reflect all amendments.

Note: Changes made by LB834 became effective July 19, 2012. Changes made by LB782 became operative July 19, 2012.

71-6228 Repealed. Laws 2012, LB 834, § 23.

ARTICLE 64
BUILDING CONSTRUCTION

Section
71-6403. State building code; adopted; amendments.
71-6404. State building code; applicability.
71-6405. State building code; compliance required.
71-6406. Political subdivision; building code; adopt; amend; enforce.

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), 2009 edition, published by the International Code Council;

(b) The International Residential Code (IRC), 2009 edition, except section R313, published by the International Code Council; and

(c) The International Existing Building Code, 2009 edition, published by the International Code Council.

(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.

Source: Laws 1987, LB 227, § 3; Laws 1993, LB 319, § 1; Laws 1996, LB 1304, § 4; Laws 2003, LB 643, § 1; Laws 2010, LB799, § 1; Laws 2011, LB546, § 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 or any component or combination of components of the state building code.

Source: Laws 1987, LB 227, § 4; Laws 1993, LB 319, § 2; Laws 2010, LB799, § 2.

71-6405 State building code; compliance required.

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.

Source: Laws 1987, LB 227, § 5; Laws 1993, LB 319, § 3; Laws 1996, LB 1304, § 5; Laws 2003, LB 643, § 2; Laws 2010, LB799, § 3; Laws 2011, LB546, § 2; Laws 2012, LB1001, § 1.
Effective date July 19, 2012.

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 recently enacted state building code is adopted by the political subdivision within two years. 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 by modifying or deleting any portion of the state building code in order to reduce unnecessary costs of construction, increase safety, durability, or efficiency, or address special local conditions within its jurisdiction;

(c) Adopts any supplement, new edition, appendix, or component or combination of components of the state building code; or

(d) Adopts section R313 of the 2009 edition of the International Residential Code.

(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; Laws 2010, LB799, § 4; Laws 2011, LB546, § 3.

ARTICLE 67

MEDICATION REGULATION

(b) MEDICATION AIDE ACT

(b) MEDICATION AIDE ACT

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 the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

Source: Laws 1998, LB 1354, § 26; Laws 2005, LB 361, § 34; Laws 2011, LB431, § 14.

Cross References

Health Care Quality Improvement Act, see section 71-7904.
Patient Safety Improvement Act, see section 71-8701.

ARTICLE 69
ABORTION

71-6901 Terms, defined.

For purposes of sections 71-6901 to 71-6911:

(1) Abortion means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. Such use, prescription, or means is not an abortion if done with the intent to:

(a) Save the life or preserve the health of an unborn child;

(b) Remove a dead unborn child caused by a spontaneous abortion; or

(c) Remove an ectopic pregnancy;

(2) Coercion means restraining or dominating the choice of a pregnant woman by force, threat of force, or deprivation of food and shelter;

(3) Consent means a declaration acknowledged before a notary public and signed by a parent or legal guardian of the pregnant woman or an alternate person as described in section 71-6902.01 declaring that the principal has been informed that the pregnant woman intends to undergo a procedure pursuant to subdivision (1) of section 71-6901 and that the principal consents to the procedure;

(4) Department means the Department of Health and Human Services;

(5) Emancipated means a situation in which a person under eighteen years of age has been married or legally emancipated;

(6) Facsimile copy means 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;

(7) Incompetent means any person who has been adjudged a disabled person and has had a guardian appointed under sections 30-2617 to 30-2629;

(8) Medical emergency means a condition that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function;

(9) Physician means any person licensed to practice medicine in this state as provided in the Uniform Credentialing Act. Physician includes a person who practices osteopathy; and

(10) Pregnant woman means an unemancipated woman under eighteen years of age who is pregnant or a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629 because of a finding of incapacity, disability, or incompetency who is pregnant.

Source: Laws 1991, LB 425, § 1; Laws 2011, LB690, § 3.

Cross References

Uniform Credentialing Act, see section 38-101.

71-6902 Performance of abortion; notarized written consent required.

Except in the case of a medical emergency or except as provided in sections 71-6902.01, 71-6903, and 71-6906, no person shall perform an abortion upon a pregnant woman unless, in the case of a woman who is less than eighteen years of age, he or she first obtains the notarized written consent of both the pregnant woman and one of her parents or a legal guardian or, in the case of a woman for whom a guardian has been appointed pursuant to sections 30-2617 to 30-2629, he or she first obtains the notarized written consent of her guardian. In deciding whether to grant such consent, a pregnant woman's parent or guardian shall consider only his or her child's or ward's best interest.

Source: Laws 1991, LB 425, § 2; Laws 2011, LB690, § 4.

71-6902.01 Victim of abuse, sexual abuse, or child abuse or neglect; attending physician; duties; liability.

If the pregnant woman declares in a signed written statement 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 by either of her parents or her legal guardians, then the attending physician shall obtain the notarized written consent required by section 71-6902 from a grandparent specified by the pregnant woman. The physician who intends to perform the abortion shall certify in the pregnant woman's medical record that he or she has received the written declaration of abuse or neglect. Any physician relying in good faith on a written statement under this section shall not be civilly or criminally liable under sections 71-6901 to 71-6911 for failure to obtain consent. 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 pursuant to sections 28-372 and 28-711.

Source: Laws 2011, LB690, § 5.

71-6902.02 Coercion to obtain abortion; prohibited; denial of financial support; effect.

No parent, guardian, or any other person shall coerce a pregnant woman to obtain an abortion. If a pregnant woman is denied financial support by her

parents, guardians, or custodians due to her refusal to obtain an abortion, the pregnant woman shall be deemed emancipated for purposes of eligibility for public assistance benefits, except that such benefits may not be used to obtain an abortion.

Source: Laws 2011, LB690, § 6.

71-6903 Abortion; authorized by court; when; procedures; confidentiality and anonymity; guardian ad litem; court order; specific factual findings and legal conclusions.

(1) The requirements and procedures under this section are available to pregnant women whether or not they are residents of this state.

(2) If a pregnant woman elects not to obtain the consent of her parents or guardians, 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 by clear and convincing evidence that the pregnant woman is both sufficiently mature and well-informed to decide whether to have an abortion. If the court does not make the finding specified in this subsection or subsection (3) of this section, it shall dismiss the petition.

(3) If the court finds, by clear and convincing evidence, that there is evidence 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 of the pregnant woman by a parent or a guardian or that an abortion without the consent of a parent or a guardian is in the best interest of the pregnant woman, the court shall issue an order authorizing the pregnant woman to consent to the performance or inducement of an abortion without the consent of a parent or a guardian. If the court does not make the finding specified in this subsection or subsection (2) of this section, it shall dismiss the petition.

(4) 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.

(5) 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.

(6) The pregnant woman may commence an action for waiver of the consent requirement by the filing of a petition or motion personally, by mail, or by facsimile on a form provided by the State Court Administrator.

(7) The State Court Administrator shall develop the petition form and accompanying instructions on the procedure for petitioning the court for a waiver of consent, 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 consent.

(8) Proceedings in court pursuant to this section shall be confidential and shall ensure the anonymity of the pregnant woman. The pregnant woman shall

have the right to file her petition in the court using a pseudonym or using solely her initials. 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 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.

(9) 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.

(10) 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 interest 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.

(11) The court shall issue a written order which includes specific factual findings and legal conclusions supporting its decision which shall be provided immediately to the pregnant woman, the pregnant woman's guardian ad litem, the pregnant woman's attorney, and any other person designated by the pregnant woman to receive the order. Further, the court shall order that a confidential record of the evidence and the judge's findings and conclusions be maintained. At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect, and understanding of the pregnant woman.

Source: Laws 1991, LB 425, § 3; Laws 2011, LB690, § 7.

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 consent. An order authorizing an abortion without consent 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; Laws 2011, LB690, § 8.

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 71-6911.

Source: Laws 1991, LB 425, § 5; Laws 2011, LB690, § 9.

71-6906 Performance of abortion; consent not required; when.

Consent shall not be required pursuant to sections 71-6901 to 71-6911 if any of the following conditions exist:

(1) The attending physician certifies in the pregnant woman's medical record that a medical emergency exists and there is insufficient time to obtain the required consent; or

(2) Consent is waived under section 71-6903.

Source: Laws 1991, LB 425, § 6; Laws 2005, LB 116, § 23; Laws 2011, LB690, § 10.

71-6907 Violation by physician; penalty; civil action; immunity; prohibited acts; violation; penalty.

(1) Any physician or attending physician who knowingly and intentionally or with reckless disregard performs an abortion in violation of sections 71-6901 to 71-6906 and 71-6909 to 71-6911 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 the right and opportunity to consent.

(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 or (b) if the person has performed an abortion authorized by a court order issued pursuant to section 71-6903 or 71-6904.

(4) Any person not authorized to provide consent under sections 71-6901 to 71-6911 who provides consent is guilty of a Class III misdemeanor.

(5) Any person who coerces a pregnant woman to have an abortion is guilty of a Class III misdemeanor.

Source: Laws 1991, LB 425, § 7; Laws 2011, LB690, § 11.

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 parental consent 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; Laws 2011, LB690, § 13.

71-6909 Physician; report; contents; form; compilation by department.

A monthly report indicating only the number of consents obtained under sections 71-6901 to 71-6911, the number of times in which exceptions were made to the consent requirement under such sections, the type of exception, the pregnant woman's age, and the number of prior pregnancies and prior abortions of the pregnant woman shall be filed by the physician with the department on forms prescribed by the department. The name of the pregnant woman shall not be used on the forms. A compilation of the data reported shall be made by the department on an annual basis and shall be available to the public.

Source: Laws 2011, LB690, § 12.

71-6910 Sections; how construed; intent.

(1) Nothing in sections 71-6901 to 71-6911 shall be construed as creating or recognizing a right to abortion.

(2) It is not the intent of sections 71-6901 to 71-6911 to make lawful an abortion that is currently unlawful.

Source: Laws 2011, LB690, § 14.

71-6911 Declaration; confidentiality.

A declaration under sections 71-6901 to 71-6911 shall be confidential except as would be required in any court proceedings under such sections.

Source: Laws 2011, LB690, § 15.

ARTICLE 74

WHOLESALE DRUG DISTRIBUTOR LICENSING

Section
71-7447. Wholesale drug distributor; licenses; requirements; exemptions.
71-7460.02. Health care facility; peer review organization, or professional association; duty to report; confidentiality; immunity; failure to report; civil penalty.

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 delegated dispensing permit or is exempt from the practice of pharmacy under subdivision (12) of section 38-2850.

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; Laws 2010, LB849, § 27.

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 the Health Care Quality Improvement Act or section 25-12,123 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in either of such acts or such section.

(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; Laws 2011, LB431, § 15.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Health Care Quality Improvement Act, see section 71-7904.
Nebraska Hospital-Medical Liability Act, see section 44-2855.
Patient Safety Improvement Act, see section 71-8701.

ARTICLE 76

HEALTH CARE

(b) NEBRASKA HEALTH CARE FUNDING ACT

Section
71-7606. Purpose of act; restrictions on use of funds; report.
71-7611. Nebraska Health Care Cash Fund; created; use; investment; report.

(b) NEBRASKA HEALTH CARE FUNDING ACT

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 and administration and enforcement of the Master Settlement Agreement as defined in section 69-2702.

(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. The report submitted to the Legislature shall be submitted electronically.

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; Laws 2011, LB590, § 18; Laws 2012, LB782, § 124.
Operative date July 19, 2012.

71-7611 Nebraska Health Care Cash Fund; created; use; investment; report.

(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, (b) fifty-nine million one hundred thousand dollars on July 15, 2010, July 15, 2011, and July 15, 2012, (c) fifty-six million one hundred forty-five thousand dollars no later than July 15, 2013, (d) fifty-three million one hundred ninety thousand dollars no later than July 15, 2014, and (e) fifty million two hundred thirty-five thousand dollars beginning July 15, 2015, 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 electronically 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.

It is the intent of the Legislature that no additional programs are funded through the Nebraska Health Care Cash Fund until funding for all programs

with an appropriation from the fund during FY2012-13 are restored to their FY2012-13 levels.

(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) 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.

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; Laws 2012, LB782, § 125; Laws 2012, LB969, § 9.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 125, with LB969, section 9, to reflect all amendments.

Note: Changes made by LB969 became operative July 1, 2012. Changes made by LB782 became operative July 19, 2012.

Cross References

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

ARTICLE 79

HEALTH CARE QUALITY IMPROVEMENT ACT

(a) PEER REVIEW COMMITTEES

Section
71-7901. Repealed. Laws 2011, LB 431, § 17.
71-7902. Repealed. Laws 2011, LB 431, § 17.
71-7903. Repealed. Laws 2011, LB 431, § 17.

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

71-7904. Act, how cited.
71-7905. Purposes of act.
71-7906. Definitions, where found.
71-7907. Health care provider, defined.
71-7908. Incident report, defined.
71-7909. Peer review, defined.
71-7910. Peer review committee, defined.
71-7911. Liability for activities relating to peer review.
71-7912. Confidentiality; discovery; availability of medical records, documents, or information; limitation.
71-7913. Incident report or risk management report; how treated.

(a) PEER REVIEW COMMITTEES

71-7901 Repealed. Laws 2011, LB 431, § 17.

71-7902 Repealed. Laws 2011, LB 431, § 17.

71-7903 Repealed. Laws 2011, LB 431, § 17.

(b) HEALTH CARE QUALITY IMPROVEMENT ACT

71-7904 Act, how cited.

Sections 71-7904 to 71-7913 shall be known and may be cited as the Health Care Quality Improvement Act.

Source: Laws 2011, LB431, § 1.

71-7905 Purposes of act.

The purposes of the Health Care Quality Improvement Act are to provide protection for those individuals who participate in peer review activities which evaluate the quality and efficiency of health care providers and to protect the confidentiality of peer review records.

Source: Laws 2011, LB431, § 2.

71-7906 Definitions, where found.

For purposes of the Health Care Quality Improvement Act, the definitions found in sections 71-7907 to 71-7910 apply.

Source: Laws 2011, LB431, § 3.

71-7907 Health care provider, defined.

Health care provider means:

(1) A facility licensed under the Health Care Facility Licensure Act;

(2) A health care professional licensed under the Uniform Credentialing Act; and

(3) An organization or association of health care professionals licensed under the Uniform Credentialing Act.

Source: Laws 2011, LB431, § 4.

Cross References

Health Care Facility Licensure Act, see section 71-401.
Uniform Credentialing Act, see section 38-101.

71-7908 Incident report, defined.

Incident report or risk management report means a report of an incident involving injury or potential injury to a patient as a result of patient care provided by a health care provider, including both an individual who provides health care and an entity that provides health care, that is created specifically for and collected and maintained for exclusive use by a peer review committee of a health care entity and that is within the scope of the functions of that committee.

Source: Laws 2011, LB431, § 5.

71-7909 Peer review, defined.

Peer review means the procedure by which health care providers evaluate the quality and efficiency of services ordered or performed by other health care providers, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, root cause analysis, claims review, underwriting assistance, and the compliance of a hospital, nursing home, or other health care facility operated by a health care

provider with the standards set by an association of health care providers and with applicable laws, rules, and regulations.

Source: Laws 2011, LB431, § 6.

71-7910 Peer review committee, defined.

Peer review committee means a utilization review committee, quality assessment committee, performance improvement committee, tissue committee, credentialing committee, or other committee established by the governing board of a facility which is a health care provider that does either of the following:

(1) Conducts professional credentialing or quality review activities involving the competence of, professional conduct of, or quality of care provided by a health care provider, including both an individual who provides health care and an entity that provides health care; or

(2) Conducts any other attendant hearing process initiated as a result of a peer review committee's recommendations or actions.

Source: Laws 2011, LB431, § 7.

71-7911 Liability for activities relating to peer review.

(1) A health care provider or an individual (a) serving as a member or employee of a peer review committee, working on behalf of a peer review committee, furnishing counsel or services to a peer review committee, or participating in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider and (b) acting without malice shall not be held liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee.

(2) A person who makes a report or provides information to a peer review committee shall not be subject to suit as a result of providing such information if such person acts without malice.

Source: Laws 2011, LB431, § 8.

71-7912 Confidentiality; discovery; availability of medical records, documents, or information; limitation.

(1) The proceedings, records, minutes, and reports of a peer review committee shall be held in confidence and shall not be subject to discovery or introduction into evidence in any civil action. No person who attends a meeting of a peer review committee, works for or on behalf of a peer review committee, provides information to a peer review committee, or participates in a peer review activity as an officer, director, employee, or member of the governing board of a facility which is a health care provider shall be permitted or required to testify in any such civil action as to any evidence or other matters produced or presented during the proceedings or activities of the peer review committee or as to any findings, recommendations, evaluations, opinions, or other actions of the peer review committee or any members thereof.

(2) Nothing in this section shall be construed to prevent discovery or use in any civil action of medical records, documents, or information otherwise available from original sources and kept with respect to any patient in the ordinary course of business, but the records, documents, or information shall

be available only from the original sources and cannot be obtained from the peer review committee's proceedings or records.

Source: Laws 2011, LB431, § 9.

71-7913 Incident report or risk management report; how treated.

An incident report or risk management report and the contents of an incident report or risk management report are not subject to discovery in, and are not admissible in evidence in the trial of, a civil action for damages for injury, death, or loss to a patient of a health care provider. A person who prepares or has knowledge of the contents of an incident report or risk management report shall not testify and shall not be required to testify in any civil action as to the contents of the report.

Source: Laws 2011, LB431, § 10.

ARTICLE 82

STATEWIDE TRAUMA SYSTEM ACT

Section
71-8215. Emergency medical service, defined.

71-8215 Emergency medical service, defined.

Emergency medical service means the organization responding to a perceived individual need for medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

Source: Laws 1997, LB 626, § 15; Laws 2012, LB646, § 3.
Effective date March 8, 2012.

ARTICLE 83

CREDENTIALING OF HEALTH CARE FACILITIES

Section
71-8313. Department; credentialing recommendations.

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 electronically 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; Laws 2012, LB782, § 126.
Operative date July 19, 2012.

ARTICLE 84

MEDICAL RECORDS

Section
71-8403. Access to medical records.

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. If an authorization does not contain an expiration date or specify an event the occurrence of which causes the authorization to expire, the authorization shall expire twelve months after the date the authorization was executed 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; Laws 2010, LB849, § 28.

ARTICLE 86

BLIND AND VISUALLY IMPAIRED

Section
71-8611. Vending facilities; license; priority status.
71-8612. Commission for the Blind and Visually Impaired Cash Fund; created; use; investment.
71-8613. Annual report.

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 product price in the bid submitted is comparable in price to the product price in the other bids submitted for similar products sold in similar buildings or on similar property and all other components of the bid for a contract, except for any rent paid to the state, are found to be reasonably equivalent 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; Laws 2012, LB858, § 4.
Effective date July 19, 2012.

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, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The commission, in consultation with the Committee of Blind Vendors, shall determine the percentage of the net proceeds that reverts to the Commission for the Blind and Visually Impaired Cash 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; Laws 2009, First Spec. Sess., LB3, § 48.

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. The report submitted to the Clerk of the Legislature shall be submitted electronically.

Source: Laws 2000, LB 352, § 13; Laws 2012, LB782, § 127.
Operative date July 19, 2012.

ARTICLE 88

STEM CELL RESEARCH ACT

Section
71-8804. Committee; establish grant process; reports.
71-8805. Stem Cell Research Cash Fund; created; use; investment.

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 submit electronically an annual report to the Legislature stating the number of grants awarded, the amount of the grants, and the researchers or institutions to which the grants were awarded.

Source: Laws 2008, LB606, § 4; Laws 2012, LB782, § 128.
Operative date July 19, 2012.

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 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; Laws 2012, LB969, § 10.
Operative date July 1, 2012.

Cross References

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

ARTICLE 90

SEXUAL ASSAULT OR DOMESTIC VIOLENCE PATIENT

Section
71-9001. Sexual assault or domestic violence patient; examination and treatment authorized.

71-9001 Sexual assault or domestic violence patient; examination and treatment authorized.

A physician, his or her agent, or a mental health professional as defined in section 71-906, upon consultation with a patient who is eighteen years of age, shall, with the consent of the patient, make or cause to be made a diagnostic examination for physical or mental injuries associated with sexual assault or domestic violence and prescribe for and treat such person for injuries associated with sexual assault or domestic violence. 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 the patient.

Source: Laws 2011, LB479, § 2.

ARTICLE 91

CONCUSSION AWARENESS ACT

Section
71-9101. Act, how cited.
71-9102. Legislative findings.
71-9103. Terms, defined.
71-9104. Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.
71-9105. City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.
71-9106. Act; how construed.

71-9101 Act, how cited.

Sections 71-9101 to 71-9106 shall be known and may be cited as the Concussion Awareness Act.

Source: Laws 2011, LB260, § 1.

71-9102 Legislative findings.

(1) The Legislature finds that concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities and that the risk of catastrophic injury or death is significant when a concussion or brain injury is not properly evaluated and managed.

(2) The Legislature further finds that concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with

each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occur without loss of consciousness.

(3) The Legislature further finds that continuing to play with a concussion or symptoms of brain injury leaves a young athlete especially vulnerable to greater injury and even death. The Legislature recognizes that, despite having generally recognized return-to-play standards for concussion and brain injury, some young athletes are prematurely returned to play, resulting in actual or potential physical injury or death.

Source: Laws 2011, LB260, § 2.

71-9103 Terms, defined.

For purposes of the Concussion Awareness Act:

(1) Chief medical officer means the chief medical officer as designated in section 81-3115; and

(2) Licensed health care professional means a physician or licensed practitioner under the direct supervision of a physician, a certified athletic trainer, a neuropsychologist, or some other qualified individual who (a) is registered, licensed, certified, or otherwise statutorily recognized by the State of Nebraska to provide health care services and (b) is trained in the evaluation and management of traumatic brain injuries among a pediatric population.

Source: Laws 2011, LB260, § 3.

71-9104 Schools; duties; participant on athletic team; actions required; notice to parent or guardian; effect of signature of licensed health care professional.

(1) Each approved or accredited public, private, denominational, or parochial school shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches of school athletic teams; and

(b) Require that concussion and brain injury information be provided on an annual basis to students and the students' parents or guardians prior to such students initiating practice or competition. The information provided to students and the students' parents or guardians shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions a student should take in response to sustaining a concussion, including the notification of his or her coaches.

(2)(a) A student who participates on a school athletic team shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional who is professionally affiliated with or contracted by the school. Such student shall not be permitted to participate in any school supervised team athletic activities involving physical exertion, including, but not limited to, practices or games, until the student (i) has been evaluated by a licensed health care professional, (ii) has received

written and signed clearance to resume participation in athletic activities from the licensed health care professional, and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the school accompanied by written permission to resume participation from the student's parent or guardian.

(b) If a student is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the student shall be notified by the school of the date and approximate time of the injury suffered by the student, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the student.

(c) Nothing in this subsection shall be construed to require any school to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is provided to a school shall be deemed to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care professional. The school shall not be required to determine or verify the individual's qualifications.

Source: Laws 2011, LB260, § 4.

71-9105 City, village, business, or nonprofit organization; duties; participant in athletic activity; actions required; notice to parent or guardian; effect of signature of licensed health care professional.

(1) Any city, village, business, or nonprofit organization that organizes an athletic activity in which the athletes are nineteen years of age or younger and are required to pay a fee to participate in the athletic activity or whose cost to participate in the athletic activity is sponsored by a business or nonprofit organization shall:

(a) Make available training approved by the chief medical officer on how to recognize the symptoms of a concussion or brain injury and how to seek proper medical treatment for a concussion or brain injury to all coaches; and

(b) Provide information on concussions and brain injuries to all coaches and athletes and to a parent or guardian of each athlete that shall include, but need not be limited to:

(i) The signs and symptoms of a concussion;

(ii) The risks posed by sustaining a concussion; and

(iii) The actions an athlete should take in response to sustaining a concussion, including the notification of his or her coaches.

(2)(a) An athlete who participates in an athletic activity under subsection (1) of this section shall be removed from a practice or game when he or she is reasonably suspected of having sustained a concussion or brain injury in such practice or game after observation by a coach or a licensed health care professional. Such athlete shall not be permitted to participate in any supervised athletic activities involving physical exertion, including, but not limited to, practices or games, until the athlete (i) has been evaluated by a licensed health care professional, (ii) has received written and signed clearance to resume participation in athletic activities from the licensed health care professional,

and (iii) has submitted the written and signed clearance to resume participation in athletic activities to the city, village, business, or nonprofit organization that organized the athletic activity accompanied by written permission to resume participation from the athlete's parent or guardian.

(b) If an athlete is reasonably suspected after observation of having sustained a concussion or brain injury and is removed from an athletic activity under subdivision (2)(a) of this section, the parent or guardian of the athlete shall be notified by the coach or a representative of the city, village, business, or nonprofit organization that organized the athletic activity of the date and approximate time of the injury suffered by the athlete, the signs and symptoms of a concussion or brain injury that were observed, and any actions taken to treat the athlete.

(c) Nothing in this subsection shall be construed to require any city, village, business, or nonprofit organization to provide for the presence of a licensed health care professional at any practice or game.

(d) The signature of an individual who represents that he or she is a licensed health care professional on a written clearance to resume participation that is provided to a city, village, business, or nonprofit organization shall be deemed to be conclusive and reliable evidence that the individual who signed the clearance is a licensed health care professional. The city, village, business, or nonprofit organization shall not be required to determine or verify the individual's qualifications.

Source: Laws 2011, LB260, § 5.

71-9106 Act; how construed.

Nothing in the Concussion Awareness Act shall be construed to create liability for or modify the liability or immunity of a school, school district, city, village, business, or nonprofit organization or the officers, employees, or volunteers of any such school, school district, city, village, business, or nonprofit organization.

Source: Laws 2011, LB260, § 6.

CHAPTER 72
PUBLIC LANDS, BUILDINGS, AND FUNDS

ARTICLE 2
SCHOOL LANDS AND FUNDS

72-201 Board of Educational Lands and Funds; members; appointment; terms; expenses; duties; qualifications; organization; chairperson; meetings; secretary.

(1) The Board of Educational Lands and Funds shall consist of five members to be appointed by the Governor with the consent of a majority of the members elected to the Legislature. One member shall be appointed from each of the congressional districts as the districts were constituted on January 1, 1961, and a fifth member shall be appointed from the state at large. One member of the board shall be competent in the field of investments. The initial members shall be appointed to take office on October 1, 1955, and shall hold office for the following periods of time: The member from the first congressional district for one year; the member from the second congressional district for two years; the member from the third congressional district for three years; the member from the fourth congressional district for four years; and the member from the state at large for five years. As the terms of the members expire, the Governor shall appoint or reappoint a member of the board for a term of five years, except members appointed to fill vacancies whose tenures shall be the unexpired terms for which they are appointed. If the Legislature is not in session when such

members, or some of them, are appointed by the Governor, such members shall take office and act as recess appointees until the Legislature next thereafter convenes. Until October 1, 2011, the compensation of the members shall be forty dollars per day for each day's time actually engaged in the performance of the duties of their office. Before, on, and after October 1, 2011, each member shall be paid his or her necessary traveling expenses incurred while upon business of the board as provided in sections 81-1174 to 81-1177. The board shall cause all school, university, agricultural college, and state college lands, owned by or the title to which may hereafter vest in the state, to be registered, leased, and sold as provided in sections 72-201 to 72-251 and shall have the general management and control of such lands and make necessary rules not provided by law. The funds arising from these lands shall be disposed of in the manner provided by the Constitution of Nebraska, sections 72-201 to 72-251, and other laws of Nebraska not inconsistent herewith.

(2) No person shall be eligible to membership on the board who is actively engaged in the teaching profession, who holds or has any financial interest in a school land lease, who is a holder of or a candidate for any state office or a member of any state board or commission, or who has not resided in this state for at least three years.

(3) The board shall elect one of its members as chairperson of the Board of Educational Lands and Funds. In the absence of the chairperson, any member of the board may, upon motion duly carried, act in his or her behalf as such chairperson. It shall keep a record of all proceedings and orders made by it. No order shall be made except upon the concurrence of at least three members of the board. It shall make all orders pertaining to the handling of all lands and funds set apart for educational purposes.

(4) The board shall maintain an office in Lincoln and shall meet in its office not less than once each month.

(5) The board may appoint a secretary for the board. The compensation of the secretary shall be payable monthly, as fixed by the board.

Source: Laws 1899, c. 69, § 1, p. 300; R.S.1913, § 5845; C.S.1922, § 5181; C.S.1929, § 72-201; Laws 1935, c. 163, § 1, p. 594; Laws 1937, c. 162, § 1, p. 628; C.S.Supp.,1941, § 72-201; R.S.1943, § 72-201; Laws 1945, c. 175, § 1, p. 559; Laws 1951, c. 338, § 3, p. 117; Laws 1953, c. 252, § 1, p. 857; Laws 1955, c. 276, § 1, p. 874; Laws 1955, c. 277, § 1, p. 877; Laws 1961, c. 282, § 5, p. 822; Laws 1965, c. 434, § 1, p. 1383; Laws 1969, c. 589, § 1, p. 2438; Laws 1981, LB 204, § 141; Laws 1999, LB 779, § 12; Laws 2011, LB332, § 1.

Cross References

Constitutional provisions:
Board of Educational Lands and Funds, duties, membership, see Article VII, section 6, Constitution of Nebraska.
Fees, see sections 25-1280 and 33-104.
Other provisions relating to the board, see Chapter 84, article 4.
State-owned geothermal resources, authority to lease, see section 66-1104.

72-240.26 Board of Educational Lands and Funds; Nebraska Investment Council; annual report; contents.

The Board of Educational Lands and Funds and the Nebraska Investment Council shall jointly report annually to the Clerk of the Legislature, and such report shall contain anticipated future actions by the board as well as actions

already taken. The report submitted to the Clerk of the Legislature shall be submitted electronically. The board's portion of the report shall include (1) with reference to each tract of land sold pursuant to section 72-201.01: (a) The legal description; (b) the unique characteristics of the land being sold; (c) the appraised value; (d) the sale price; (e) the amount of funds received in the calendar year covered by the report from the sale; (f) the disposition of the funds; (g) the total number of acres of any unsold educational lands remaining under the general management and control of the board by county; (h) the total appraised value of unsold land; and (i) the percentage of the investment portfolio remaining in real estate, including all nonagricultural real estate and (2) the corresponding information for any land that has been acquired or traded. The council's portion of the report shall include a cost-benefit analysis which considers the land being sold versus the anticipated investment potential of proceeds resulting from the sale. The cost-benefit analysis model used shall be consistent with the standards of the investment industry at the time of the proposed sale. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the chairperson of the board.

Source: Laws 1974, LB 894, § 6; Laws 1979, LB 322, § 31; Laws 1996, LB 1205, § 2; Laws 2000, LB 1010, § 2; Laws 2012, LB782, § 129.
Operative date July 19, 2012.

72-258.03 School lands; sale; appraised value.

For purposes of sales of educational lands at public auction, appraised value is the value as determined by the Board of Educational Lands and Funds.

Source: Laws 2000, LB 1010, § 1; Laws 2007, LB166, § 2; Laws 2009, LB166, § 3; Laws 2011, LB210, § 3; Laws 2012, LB800, § 1.
Effective date July 19, 2012.

72-270 Production of wind or solar energy; agreements; sections applicable.

Agreements involving the production of wind or solar energy on lands under the control of the Board of Educational Lands and Funds shall be regulated by sections 72-270 to 72-274.

Source: Laws 2010, LB235, § 1; Laws 2012, LB828, § 11.
Effective date March 8, 2012.

72-271 Production of wind or solar energy; agreements; terms, defined.

For purposes of sections 72-270 to 72-274:

(1) Agreement means (a) for purposes of a solar energy system, a solar agreement as defined in section 66-909 and (b) for purposes of a wind energy conversion system, a wind agreement as defined in section 66-909.04;

(2) Board means the Board of Educational Lands and Funds;

(3) Lessee means any individual, corporation, or other entity that enters into an agreement with the board;

(4) Solar energy means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy; and

(5) Wind energy has the definition found in section 66-909.01.

Source: Laws 2010, LB235, § 2; Laws 2012, LB828, § 12.
Effective date March 8, 2012.

72-272 Production of wind energy or solar energy; agreements; board; powers.

The board may authorize agreements for the use of any school or public lands belonging to the state and under its control for exploration and development of wind energy or solar energy for such durations and under such terms and conditions as the board shall deem appropriate, except that such agreements shall comply with sections 66-901 to 66-914. In making such determinations, the board shall consider comparable arrangements involving other lands similarly situated and any other relevant factors bearing upon such agreements.

Source: Laws 2010, LB235, § 3; Laws 2012, LB828, § 13.
Effective date March 8, 2012.

72-273 Wind energy or solar energy agreement; prior lease; effect on rights; compensation for damages.

(1) If an agreement relating to wind energy or solar energy is authorized by the board on land already being leased for agricultural or other purposes by a prior lessee, the existing rights of the prior lessee shall not be impaired, and the board shall reduce the rental amount due from such prior lessee in proportion to the amount of land that is removed from use as a result of the agreement.

(2) A lessee for agricultural or other purposes shall be compensated for all damages to personal property owned by such lessee or to growing crops, including grass, caused by operations under a concurrent agreement regarding such land for wind energy or solar energy purposes, and the board shall require the lessee under the agreement to provide such insurance and indemnity agreements which the board determines are necessary for the protection of the state and its lessees.

(3) If an agreement relating to wind energy or solar energy is authorized by the board on land concurrently being leased for agricultural purposes, the lessee for agricultural purposes shall have priority as to the use of the water on the land, but lessees for other purposes, including parties to agreements relating to wind energy or solar energy, shall be allowed reasonable use of the water on the land.

Source: Laws 2010, LB235, § 4; Laws 2012, LB828, § 14.
Effective date March 8, 2012.

72-274 Wind energy or solar energy agreement; rules and regulations.

The board may adopt and promulgate such rules and regulations as it shall deem necessary and proper to regulate the agreements relating to wind energy or solar energy exploration and development on school and public lands pursuant to sections 72-270 to 72-274 and to prescribe such terms and conditions, including bonds, as it shall deem necessary in order to protect the interests of the state and its lessees.

Source: Laws 2010, LB235, § 5; Laws 2012, LB828, § 15.
Effective date March 8, 2012.

ARTICLE 8
PUBLIC BUILDINGS

Section
72-804. New state building; code requirements.
72-805. Buildings constructed with state funds; code requirements.
72-806. Enforcement.
72-813. Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.
72-815. Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance.

72-804 New state building; code requirements.

(1) Any new state building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(2) Any new lighting, heating, cooling, ventilating, or water heating equipment or controls in a state-owned building and any new building envelope components installed in a state-owned building shall meet or exceed the requirements of the 2009 International Energy Conservation Code.

(3) The State Building Administrator of the Department of Administrative Services, in consultation with the State Energy Office, may specify:

(a) A more recent edition of the International Energy Conservation Code;

(b) Additional energy efficiency or renewable energy requirements for buildings; and

(c) Waivers of specific requirements which are demonstrated through life-cycle cost analysis to not be in the state's best interest. The agency receiving the funding shall be required to provide a life-cycle cost analysis to the State Building Administrator.

Source: Laws 1999, LB 755, § 1; Laws 2003, LB 643, § 3; Laws 2004, LB 888, § 1; Laws 2011, LB329, § 1.

72-805 Buildings constructed with state funds; code requirements.

The 2009 International Energy Conservation Code applies to all new buildings constructed in whole or in part with state funds after August 27, 2011. The State Energy Office shall review building plans and specifications necessary to determine whether a building will meet the requirements of this section. The State Energy Office shall provide a copy of its review to the agency receiving funding. The agency receiving the funding shall verify that the building as constructed meets or exceeds the code. The verification shall be provided to the State Energy Office. The State Energy Office shall, in consultation with the State Building Administrator of the Department of Administrative Services, adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1999, LB 755, § 2; Laws 2004, LB 888, § 2; Laws 2011, LB329, § 2.

72-806 Enforcement.

The enforcement provisions of Chapter 1 of the 2009 International Energy Conservation Code shall not apply to buildings subject to section 72-804.

Source: Laws 1999, LB 755, § 3; Laws 2003, LB 643, § 4; Laws 2004, LB 888, § 3; Laws 2011, LB329, § 3.

72-813 Vacant buildings and excess land; list; compilation; committee; review status; disposition; considerations.

(1) Each state agency shall by September 15 of each year submit to the State Building Administrator a list of all state-owned buildings and land for which it is responsible and shall note the current and planned uses of each building and parcel of land. The State Building Administrator shall compile the information on state-owned buildings and land and provide it, along with any other information or recommendations he or she may consider relevant to the purposes of sections 72-811 to 72-818, to the Vacant Building and Excess Land Committee and to the Legislative Fiscal Analyst. The information provided to the Legislative Fiscal Analyst shall be submitted electronically.

(2) The committee shall meet to review the information and consider further action or possible amendments to orders made pursuant to this section. If the committee determines that there is reason to believe that any particular state-owned building or piece of land is vacant or excess, the committee shall review the status of the building or land and by majority vote determine whether it should be declared vacant or excess.

(3) If the committee declares a building or land to be vacant or excess, it shall order either maintenance of the building or land by the state building division of the Department of Administrative Services or the disposal of the building or land through sale, lease, demolition, or otherwise. Any order for disposal of a building may include related lands. In determining the appropriate action to be taken in regard to a building or land, the committee shall consider the benefits to the state of the alternative possible actions, including cost-effectiveness, other possible future uses of the building or land for state purposes, and the necessity or utility of the building or land for the furtherance of existing or planned state programs.

Source: Laws 1988, LB 1143, § 3; Laws 1990, LB 830, § 3; Laws 1992, LB 1241, § 8; Laws 1995, LB 567, § 4; Laws 2012, LB782, § 130. Operative date July 19, 2012.

72-815 Vacant buildings and excess land; state building division; powers and duties; demolition; sale; lease; proceeds; disposition; maintenance.

(1) The state building division of the Department of Administrative Services shall be responsible for the sale, lease, or other disposal of a building or land, whichever action is ordered by the committee.

(2) If a building is to be demolished, section 72-810 shall not apply, but the state building division shall notify the State Historic Preservation Officer of such demolition at least thirty days prior to the beginning of the demolition or disassembly so that the officer may collect any photographic or other evidence he or she may find of historic value.

(3)(a) If a building or land is to be sold or leased, the state building division shall cause an appraisal to be made of the building or land. The sale, lease, or other disposal of the building or land shall comply with all relevant statutes pertaining to the sale or lease of surplus state property, except that if the state building division fails to receive an offer from a state agency in which the agency certifies that it (i) intends to use the building for the purposes for which it was designed, intended, or remodeled or to remodel the building for uses which will serve the agency's purposes or (ii) intends to use the land for the purposes for which it was acquired or received, the state building division shall

then notify the Department of Economic Development that the building or land is available for sale or lease so that the department may refer to the state building division any potential buyers or lessees of which the department may be aware. The state building division may then sell or lease the building or land by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale and, if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property. The state building division may use the services of a real estate broker licensed under the Nebraska Real Estate License Act. Priority shall be given to other political subdivisions of state government, then to persons contracting with the state or political subdivisions of the state who will use the building or land for middle-income or low-income rental housing for at least fifteen years, and finally to referrals from the Department of Economic Development.

(b) When a building or land designated for sale is listed in the National Register of Historic Places, the state building division, in its discretion and based on the best interests of the state, may follow the procedure outlined in subdivision (3)(a) of this section or may sell the building or land by any method deemed in the best interests of the state to a not-for-profit community organization that intends to maintain the historic and cultural integrity of the building or land.

(c) All sales and leases shall be in the name of the State of Nebraska. The state building division may provide that a deed of sale include restrictions on the building or land to ensure that the use and appearance of the building or land remain compatible with any adjacent state-owned property.

(d) Except as otherwise provided in subsection (4) of this section, the proceeds of the sale or lease shall be remitted to the State Treasurer for credit to the Vacant Building and Excess Land Cash Fund unless the state agency formerly responsible for the building or land certifies to the state building division that the building or land was purchased in part or in total from cash, federal, or revolving funds, in which event, after the costs of selling or leasing the building or land are deducted from the proceeds of the sale or lease and such amount is credited to the fund, the remaining proceeds of the sale or lease shall be credited to the cash, federal, or revolving fund in the percentage used in originally purchasing the building or land.

(4) Any state-owned military property, including any armories considered surplus property, shall be sold by such method as is to the best advantage of the State of Nebraska, including auction, sealed bid, or public sale, and if necessary, by private sale, but in all situations only after notice of the property sale is publicly advertised on at least two separate occasions in the newspaper with the largest circulation in the county where the surplus property is located and not less than thirty days prior to the sale of the property, and pursuant to section 72-816, all proceeds from the sale of the property, less maintenance expenses pending the sale and selling expenses, but including investment income on the sale proceeds of the property, shall be promptly transferred from the Vacant Building and Excess Land Cash Fund to the General Fund by the State Building Administrator.

(5) The state building division shall be responsible for the maintenance of the building or land if maintenance is ordered by the committee and shall be responsible for maintenance of the building or land pending sale or lease of the building or land.

Source: Laws 1988, LB 1143, § 5; Laws 1989, LB 18, § 6; Laws 1990, LB 830, § 5; Laws 1992, LB 1241, § 10; Laws 2000, LB 1216, § 21; Laws 2003, LB 403, § 6; Laws 2010, LB722, § 2.

Cross References

Nebraska Real Estate License Act, see section 81-885.

ARTICLE 10
BUILDING FUNDS

Section
72-1001. Nebraska Capital Construction Fund; created; use; investment.

72-1001 Nebraska Capital Construction Fund; created; use; investment.

The Nebraska Capital Construction Fund is created. The fund shall consist of revenue and transfers credited to the fund as authorized by law. Money shall be appropriated from the fund to state agencies for making payments on projects as determined by the Legislature, including, but not limited to, purchases of land, structural improvements to land, acquisition of buildings, construction of buildings, including architectural and engineering costs, replacement of or major repairs to structural improvements to land or buildings, additions to existing structures, remodeling of buildings, and acquisition of equipment and furnishings of new or remodeled buildings. The fund shall be administered by the State Treasurer as a multiple-agency-use fund and appropriated to state agencies as determined 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.

The State Treasurer shall transfer four million five hundred seventy-four thousand four hundred sixty-six dollars from the Nebraska Capital Construction Fund to the General Fund on or before June 30, 2010, on such date as directed by the budget administrator of the budget division of the Department of Administrative Services.

Source: Laws 2005, LB 426, § 1; Laws 2009, First Spec. Sess., LB2, § 3.

Cross References

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

ARTICLE 12
INVESTMENT OF STATE FUNDS

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

Section
72-1243. State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.
72-1246.06. Repealed. Laws 2011, LB 303, § 1.
72-1246.07. Repealed. Laws 2011, LB 303, § 1.
72-1246.08. Repealed. Laws 2011, LB 303, § 1.

(a) NEBRASKA STATE FUNDS INVESTMENT ACT

72-1243 State investment officer; investment and reinvestment of funds; duties; council; analysis required; plan; contents.

(1) Except as otherwise specifically provided by law, the state investment officer shall direct the investment and reinvestment of money in all state funds not currently needed and all funds described in section 83-133 and order the purchase, sale, or exchange of securities for such funds. He or she shall notify the State Treasurer of any payment, receipt, or delivery that may be required as a result of any investment decision, which notification shall be the authorization and direction for the State Treasurer to make such disbursement, receipt, or delivery from the appropriate fund.

(2) The council shall have an analysis made of the investment returns that have been achieved on the assets of each retirement system administered by the Public Employees Retirement Board as provided in section 84-1503. By March 31 of each year, the analysis shall be presented to the board and the Nebraska Retirement Systems Committee of the Legislature. The analysis shall be prepared by an independent organization which has demonstrated expertise to perform this type of analysis and for which there exists no conflict of interest in the analysis being provided. The analysis may be waived by the council for any retirement system with assets of less than one million dollars.

(3) By March 31 of each year, the council shall prepare a written plan of action and shall present such plan to the Nebraska Retirement Systems Committee of the Legislature at a public hearing. The plan shall include, but not be limited to, the council's investment portfolios, investment strategies, the duties and limitations of the state investment officer, and an organizational structure of the council's office.

Source: Laws 1969, c. 584, § 7, p. 2351; Laws 1971, LB 53, § 7; Laws 1985, LB 335, § 2; Laws 1991, LB 549, § 21; Laws 1996, LB 847, § 24; Laws 2005, LB 503, § 7; Laws 2011, LB509, § 14.

72-1246.06 Repealed. Laws 2011, LB 303, § 1.

72-1246.07 Repealed. Laws 2011, LB 303, § 1.

72-1246.08 Repealed. Laws 2011, LB 303, § 1.

72-1255 Investment transactions; Auditor of Public Accounts; postaudits; report.

The Auditor of Public Accounts shall conduct, at such time as he or she determines necessary, postaudits of the investment transactions provided for in the Nebraska State Funds Investment Act and shall submit annually a report of his or her findings to the Governor and the state investment officer.

Source: Laws 1969, c. 584, § 19, p. 2355; Laws 1997, LB 4, § 4; Laws 2011, LB337, § 5.

(d) REVIEW OF NEBRASKA INVESTMENT COUNCIL

72-1278 Nebraska Investment Council; comprehensive review of council; contract.

The Nebraska Investment Council shall enter into a contract with a qualified independent organization familiar with similar state investment offices to complete a comprehensive review of the current statutory, regulatory, and organizational situation of the council, review best practices of similar state investment offices, and make recommendations to the council, the Governor, and the Legislature for changes needed to ensure that the council has adequate authority to independently execute its fiduciary responsibilities to the members and beneficiaries of the retirement systems and the Nebraska educational savings plan trust and the residents of Nebraska with regards to other state funds. The recommendations submitted to the Legislature shall be submitted electronically.

Source: Laws 2008, LB1147, § 18; Laws 2012, LB782, § 131.
Operative date July 19, 2012.

ARTICLE 17

SMALL BUSINESS INCUBATORS

Section
72-1710. Community board; report; contents.

72-1710 Community board; report; contents.

A community board shall report electronically at least annually to the Legislature on the activities of the community board and the center. The report shall include, at minimum, the name of each applicant whose application the community board rejects, together with the reasons for the rejection, and the name of each applicant whose application the community board favorably evaluates.

Source: Laws 1990, LB 409, § 10; Laws 2012, LB782, § 132.
Operative date July 19, 2012.

ARTICLE 18

JOSLYN CASTLE

Section
72-1801. Repealed. Laws 2012, LB 707, § 1.
72-1802. Repealed. Laws 2012, LB 707, § 1.

72-1801 Repealed. Laws 2012, LB 707, § 1.

72-1802 Repealed. Laws 2012, LB 707, § 1.

ARTICLE 20

NIOBRARA RIVER CORRIDOR

Section
72-2009. Niobrara Council Fund; created; use; investment.

72-2009 Niobrara Council Fund; created; use; investment.

The Niobrara Council Fund is created. The fund shall be administered by the Niobrara Council. The council may accept any private or public funds to carry

out its work and such funds shall be remitted to the State Treasurer for credit to the fund. The fund shall consist of such funds and legislative appropriations made to the council. Transfers may be made from the fund to the General Fund at the direction of the Legislature through June 30, 2011. Any money in the Niobrara Council 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 1234, § 5; Laws 2009, First Spec. Sess., LB3, § 49.

Cross References

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

ARTICLE 22
NEBRASKA STATE CAPITOL PRESERVATION AND RESTORATION ACT

Section
72-2211. Capitol Restoration Cash Fund; created; use; investment.

72-2211 Capitol Restoration Cash Fund; created; use; investment.

The Capitol Restoration Cash Fund is created. The administrator shall administer the fund, which shall consist of money received from the sale of material, rental revenue, private donations, and public donations. The fund shall be used to finance projects to restore the State Capitol and capitol grounds to their original condition, to purchase and conserve items to be added to the Nebraska Capitol Collections housed in the State Capitol, and to produce promotional material concerning the State Capitol, its grounds, and the Nebraska State Capitol Environs District, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Such expenditures shall be prescribed by the administrator and approved by the commission. Any money in the Capitol Restoration 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 2004, LB 439, § 11; Laws 2009, First Spec. Sess., LB3, § 50.

Cross References

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

ARTICLE 25
NEBRASKA INCENTIVES FUND

Section
72-2501. Nebraska Incentives Fund; created; investment.

72-2501 Nebraska Incentives Fund; created; investment.

The Nebraska Incentives Fund is created. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Nebraska Incentives 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, LB914, § 24; Laws 2009, First Spec. Sess., LB3, § 51.

Cross References

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

CHAPTER 73
PUBLIC LETTINGS AND CONTRACTS

Article.
3. Contracts for Personal Services. 73-305, 73-307.
4. Health and Human Services Contracts. 73-401.
5. State Contracts for Services. 73-501 to 73-510.

ARTICLE 3
CONTRACTS FOR PERSONAL SERVICES

Section
73-305. Director of Administrative Services; report required.
73-307. Sections; applicability; how construed.

73-305 Director of Administrative Services; report required.

The Director of Administrative Services shall, within forty-five days after receipt of the information described in sections 73-302 and 73-303 from the state agency, prepare a report detailing why the proposed contract was approved or disapproved. The report shall be delivered electronically to the chairperson of the Appropriations Committee of the Legislature and the Legislative Fiscal Analyst.

Source: Laws 1995, LB 519, § 9; Laws 2012, LB782, § 133.
Operative date July 19, 2012.

73-307 Sections; applicability; how construed.

Sections 73-301 to 73-306 shall not apply to the Nebraska Consultants' Competitive Negotiation Act or section 57-1503.

Sections 73-301 to 73-306 shall not be construed to apply to renewals of contracts already approved pursuant to or not subject to such sections, to amendments to such contracts, or to renewals of such amendments unless the amendments would directly cause or result in the replacement by the private entity of additional permanent state employees or positions greater than the replacement caused by the original contract.

Source: Laws 1995, LB 519, § 11; Laws 2011, First Spec. Sess., LB4, § 4.
Effective date November 23, 2011.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

ARTICLE 4
HEALTH AND HUMAN SERVICES CONTRACTS

Section
73-401. Contract with state agency; Public Counsel; jurisdiction.

73-401 Contract with state agency; Public Counsel; jurisdiction.

Except for long-term care facilities subject to the jurisdiction of the state long-term care ombudsman pursuant to the Long-Term Care Ombudsman Act,

the contracting agency shall ensure that any contract which a state agency enters into or renews which agrees that a corporation, partnership, business, firm, governmental entity, or person shall provide health and human services to individuals or service delivery, service coordination, or case management on behalf of the State of Nebraska shall contain a clause requiring the corporation, partnership, business, firm, governmental entity, or person to submit to the jurisdiction of the Public Counsel under sections 81-8,240 to 81-8,254 with respect to the provision of services under the contract.

Source: Laws 1997, LB 622, § 120; Laws 2012, LB821, § 40.
Effective date April 12, 2012.

Cross References

Long-Term Care Ombudsman Act, see section 81-2237.

ARTICLE 5
STATE CONTRACTS FOR SERVICES

Section
73-501. Purposes of sections.
73-502. Terms, defined.
73-503. Documentation; requirements.
73-504. Competitive bidding requirements.
73-506. State agency contracts for services; requirements.
73-507. Exceptions.
73-508. Preapproval; required; when.
73-509. Pre-process; required; when; procedure.
73-510. Proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.

73-501 Purposes of sections.

The purposes of sections 73-501 to 73-510 are to establish a standardized, open, and fair process for selection of contractual services, using performance-based contracting methods to the maximum extent practicable, and to create an accurate reporting of expended funds for contractual services. This process shall promote a standardized method of selection for state contracts for services, assuring a fair assessment of qualifications and capabilities for project completion. There shall also be an accountable, efficient reporting method of expenditures for these services.

Source: Laws 2003, LB 626, § 1; Laws 2012, LB858, § 5.
Effective date July 19, 2012.

73-502 Terms, defined.

For purposes of sections 73-501 to 73-510:

(1) Contract for services means any contract that directly engages the time or effort of an independent contractor whose purpose is to perform an identifiable task, study, or report rather than to furnish an end item of supply, goods, equipment, or material;

(2) Division means the materiel division of the Department of Administrative Services;

(3) Emergency means necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(4) Occasional means seasonal, irregular, or fluctuating in nature;

(5) Sole source means of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;

(6) State agency means any agency, board, or commission of this state other than the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or any officer or state agency established by the Constitution of Nebraska; and

(7) Temporary means a finite period of time with respect to a specific task or result relating to a contract for services.

Source: Laws 2003, LB 626, § 2; Laws 2012, LB858, § 6.
Effective date July 19, 2012.

73-503 Documentation; requirements.

(1) All state agencies shall process and document all contracts for services through the state accounting system. The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.

(2) The requirements of this section also apply to the courts, the Legislature, and any officer or state agency established by the Constitution of Nebraska, but not to the University of Nebraska.

(3) The Nebraska state colleges shall document all contracts for services through the state accounting system.

(4) The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.

Source: Laws 2003, LB 626, § 3; Laws 2012, LB858, § 7.
Effective date July 19, 2012.

73-504 Competitive bidding requirements.

Except as provided in section 73-507:

(1) All state agencies shall comply with the review and competitive bidding processes provided in this section for contracts for services. Unless otherwise exempt, no state agency shall expend funds for contracts for services without complying with this section;

(2) All proposed state agency contracts for services in excess of fifty thousand dollars shall be bid in the manner prescribed by the division procurement manual or a process approved by the Director of Administrative Services.

Bidding may be performed at the state agency level or by the division. Any state agency may request that the division conduct the competitive bidding process;

(3) If the bidding process is at the state agency level, then state agency directors shall ensure that bid documents for each contract for services in excess of fifty thousand dollars are prereviewed by the division and that any changes to the proposed contract that differ from the bid documents in the proposed contract for services are reviewed by the division before signature by the parties;

(4) State agency directors, in cooperation with the division, shall be responsible for appropriate public notice of an impending contractual services project in excess of fifty thousand dollars in accordance with the division's procurement manual and sections 73-501 to 73-510; and

(5) State agency directors, in cooperation with the division, shall be responsible for ensuring that a request for contractual services in excess of fifty thousand dollars is filed with the division for dissemination or web site access to vendors interested in competing for contracts for services.

Source: Laws 2003, LB 626, § 4; Laws 2012, LB858, § 8.
Effective date July 19, 2012.

73-506 State agency contracts for services; requirements.

State agency contracts for services shall be subject to the following requirements:

(1) Payments shall be made when contractual deliverables are received or in accordance with specific contractual terms and conditions;

(2) State agencies shall not enter into contracts for services with an unspecified or unlimited duration;

(3) State agencies shall not structure contracts for services to avoid any of the requirements of sections 73-501 to 73-510; and

(4) State agencies shall not enter into contracts for services in excess of fifteen million dollars unless the state agency has complied with section 73-510.

Source: Laws 2003, LB 626, § 6; Laws 2012, LB858, § 9.
Effective date July 19, 2012.

73-507 Exceptions.

(1) Subject to review by the Director of Administrative Services, the division shall provide procedures to grant limited exceptions from sections 73-504, 73-508, and 73-509 for:

(a) Sole source and emergency contracts; and

(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, 73-509, and 73-510:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with a value of fifteen million dollars or less with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or state agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects;

(j) Nebraska Investment Council contracts; and

(k) Contracts under section 57-1503.

Source: Laws 2003, LB 626, § 7; Laws 2011, First Spec. Sess., LB4, § 5; Laws 2012, LB858, § 10.
Effective date July 19, 2012.

Cross References

Nebraska Consultants' Competitive Negotiation Act, see section 81-1702.

73-508 Preapproval; required; when.

Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and state agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the state agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.

Source: Laws 2003, LB 626, § 8; Laws 2007, LB256, § 3; Laws 2012, LB858, § 11.
Effective date July 19, 2012.

73-509 Pre-process; required; when; procedure.

Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state

employee covered by the classified personnel system or by any labor contract shall use a pre-process prescribed by the division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.

Source: Laws 2003, LB 626, § 9; Laws 2012, LB858, § 12.
Effective date July 19, 2012.

73-510 Proposed contract in excess of fifteen million dollars; submission of contract and proof-of-need analysis; information required; division; duties; state agency; filing required.

(1) A state agency shall not enter into a proposed contract for services in excess of fifteen million dollars until the state agency has submitted to the division a copy of the proposed contract and proof-of-need analysis described in this section and has subsequently received certification from the division to enter into the contract.

(2) The proof-of-need analysis shall require state agencies to provide the following information:

(a) A description of the service that is the subject of the proposed contract;

(b) The reason for purchase of the service rather than the use or hiring of state employees, including, but not limited to, whether there is an administrative restriction on hiring additional state employees;

(c) A review of any long-term actual cost savings of the contract and an explanation of the analysis used to determine such savings;

(d) An explanation of the process by which the state agency will include adequate control mechanisms to ensure that the services are provided pursuant to the terms of the contract, including a description of the method by which the control mechanisms will ensure the quality of services provided by the contract;

(e) Identification of the specific state agency employee who will monitor the contract for services for performance;

(f) Identification and description of whether the service requested is temporary or occasional;

(g) An assessment of the feasibility of alternatives within the state agency to contract for performance of the services;

(h) A justification for entering into the contract for services if:

(i) The proposed contract will not result in cost savings to the state; and

(ii) The public's interest in having the particular service performed directly by the state agency exceeds the public's interest in the proposed contract;

(i) Any federal requirements that the service be provided by a person other than the state agency;

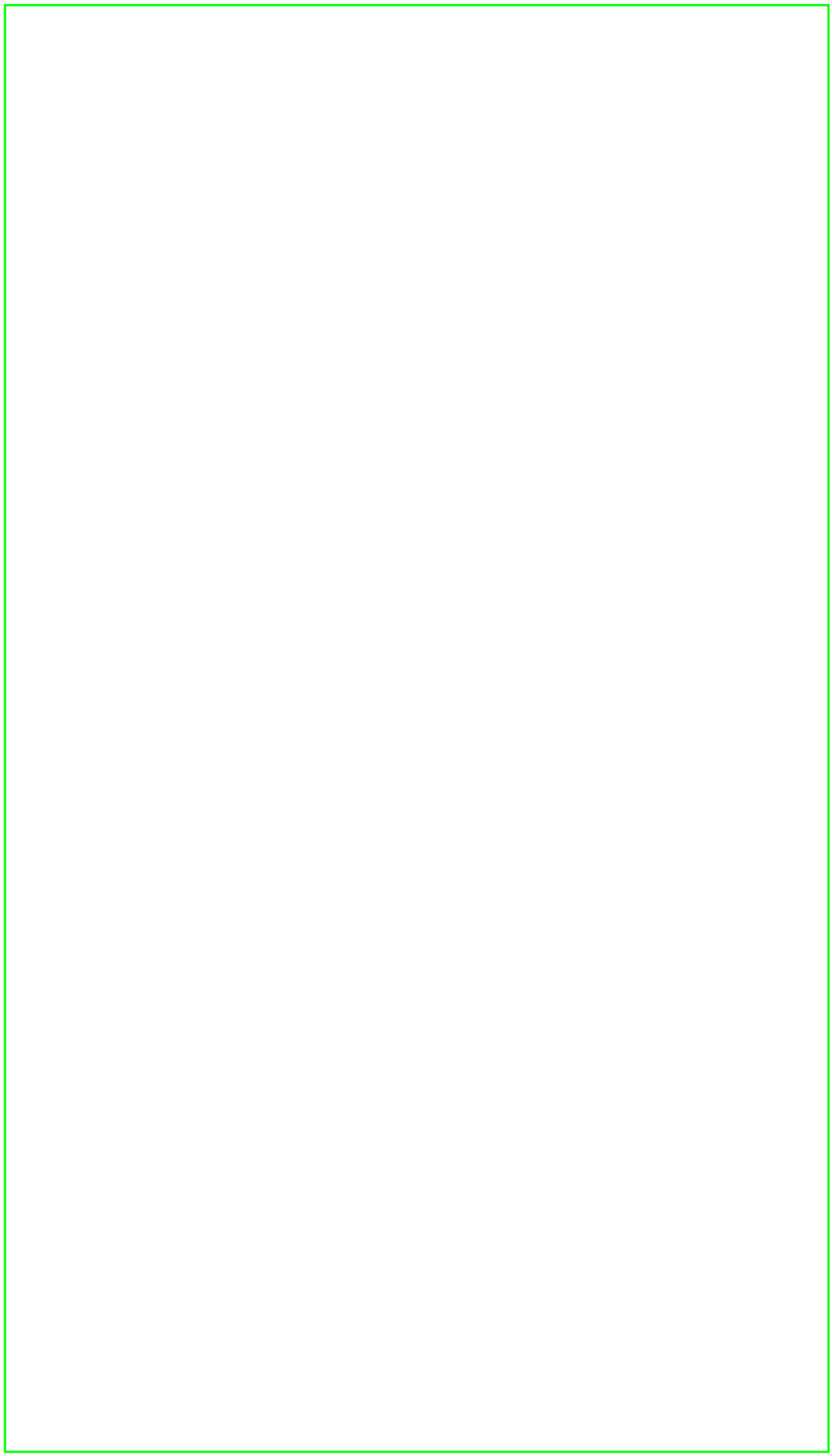
(j) Demonstration by the state agency that it has taken formal and positive steps to consider alternatives to such contract, including reorganization, reevaluation of services, and reevaluation of performance; and

(k) A description of any relevant legal issues, including barriers to contracting for the service or requirements that the state agency contract for the service.

(3) The division shall certify receipt of a proof-of-need analysis and shall report its receipt of the proof-of-need analysis to the state agency no more than thirty days after receiving the analysis. Certification of the proof-of-need analysis means that all information required by this section has been provided to the division by the state agency. If the division certifies the analysis, the state agency may enter into the proposed contract. If the division does not certify the analysis, it shall inform the state agency of the additional information required.

(4) If the division certifies a proof-of-need analysis pursuant to this section, the state agency shall file the proposed contract, proof-of-need analysis, and proof of certification with the Legislative Fiscal Analyst.

Source: Laws 2012, LB858, § 13.
Effective date July 19, 2012.



CHAPTER 74
RAILROADS

Article.
14. Light-Density Rail Lines. 74-1401 to 74-1429.

ARTICLE 14
LIGHT-DENSITY RAIL LINES

Section
74-1401. Repealed. Laws 2011, LB 259, § 5.
74-1402. Repealed. Laws 2011, LB 259, § 5.
74-1402.01. Repealed. Laws 2011, LB 259, § 5.
74-1403. Repealed. Laws 2011, LB 259, § 5.
74-1404. Repealed. Laws 2011, LB 259, § 5.
74-1405. Repealed. Laws 2011, LB 259, § 5.
74-1405.01. Repealed. Laws 2011, LB 259, § 5.
74-1405.02. Repealed. Laws 2011, LB 259, § 5.
74-1405.03. Repealed. Laws 2011, LB 259, § 5.
74-1406. Repealed. Laws 2011, LB 259, § 5.
74-1407.01. Repealed. Laws 2011, LB 259, § 5.
74-1408. Repealed. Laws 2011, LB 259, § 5.
74-1410. Repealed. Laws 2011, LB 259, § 5.
74-1410.01. Repealed. Laws 2011, LB 259, § 5.
74-1411. Repealed. Laws 2011, LB 259, § 5.
74-1411.01. Repealed. Laws 2011, LB 259, § 5.
74-1412. Repealed. Laws 2011, LB 259, § 5.
74-1412.01. Repealed. Laws 2011, LB 259, § 5.
74-1413. Repealed. Laws 2011, LB 259, § 5.
74-1414. Repealed. Laws 2011, LB 259, § 5.
74-1415. Repealed. Laws 2011, LB 259, § 5.
74-1415.01. Repealed. Laws 2011, LB 259, § 5.
74-1415.03. Repealed. Laws 2011, LB 259, § 5.
74-1415.04. Repealed. Laws 2011, LB 259, § 5.
74-1415.05. Repealed. Laws 2011, LB 259, § 5.
74-1415.06. Repealed. Laws 2011, LB 259, § 5.
74-1419.02. Repealed. Laws 2011, LB 259, § 5.
74-1420. Repealed. Laws 2011, LB 259, § 5.
74-1420.01. Repealed. Laws 2011, LB 259, § 5.
74-1420.02. Repealed. Laws 2011, LB 259, § 5.
74-1420.03. Repealed. Laws 2011, LB 259, § 5.
74-1427. Political subdivision; expend local tax funds; election; procedure.
74-1428.01. Repealed. Laws 2011, LB 259, § 5.
74-1428.02. Repealed. Laws 2011, LB 259, § 5.
74-1428.03. Repealed. Laws 2011, LB 259, § 5.
74-1429. Repealed. Laws 2011, LB 259, § 5.

74-1401 Repealed. Laws 2011, LB 259, § 5.

74-1402 Repealed. Laws 2011, LB 259, § 5.

74-1402.01 Repealed. Laws 2011, LB 259, § 5.

74-1403 Repealed. Laws 2011, LB 259, § 5.

74-1404 Repealed. Laws 2011, LB 259, § 5.

74-1405 Repealed. Laws 2011, LB 259, § 5.

74-1405.01 Repealed. Laws 2011, LB 259, § 5.

74-1405.02 Repealed. Laws 2011, LB 259, § 5.

74-1405.03 Repealed. Laws 2011, LB 259, § 5.

74-1406 Repealed. Laws 2011, LB 259, § 5.

74-1407.01 Repealed. Laws 2011, LB 259, § 5.

74-1408 Repealed. Laws 2011, LB 259, § 5.

74-1410 Repealed. Laws 2011, LB 259, § 5.

74-1410.01 Repealed. Laws 2011, LB 259, § 5.

74-1411 Repealed. Laws 2011, LB 259, § 5.

74-1411.01 Repealed. Laws 2011, LB 259, § 5.

74-1412 Repealed. Laws 2011, LB 259, § 5.

74-1412.01 Repealed. Laws 2011, LB 259, § 5.

74-1413 Repealed. Laws 2011, LB 259, § 5.

74-1414 Repealed. Laws 2011, LB 259, § 5.

74-1415 Repealed. Laws 2011, LB 259, § 5.

74-1415.01 Repealed. Laws 2011, LB 259, § 5.

74-1415.03 Repealed. Laws 2011, LB 259, § 5.

74-1415.04 Repealed. Laws 2011, LB 259, § 5.

74-1415.05 Repealed. Laws 2011, LB 259, § 5.

74-1415.06 Repealed. Laws 2011, LB 259, § 5.

74-1419.02 Repealed. Laws 2011, LB 259, § 5.

74-1420 Repealed. Laws 2011, LB 259, § 5.

74-1420.01 Repealed. Laws 2011, LB 259, § 5.

74-1420.02 Repealed. Laws 2011, LB 259, § 5.

74-1420.03 Repealed. Laws 2011, LB 259, § 5.

74-1427 Political subdivision; expend local tax funds; election; procedure.

(1) If the governing body of a political subdivision determines that it is necessary or beneficial for the vitality of such political subdivision to expend local tax funds for rehabilitation or improvement of a light-density rail line or rail facility construction, including the issuance of bonds, the governing body shall by resolution place the proposition for such expenditure or bond issue on

the general or primary election ballot or in odd-numbered years only call for a special election in such political subdivision for the purpose of approving such expenditure of local tax funds.

(2) The resolution calling for the election and the election notice shall show the proposed purpose for which such local tax funds will be expended and the amount of money sought.

(3) Notice of the election shall state the date the election is to be held and the hours the polls will be open. Such notice shall be published in a newspaper that is published in or of general circulation in such political subdivision at least once each week for three weeks prior to such election. If no such newspaper exists, notice shall be posted in at least three public places in the political subdivision for at least three weeks prior to such election.

(4) The proposition appearing on the ballot in any election shall state the purpose for which such local tax funds will be spent, the amount of local tax funds to be so expended, and the source from which the revenue will be raised. Such proposition shall be adopted if approved by a majority of those voting in such election.

(5) If a special election is called, the governing body shall prescribe the form of the ballot to be used.

(6) For purposes of this section:

(a) Facility means the track, ties, roadbed, and related structures, including terminals, team tracks and appurtenances, bridges, tunnels, and other structures used or usable for rail service operations;

(b) Light-density rail line means any rail line classified as a light-density line by the United States Department of Transportation;

(c) Rail facility construction means the construction of rail or rail-related facilities, including new connections between two or more existing lines, intermodal freight terminals, sidings, and relocation of existing lines, for the purpose of improving the quality and efficiency of rail freight service; and

(d) Rehabilitation or improvement means replacing, repairing, or upgrading, to the extent necessary to permit adequate and efficient rail freight service, facilities needed to provide service on a rail line.

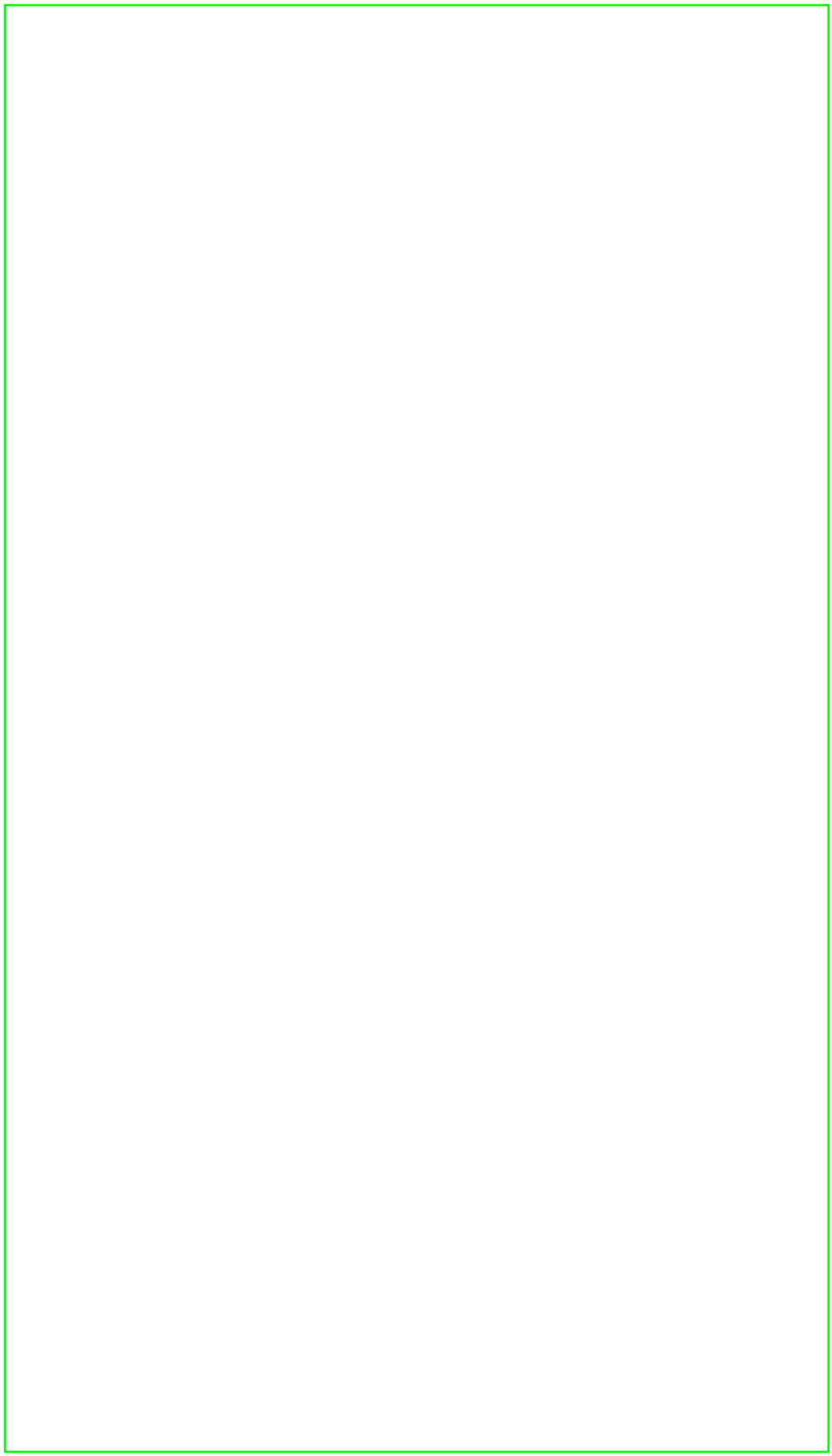
Source: Laws 1980, LB 507, § 27; Laws 1991, LB 783, § 28; Laws 1996, LB 463, § 30; Laws 2011, LB259, § 3.

74-1428.01 Repealed. Laws 2011, LB 259, § 5.

74-1428.02 Repealed. Laws 2011, LB 259, § 5.

74-1428.03 Repealed. Laws 2011, LB 259, § 5.

74-1429 Repealed. Laws 2011, LB 259, § 5.



CHAPTER 75
PUBLIC SERVICE COMMISSION

Article.
1. Organization and Composition, Regulatory Scope, and Procedure. 75-101.01 to 75-159.
3. Motor Carriers.
   (a) Intrastate Motor Carriers. 75-302 to 75-311.
   (e) Safety Regulations. 75-362 to 75-366.
   (l) Unified Carrier Registration Plan and Agreement. 75-393.
5. Pipeline Carriers. 75-502.

ARTICLE 1
ORGANIZATION AND COMPOSITION, REGULATORY SCOPE, AND PROCEDURE

Section

75-101.01 Public Service Commission; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) Based on the 2010 Census of Population by the United States Department of Commerce, Bureau of the Census, the State of Nebraska is hereby divided into five public service commissioner districts, and each public service commissioner district shall be entitled to one member.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps PSC11-1, PSC11-2, PSC11-3, PSC11-4, and PSC11-5, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB700.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1963, c. 174, § 1, p. 596; Laws 1971, LB 955, § 1; Laws 1981, LB 551, § 1; R.S.1943, (1987), § 5-107; Laws 1991, LB 618, § 1; Laws 2001, LB 855, § 2; Laws 2011, LB700, § 1.

75-101.02 Public service commission districts; population figures and maps; basis.

For purposes of section 75-101.01, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1971, LB 955, § 2; Laws 1981, LB 551, § 2; R.S.1943, (1987), § 5-107.01; Laws 1991, LB 618, § 2; Laws 2001, LB 855, § 3; Laws 2011, LB700, § 2.

75-109.01 Jurisdiction.

Except as otherwise specifically provided by law, the Public Service Commission shall have jurisdiction, as prescribed, over the following subjects:

(1) Common carriers, generally, pursuant to sections 75-101 to 75-158;

(2) Grain pursuant to the Grain Dealer Act and the Grain Warehouse Act and sections 89-1,104 to 89-1,108;

(3) Manufactured homes and recreational vehicles pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles;

(4) Modular housing units pursuant to the Nebraska Uniform Standards for Modular Housing Units Act;

(5) Motor carrier registration and safety pursuant to sections 75-301 to 75-322, 75-369.03, 75-370, and 75-371;

(6) Pipeline carriers and rights-of-way pursuant to the Major Oil Pipeline Siting Act, the State Natural Gas Regulation Act, and sections 75-501 to 75-503. If the provisions of Chapter 75 are inconsistent with the provisions of the Major Oil Pipeline Siting Act, the provisions of the Major Oil Pipeline Siting Act control;

(7) Railroad carrier safety pursuant to sections 74-918, 74-919, 74-1323, and 75-401 to 75-430;

(8) Telecommunications carriers pursuant to the Automatic Dialing-Announcing Devices Act, the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Intrastate Pay-Per-Call Regulation Act, the Nebraska Telecommunications Regulation Act, the Nebraska Telecommunications Universal Service Fund Act, the Telecommunications Relay System Act, the Telephone Consumer Slamming Prevention Act, and sections 86-574 to 86-580;

(9) Transmission lines and rights-of-way pursuant to sections 70-301 and 75-702 to 75-724;

(10) Water service pursuant to the Water Service Regulation Act; and

(11) Jurisdictional utilities governed by the State Natural Gas Regulation Act. If the provisions of Chapter 75 are inconsistent with the provisions of the State

Natural Gas Regulation Act, the provisions of the State Natural Gas Regulation Act control.

Source: Laws 2002, LB 1105, § 482; Laws 2003, LB 790, § 63; Laws 2006, LB 1069, § 1; Laws 2006, LB 1249, § 12; Laws 2011, First Spec. Sess., LB1, § 14.
Effective date November 23, 2011.

Cross References

Automatic Dialing-Announcing Devices Act, see section 86-236.
Emergency Telephone Communications Systems Act, see section 86-420.
Enhanced Wireless 911 Services Act, see section 86-442.
Grain Dealer Act, see section 75-901.
Grain Warehouse Act, see section 88-525.
Intrastate Pay-Per-Call Regulation Act, see section 86-258.
Major Oil Pipeline Siting Act, see section 57-1401.
Nebraska Telecommunications Regulation Act, see section 86-101.
Nebraska Telecommunications Universal Service Fund Act, see section 86-316.
Nebraska Uniform Standards for Modular Housing Units Act, see section 71-1555.
State Natural Gas Regulation Act, see section 66-1801.
Telecommunications Relay System Act, see section 86-301.
Telephone Consumer Slamming Prevention Act, see section 86-201.
Uniform Standard Code for Manufactured Homes and Recreational Vehicles, see section 71-4601.
Water Service Regulation Act, see section 75-1001.

75-110.01 Application or petition for authority or relief; procedures.

A summary of the authority or relief sought in an application or petition shall be set out in the notice given according to the rules the commission shall adopt. After notice of an application or petition has been given as provided by the rules for notice, the commission may process the application or petition without a hearing by use of affidavits if the application or petition is not opposed. The commission shall not deny an application or petition of a common carrier, pipeline carrier, or jurisdictional utility until after it has either given the applicant a hearing thereon, or received the applicant's affidavits and made them a part of the record.

Source: Laws 1967, c. 479, § 2, p. 1476; Laws 2003, LB 790, § 64; Laws 2011, First Spec. Sess., LB1, § 15.
Effective date November 23, 2011.

75-112 Commissioners and examiners; powers; certification of official acts.

(1) For purposes of carrying out the powers and duties of the commission related to the subjects under its jurisdiction enumerated in section 75-109.01, each commissioner and examiner of the commission may:

(a) Administer oaths;

(b) Compel the attendance of witnesses;

(c) Examine any of the books, papers, documents, and records of any motor carrier or regulated motor carrier as defined in section 75-302 or common, contract, or pipeline carrier subject to the jurisdiction of the commission under section 75-109.01 or any jurisdictional utility or have such examination made by any person that the commission may employ for that purpose;

(d) Compel the production of such books, papers, documents, and records; or

(e) Examine under oath or otherwise any officer, director, agent, or employee of any such carrier or jurisdictional utility or any other person.

(2) Any person employed by the commission to examine such books, papers, documents, or records shall produce his or her authority, under the hand and seal of the commission, to make such examination.

(3) The commissioners may certify to all official acts of the commission.

Source: Laws 1963, c. 425, art. I, § 12, p. 1358; Laws 1989, LB 78, § 2; Laws 1994, LB 414, § 33; Laws 1995, LB 424, § 4; Laws 2003, LB 790, § 65; Laws 2004, LB 1004, § 1; Laws 2011, First Spec. Sess., LB1, § 16.
Effective date November 23, 2011.

75-118 Commission; duties.

The commission shall:

(1) Fix all necessary rates, charges, and regulations governing and regulating the transportation, storage, or handling of household goods and passengers by any common carrier in Nebraska intrastate commerce;

(2) Make all necessary classifications of household goods that may be transported, stored, or handled by any common carrier in Nebraska intrastate commerce, such classifications applying to and being the same for all common carriers;

(3) Prevent and correct the unjust discriminations set forth in section 75-126;

(4) Enforce all statutes and commission regulations pertaining to rates and, if necessary, institute actions in the appropriate court of any county in which the common carrier involved operates except actions instituted pursuant to sections 75-140 and 75-156 to 75-158. All suits shall be brought and penalties recovered in the name of the state by or under the direction of the Attorney General; and

(5) Enforce the Major Oil Pipeline Siting Act and the State Natural Gas Regulation Act.

Source: Laws 1963, c. 425, art. I, § 18, p. 1360; Laws 1989, LB 78, § 8; Laws 1994, LB 414, § 36; Laws 1995, LB 424, § 10; Laws 2003, LB 790, § 66; Laws 2011, First Spec. Sess., LB1, § 17.
Effective date November 23, 2011.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.
State Natural Gas Regulation Act, see section 66-1801.

75-128 Hearings; when held; filing fee.

(1) It is hereby declared to be the policy of the Legislature that all matters presented to the commission be heard and determined without delay. All matters requiring a hearing shall be set for hearing at the earliest practicable date and in no event, except for good cause shown, which showing shall be recited in the order, shall the time fixed for hearing be more than six months after the date of filing of the application, complaint, or petition on which such hearing is to be had. Except in case of an emergency and upon a motion to proceed with less than a quorum made by all parties and supported by a showing of clear and convincing evidence of such emergency and benefit to all parties, a quorum of the commission shall hear all matters set for hearing. Except as otherwise provided in the Major Oil Pipeline Siting Act or section 75-121 and except for good cause shown, a decision of the commission shall be

made and filed within thirty days after completion of the hearing or after submission of affidavits in nonhearing proceedings.

(2) In the case of any proceeding upon which a hearing is held, the transcript of testimony shall be prepared and submitted to the commission prior to entry of an order, except that it shall not be necessary to have prepared prior to a commission decision the transcripts of testimony on hearings involving noncontested proceedings and hearings involving emergency rate applications under section 75-121.

(3) For each application, complaint, or petition filed with the commission, except those filed under sections 75-303.01 and 75-303.02, the Major Oil Pipeline Siting Act, or the State Natural Gas Regulation Act, the commission shall charge a filing fee to be determined by the commission, but in an amount not to exceed the sum of five hundred dollars, payable at the time of such filing. The commission shall also charge to persons regulated by the commission, except persons regulated under the Major Oil Pipeline Siting Act or the State Natural Gas Regulation Act, a hearing fee to be determined by the commission, but in an amount not to exceed the sum of two hundred fifty dollars, for each half day of hearings if the person regulated by the commission files an application, complaint, or petition which necessitates a hearing.

(4) For each new tariff filed with the commission, except those filed under sections 75-301 to 75-322, the commission shall charge a fee not to exceed fifty dollars. This subsection does not apply to amendments to existing tariffs.

(5) The commission shall remit the fees received to the State Treasurer for credit to the General Fund.

Source: Laws 1963, c. 425, art. I, § 28, p. 1365; Laws 1967, c. 479, § 8, p. 1479; Laws 1969, c. 604, § 1, p. 2464; Laws 1971, LB 24, § 1; Laws 1971, LB 839, § 1; Laws 1972, LB 1068, § 1; Laws 1982, LB 928, § 56; Laws 1982, LB 633, § 2; Laws 1985, LB 384, § 1; Laws 1989, LB 78, § 9; Laws 1993, LB 412, § 1; Laws 1994, LB 414, § 43; Laws 1994, LB 872, § 17; Laws 1995, LB 424, § 13; Laws 2002, LB 1105, § 487; Laws 2003, LB 187, § 17; Laws 2003, LB 790, § 68; Laws 2011, First Spec. Sess., LB1, § 18. Effective date November 23, 2011.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.
State Natural Gas Regulation Act, see section 66-1801.

75-129 Sessions and hearings; when and where held.

The commission may hold sessions at any place in the state when deemed necessary to facilitate the discharge of its duties and may conduct the hearing and other proceedings provided for in sections 75-101 to 75-801, in the Major Oil Pipeline Siting Act, in the State Natural Gas Regulation Act, or under any other law of this state at such place or places in the state as may, in the judgment of the commission, be the most convenient and practicable for determining the particular matter before the commission. The commission may hold public meetings as provided in section 57-1407.

Source: Laws 1963, c. 425, art. I, § 29, p. 1366; Laws 2003, LB 790, § 69; Laws 2011, First Spec. Sess., LB1, § 19.
Effective date November 23, 2011.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.
State Natural Gas Regulation Act, see section 66-1801.

75-159 Public Service Commission Housing and Recreational Vehicle Cash Fund; created; use; investment.

(1) The Public Service Commission Housing and Recreational Vehicle Cash Fund is created. The fund shall consist of fees collected under the Nebraska Uniform Standards for Modular Housing Units Act and fees collected pursuant to the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(2) Money credited to the fund shall be used by the Public Service Commission for the purposes of administering the Nebraska Uniform Standards for Modular Housing Units Act and the Uniform Standard Code for Manufactured Homes and Recreational Vehicles.

(3) Transfers from the fund to the General Fund may be made at the direction of the Legislature. Any money in the Public Service Commission Housing and Recreational Vehicle 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.

(4) On July 1, 2010, the State Treasurer shall transfer any money in the Modular Housing Units Cash Fund and any money in the Manufactured Homes and Recreational Vehicles Cash Fund to the Public Service Commission Housing and Recreational Vehicle Cash Fund.

Source: Laws 2010, LB849, § 36.

Cross References

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

ARTICLE 3
MOTOR CARRIERS

(a) INTRASTATE MOTOR CARRIERS

Section
75-302. Terms, defined.
75-303. Motor carriers; scope of law.
75-311. Certificates; permits; issuance; review by commission; effect.

(e) SAFETY REGULATIONS

75-362. Federal regulations; terms, defined.
75-363. Federal motor carrier safety regulations; provisions adopted; exceptions.
75-364. Additional federal motor carrier regulations; provisions adopted.
75-366. Enforcement powers.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-393. Unified carrier registration plan and agreement; director; powers.

(a) INTRASTATE MOTOR CARRIERS

75-302 Terms, defined.

For purposes of sections 75-301 to 75-322 and in all rules and regulations adopted and promulgated by the commission pursuant to such sections, unless the context otherwise requires:

(1) Attended services means an attendant or caregiver accompanying a minor or persons who are physically, mentally, or developmentally disabled and unable to travel or wait without assistance or supervision;

(2) Carrier enforcement division means the carrier enforcement division of the Nebraska State Patrol or the Nebraska State Patrol;

(3) Certificate means a certificate of public convenience and necessity issued under Chapter 75, article 3, to common carriers by motor vehicle;

(4) Civil penalty means any monetary penalty assessed by the commission or carrier enforcement division due to a violation of Chapter 75, article 3, or section 75-126 as such section applies to any person or carrier specified in Chapter 75, article 3; any term, condition, or limitation of any certificate or permit issued pursuant to Chapter 75, article 3; or any rule, regulation, or order of the commission, the Division of Motor Carrier Services, or the carrier enforcement division issued pursuant to Chapter 75, article 3;

(5) Commission means the Public Service Commission;

(6) Common carrier means any person who or which undertakes to transport passengers or household goods for the general public in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state;

(7) Contract carrier means any motor carrier which transports passengers or household goods for hire other than as a common carrier designed to meet the distinct needs of each individual customer or a specifically designated class of customers without any limitation as to the number of customers it can serve within the class;

(8) Division of Motor Carrier Services means the Division of Motor Carrier Services of the Department of Motor Vehicles;

(9) Highway means the roads, highways, streets, and ways in this state;

(10) Household goods means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property as the commission may provide by regulation if the transportation of such effects or property, is:

(a) Arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with the intent to use in his or her dwelling; or

(b) Arranged and paid for by another party;

(11) Intrastate commerce means commerce between any place in this state and any other place in this state and not in part through any other state;

(12) Licensed care transportation services means transportation provided by an entity licensed by the Department of Health and Human Services as a child-caring agency as defined in section 71-1902 or child-placing agency as defined in such section or a child care facility licensed under the Child Care Licensing Act to a client of the entity or facility when the person providing transportation services also assists and supervises the passenger or, if the client is a minor, to a family member of a minor when it is necessary for agency or facility staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Licensed care transportation services must be incidental to and in furtherance of the social services provided by the entity or facility to the transported client;

(13) Motor carrier means any person other than a regulated motor carrier who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers or property over any public highway in this state;

(14) Motor vehicle means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails;

(15) Permit means a permit issued under Chapter 75, article 3, to contract carriers by motor vehicle;

(16) Person means any individual, firm, partnership, limited liability company, corporation, company, association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof;

(17) Private carrier means any motor carrier which owns, controls, manages, operates, or causes to be operated a motor vehicle to transport passengers or property to or from its facility, plant, or place of business or to deliver to purchasers its products, supplies, or raw materials (a) when such transportation is within the scope of and furthers a primary business of the carrier other than transportation and (b) when not for hire. Nothing in sections 75-301 to 75-322 shall apply to private carriers;

(18) Regulated motor carrier means any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers, other than those excepted under section 75-303, or household goods over any public highway in this state;

(19) Residential care means care for a minor or a person who is physically, mentally, or developmentally disabled who resides in a residential home or facility regulated by the Department of Health and Human Services, including, but not limited to, a foster home, treatment facility, group home, or shelter;

(20) Residential care transportation services means transportation services to persons in residential care when such residential care transportation services and residential care are provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department; and

(21) Supported transportation services means transportation services to a minor or for a person who is physically, mentally, or developmentally disabled when the person providing transportation services also assists and supervises the passenger or transportation services to a family member of a minor when it is necessary for provider staff to accompany or facilitate the transportation in order to provide necessary services and support to the minor. Supported transportation services must be provided as part of a services contract with the Department of Health and Human Services or pursuant to a subcontract entered into incident to a services contract with the department, and the driver must meet department requirements for (a) training or experience working with minors or persons who are physically, mentally, or developmentally disabled, (b) training with regard to the specific needs of the client served, (c) reporting to the department, and (d) age. Assisting and supervising the passen-

ger shall not necessarily require the person providing transportation services to stay with the passenger after the transportation services have been provided.

Source: Laws 1963, c. 425, art. III, § 2, p. 1375; Laws 1969, c. 606, § 1, p. 2467; Laws 1972, LB 1370, § 1; Laws 1989, LB 78, § 18; Laws 1990, LB 980, § 25; Laws 1993, LB 121, § 464; Laws 1993, LB 412, § 2; Laws 1995, LB 424, § 22; Laws 1996, LB 1218, § 43; Laws 1999, LB 594, § 66; Laws 2006, LB 1069, § 3; Laws 2007, LB358, § 12; Laws 2011, LB112, § 1.

Cross References

Child Care Licensing Act, see section 71-1908.

75-303 Motor carriers; scope of law.

Sections 75-301 to 75-322 shall apply to transportation by a motor carrier or the transportation of passengers and household goods by a regulated motor carrier for hire in intrastate commerce except for the following:

(1) A motor carrier for hire in the transportation of school children and teachers to and from school;

(2) A motor carrier for hire operated in connection with a part of a streetcar system;

(3) An ambulance, ambulance owner, hearse, or automobile used exclusively as an incident to conducting a funeral;

(4) A motor carrier exempt by subdivision (1) of this section which hauls for hire (a) persons of a religious, fraternal, educational, or charitable organization, (b) pupils of a school to athletic events, (c) players of American Legion baseball teams when the point of origin or termination is within five miles of the domicile of the carrier, and (d) the elderly as defined in section 13-1203 and their spouses and dependents under a contract with a municipality or county authorized in section 13-1208;

(5) A motor carrier operated by a city and engaged in the transportation of passengers, and such exempt operations shall be no broader than those authorized in intrastate commerce at the time the city or other political subdivision assumed ownership of the operation;

(6) A motor vehicle owned and operated by a nonprofit organization which is exempt from payment of federal income taxes, as provided by section 501(c)(4), Internal Revenue Code, transporting solely persons over age sixty, persons who are spouses and dependents of persons over age sixty, and handicapped persons;

(7) A motor carrier engaged in the transportation of passengers operated by a transit authority created under and acting pursuant to the laws of the State of Nebraska;

(8) A motor carrier operated by a municipality or county, as authorized in section 13-1208, in the transportation of elderly persons;

(9) A motor vehicle having a seating capacity of twenty or less which is operated by a governmental subdivision or a qualified public-purpose organization as defined in section 13-1203 engaged in the transportation of passengers in the state;

(10) A motor vehicle owned and operated by a nonprofit entity organized for the purpose of furnishing electric service;

(11) A motor carrier engaged in attended services under contract or subcontract with the Department of Health and Human Services or with any agency organized under the Nebraska Community Aging Services Act;

(12) A motor carrier engaged in residential care transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements;

(13) A motor carrier engaged in supported transportation services if the motor carrier complies with the requirements of the Department of Health and Human Services adopted, promulgated, and enforced to protect the safety and well-being of the passengers, including insurance, training, and age requirements; and

(14) A motor carrier engaged in licensed care transportation services if the motor carrier files a certificate with the commission that such provider meets the minimum driver standards, insurance requirements, and equipment standards prescribed by the commission. Insurance requirements established by the commission shall be consistent with the insurance requirements established by the Department of Health and Human Services for attended services, residential care transportation services, and supported transportation services.

Source: Laws 1963, c. 425, art. III, § 3, p. 1376; Laws 1969, c. 606, § 2, p. 2468; Laws 1972, LB 1178, § 1; Laws 1973, LB 54, § 1; Laws 1973, LB 70, § 1; Laws 1973, LB 345, § 2; Laws 1974, LB 762, § 1; Laws 1981, LB 85, § 2; Laws 1981, LB 144, § 8; Laws 1983, LB 98, § 1; Laws 1989, LB 78, § 19; Laws 1993, LB 412, § 3; Laws 1993, LB 413, § 3; Laws 1995, LB 424, § 23; Laws 1996, LB 1218, § 44; Laws 1999, LB 594, § 67; Laws 2011, LB112, § 2.

Cross References

Nebraska Community Aging Services Act, see section 81-2201.

75-311 Certificates; permits; issuance; review by commission; effect.

(1) A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of sections 75-301 to 75-322 and the requirements, rules, and regulations of the commission under such sections and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied.

(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or

a specifically designated class of customers as defined in subdivision (7) of section 75-302. Otherwise the application shall be denied.

(3) No person shall at the same time hold a certificate as a common carrier and a permit as a contract carrier for transportation of household goods by motor vehicles over the same route or within the same territory unless the commission finds that it is consistent with the public interest and with the policy declared in section 75-301.

(4) After the issuance of a certificate or permit, the commission shall review the operations of all common or contract carriers who hold authority from the commission to determine whether there are insufficient operations in the transportation of household goods to justify the commission's finding that such common or contract carrier has willfully failed to perform transportation under sections 75-301 to 75-322 and rules and regulations promulgated under such sections. If the commission determines that there are insufficient operations, then the commission shall commence proceedings under section 75-315 to revoke the certificate or permit involved.

(5) This section shall not apply to operations pursuant to a contract authorized by sections 75-303.01 and 75-303.02.

Source: Laws 1963, c. 425, art. III, § 11, p. 1381; Laws 1969, c. 606, § 6, p. 2471; Laws 1972, LB 1370, § 2; Laws 1974, LB 438, § 2; Laws 1989, LB 78, § 25; Laws 1990, LB 980, § 27; Laws 1993, LB 412, § 10; Laws 1994, LB 414, § 74; Laws 1995, LB 424, § 38; Laws 1996, LB 1218, § 50; Laws 2011, LB112, § 3.

(e) SAFETY REGULATIONS

75-362 Federal regulations; terms, defined.

For purposes of sections 75-362 to 75-369.07, unless the context otherwise requires:

(1) Accident means:

(a) Except as provided in subdivision (b) of this subdivision, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicles to be transported away from the scene by a tow truck or other motor vehicle.

(b) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo;

(2) Bulk packaging means a packaging, other than a vessel or a barge, including a transport vehicle or freight container, in which hazardous materials are loaded with no intermediate form of containment and which has:

(a) A maximum capacity greater than one hundred nineteen gallons as a receptacle for a liquid;

(b) A maximum net mass greater than eight hundred eighty-two pounds and a maximum capacity greater than one hundred nineteen gallons as a receptacle for a solid; or

(c) A water capacity greater than one thousand pounds as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(3) Cargo tank means a bulk packaging that:

(a) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures;

(b) Is permanently attached to or forms a part of a motor vehicle or is not permanently attached to a motor vehicle but which, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(c) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank-car tanks, portable tanks, or tank cars;

(4) Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle;

(5) Commercial enterprise means any business activity relating to or based upon the production, distribution, or consumption of goods or services;

(6) Commercial motor vehicle means any self-propelled or towed motor vehicle used on a highway in interstate commerce or intrastate commerce to transport passengers or property when the vehicle:

(a) Has a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of ten thousand one pounds or more, whichever is greater;

(b) Is designed or used to transport more than eight passengers, including the driver, for compensation;

(c) Is designed or used to transport more than fifteen passengers, including the driver, and is not used to transport passengers for compensation; or

(d) Is used in transporting material found to be hazardous and such material is transported in a quantity requiring placarding pursuant to section 75-364;

(7) Compliance review means an onsite examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. The compliance review may result in the initiation of an enforcement action with penalties;

(8) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

(a) Inclusions: Damage to motor vehicles that could have been driven but would have been further damaged if so driven.

(b) Exclusions:

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts;

(ii) Tire disablement without other damage even if no spare tire is available;

(iii) Headlight or taillight damage; and

(iv) Damage to turnsignals, horn, or windshield wipers which makes them inoperative;

(9) Driver means any person who operates any commercial motor vehicle;

(10) Elevated temperature material means a material which, when offered for transportation or transported in a bulk packaging:

(a) Is in a liquid phase and at a temperature at or above two hundred twelve degrees Fahrenheit;

(b) Is in a liquid phase with a flash point at or above one hundred degrees Fahrenheit that is intentionally heated and offered for transportation or transported at or above its flash point; or

(c) Is in a solid phase and at a temperature at or above four hundred sixty-four degrees Fahrenheit;

(11) Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle, including an independent contractor while in the course of operating a commercial motor vehicle, a mechanic, and a freight handler. Such term does not include an employee of the United States, any state, any political subdivision of a state, or any agency established under a compact between states and approved by the Congress of the United States who is acting within the course of such employment;

(12) Employer means any person engaged in a business affecting commerce who owns or leases a commercial motor vehicle in connection with that business or assigns employees to operate it. Such term does not include the United States, any state, any political subdivision of a state, or an agency established under a compact between states approved by the Congress of the United States;

(13) Exempt motor carrier means a person engaged in transportation exempt from economic regulation under 49 U.S.C. 13506. An exempt motor carrier is subject to the safety regulations adopted in sections 75-362 to 75-369.07;

(14) Farm vehicle driver means a person who drives only a commercial motor vehicle that is controlled and operated by a farmer as a private motor carrier of property;

(15) Farmer means any person who operates a farm or is directly involved in the cultivation of land, crops, or livestock which:

(a) Are owned by that person; or

(b) Are under the direct control of that person;

(16) Fatality means any injury which results in the death of a person at the time of the motor vehicle accident or within thirty days after the accident;

(17) Fertilizer and agricultural chemical application and distribution equipment means:

(a) Self-propelled or towed equipment, designed and used exclusively to apply commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products to agricultural soil and crops; or

(b) Towed equipment designed and used exclusively to carry commercial fertilizer, as that term is defined in section 81-2,162.02, chemicals, or related products for use on agricultural soil and crops, which are equipped with implement or floatation tires;

(18) For-hire motor carrier means a person engaged in the transportation of goods or passengers for compensation;

(19) Gross combination weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon and the empty weight of the towed unit or units plus the total weight of any load carried on such towed unit or units;

(20) Gross combination weight rating means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating will be determined by adding either the gross vehicle weight rating or gross vehicle weight of the motor vehicle plus the gross vehicle weight rating or gross vehicle weight of the towed unit or units;

(21) Gross vehicle weight means the sum of the empty weight of a motor vehicle plus the total weight of any load carried thereon;

(22) Gross vehicle weight rating means the value specified by the manufacturer as the loaded weight of a single motor vehicle. In the absence of such value specified by the manufacturer or the absence of any marking of such value on the vehicle, the gross vehicle weight rating shall be determined from the sum of the axle weight ratings of the vehicle or the sum of the tire weight ratings as marked on the sidewall of the tires, whichever is greater. In the absence of any tire sidewall marking, the tire weight ratings shall be determined for the specified tires from any of the publications of any of the organizations listed in 49 C.F.R. 571.119;

(23) Hazardous material means a substance or material that the Secretary of the United States Department of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under 49 U.S.C. 5103. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table, 49 C.F.R. 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 C.F.R. part 173;

(24) Hazardous substance means a material, including its mixtures and solutions, that is listed in 49 C.F.R. 172.101, Appendix A, List Of Hazardous Substances and Reportable Quantities, and is in a quantity, in one package, which equals or exceeds the reportable quantity listed in 49 C.F.R. 172.101, Appendix A. This definition does not apply to petroleum products that are lubricants or fuels or to mixtures or solutions of hazardous substances if in a concentration less than that shown in the table in 49 C.F.R. 171.8 under the definition of hazardous substance based on the reportable quantity specified for the materials listed in 49 C.F.R. 172.101, Appendix A;

(25) Hazardous waste means any material that is subject to the hazardous waste manifest requirements of the United States Environmental Protection Agency specified in 40 C.F.R. 262;

(26) Highway means the entire width between the boundary limits of any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel;

(27) Interstate commerce means trade, traffic, or transportation provided in the furtherance of a commercial enterprise in the United States:

(a) Between a place in a state and a place outside of such state, including a place outside of the United States;

(b) Between two places in a state through another state or a place outside of the United States; or

(c) Between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States;

(28) Intrastate commerce means any trade, traffic, or transportation provided in the furtherance of a commercial enterprise between any place in the State of Nebraska and any other place in Nebraska and not through any other state;

(29) Marine pollutant means a material which is listed in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B, as a marine pollutant (see 49 C.F.R. 171.4 for applicability to marine pollutants) and, when in a solution or mixture of one or more marine pollutants, is packaged in a concentration which equals or exceeds:

(a) Ten percent by weight of the solution or mixture for materials listed in 49 C.F.R. 172.101, Appendix B; or

(b) One percent by weight of the solution or mixture for materials that are identified as severe marine pollutants in the Hazardous Materials Table, 49 C.F.R. 172.101, Appendix B;

(30) Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes a motor carrier's agents, officers, and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories. This definition includes the terms employer and exempt motor carrier;

(31) Motor vehicle means any vehicle, truck, truck-tractor, trailer, or semitrailer propelled or drawn by mechanical power except (a) farm tractors, (b) vehicles which run only on rails or tracks, and (c) road and general-purpose construction and maintenance machinery which by design and function is obviously not intended for use on a public highway, including, but not limited to, motor scrapers, earthmoving equipment, backhoes, trenchers, motor graders, compactors, tractors, bulldozers, bucket loaders, ditchdigging apparatus, asphalt spreaders, leveling graders, power shovels, and crawler tractors;

(32) Nonbulk packaging means a packaging which has:

(a) A maximum capacity of one hundred nineteen gallons or less as a receptacle for a liquid;

(b) A maximum net mass of eight hundred eighty-two pounds or less and a maximum capacity of one hundred nineteen gallons or less as a receptacle for a solid; or

(c) A water capacity of one thousand pounds or less as a receptacle for a gas as defined in 49 C.F.R. 173.115;

(33) Out-of-service order means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws or the North American Uniform Out-of-Service Criteria;

(34) Packaging means a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of Title 49 of the Code of Federal Regulations. For radioactive materials packaging, see 49 C.F.R. 173.403;

(35) Person means any individual, partnership, association, corporation, business trust, or any other organized group of individuals;

(36) Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification. The motor carrier must make records required by the regulations referred to in sections 75-363 to 75-369.07 and this section available for inspection at this location within forty-eight hours, Saturdays, Sundays, and state or federal holidays excluded, after a request has been made by an officer of the Nebraska State Patrol;

(37) Private motor carrier means a person who provides transportation of property or passengers by commercial motor vehicle and is not a for-hire motor carrier;

(38) Safety audit means an examination of a motor carrier's operations to provide educational and technical assistance on drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine whether a motor carrier meets the safety fitness standard. The purpose of a safety audit is to gather critical safety data needed to make an assessment of the carrier's safety performance and basic safety management controls. Safety audits do not result in safety ratings; and

(39) Tank means a container, consisting of a shell and heads, that forms a pressure-tight vessel having openings designed to accept pressure-tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Source: Laws 2006, LB 1007, § 14; Laws 2010, LB725, § 2; Laws 2010, LB805, § 12.

75-363 Federal motor carrier safety regulations; provisions adopted; exceptions.

(1) The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, as modified in this section, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2012, are adopted as Nebraska law.

(2) Except as otherwise provided in this section, the regulations shall be applicable to:

(a) All motor carriers, drivers, and vehicles to which the federal regulations apply; and

(b) All motor carriers transporting persons or property in intrastate commerce to include:

(i) All vehicles of such motor carriers with a gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight over ten thousand pounds;

(ii) All vehicles of such motor carriers designed or used to transport more than eight passengers, including the driver, for compensation, or designed or used to transport more than fifteen passengers, including the driver, and not used to transport passengers for compensation;

(iii) All vehicles of such motor carriers transporting hazardous materials required to be placarded pursuant to section 75-364; and

(iv) All drivers of such motor carriers if the drivers are operating a commercial motor vehicle as defined in section 60-465 which requires a commercial driver's license.

(3) The Legislature hereby adopts, as modified in this section, the following parts of Title 49 of the Code of Federal Regulations:

(a) Part 382 - Controlled Substances And Alcohol Use And Testing;

(b) Part 385 - Safety Fitness Procedures;

(c) Part 386 - Rules Of Practice For Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, And Hazardous Materials Proceedings;

(d) Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers;

(e) Part 390 - Federal Motor Carrier Safety Regulations; General;

(f) Part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors;

(g) Part 392 - Driving Of Commercial Motor Vehicles;

(h) Part 393 - Parts And Accessories Necessary For Safe Operation;

(i) Part 395 - Hours Of Service Of Drivers;

(j) Part 396 - Inspection, Repair, And Maintenance;

(k) Part 397 - Transportation Of Hazardous Materials; Driving And Parking Rules; and

(l) Part 398 - Transportation Of Migrant Workers.

(4) The provisions of subpart E - Physical Qualifications And Examinations of 49 C.F.R. part 391 - Qualifications Of Drivers And Longer Combination Vehicle (LCV) Driver Instructors shall not apply to any driver subject to this section who: (a) Operates a commercial motor vehicle exclusively in intrastate commerce; and (b) holds, or has held, a commercial driver's license issued by this state prior to July 30, 1996.

(5) The regulations adopted in subsection (3) of this section shall not apply to farm trucks registered pursuant to section 60-3,146 with a gross weight of sixteen tons or less. The following parts and sections of 49 C.F.R. chapter III shall not apply to drivers of farm trucks registered pursuant to section 60-3,146 and operated solely in intrastate commerce:

(a) All of part 391;

(b) Section 395.8 of part 395; and

(c) Section 396.11 of part 396.

(6) Part 393 - Parts And Accessories Necessary For Safe Operation and Part 396 - Inspection, Repair, And Maintenance shall not apply to fertilizer and agricultural chemical application and distribution equipment transported in units with a capacity of three thousand five hundred gallons or less.

(7) For purposes of this section, intrastate motor carriers shall not include any motor carrier or driver excepted from 49 C.F.R. chapter III by section 390.3(f) of part 390.

(8)(a) Part 395 - Hours Of Service Of Drivers shall apply to motor carriers and drivers who engage in intrastate commerce as defined in section 75-362, except that no motor carrier who engages in intrastate commerce shall permit or require any driver used by it to drive nor shall any driver drive:

(i) More than twelve hours following eight consecutive hours off duty; or

(ii) For any period after having been on duty sixteen hours following eight consecutive hours off duty.

(b) No motor carrier who engages in intrastate commerce shall permit or require a driver of a commercial motor vehicle, regardless of the number of motor carriers using the driver's services, to drive, nor shall any driver of a commercial motor vehicle drive, for any period after:

(i) Having been on duty seventy hours in any seven consecutive days if the employing motor carrier does not operate every day of the week; or

(ii) Having been on duty eighty hours in any period of eight consecutive days if the employing motor carrier operates motor vehicles every day of the week.

(9) Part 395 - Hours Of Service Of Drivers, as adopted in subsections (3) and (8) of this section, shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes when the transportation of such commodities or supplies occurs within a one-hundred-air-mile radius of the source of the commodities or the distribution point for the supplies when such transportation occurs during the period beginning on February 15 up to and including December 15 of each calendar year.

(10) 49 C.F.R. 390.21 - Marking Of Self-Propelled CMVs And Intermodal Equipment shall not apply to farm trucks and farm truck-tractors registered pursuant to section 60-3,146 and operated solely in intrastate commerce.

(11) 49 C.F.R. 392.9a - Operating Authority shall not apply to Nebraska motor carriers operating commercial motor vehicles solely in intrastate commerce.

(12) No motor carrier shall permit or require a driver of a commercial motor vehicle to violate, and no driver of a commercial motor vehicle shall violate, any out-of-service order.

Source: Laws 1986, LB 301, § 1; Laws 1987, LB 224, § 23; Laws 1988, LB 884, § 1; Laws 1989, LB 285, § 140; Laws 1990, LB 980, § 29; Laws 1991, LB 854, § 3; Laws 1993, LB 410, § 1; Laws 1994, LB 1061, § 5; Laws 1995, LB 461, § 1; Laws 1996, LB 938, § 4; Laws 1997, LB 722, § 1; Laws 1998, LB 1056, § 8; Laws 1999, LB 161, § 1; Laws 1999, LB 704, § 49; Laws 2000, LB 1361, § 11; Laws 2001, LB 375, § 1; Laws 2002, LB 499, § 5; Laws 2003, LB 480, § 2; Laws 2004, LB 878, § 1; Laws 2005, LB 83, § 1; Laws 2005, LB 274, § 271; Laws 2006, LB 1007, § 13; Laws 2007, LB239, § 8; Laws 2008, LB756, § 28; Laws 2008, LB845, § 1; Laws 2009, LB48, § 1; Laws 2009, LB331, § 15;

Laws 2010, LB725, § 3; Laws 2010, LB805, § 13; Laws 2011, LB178, § 21; Laws 2011, LB212, § 7; Laws 2012, LB751, § 49. Operative date April 7, 2012.

Cross References

Violation of section, penalty, see section 75-367.

75-364 Additional federal motor carrier regulations; provisions adopted.

The parts, subparts, and sections of Title 49 of the Code of Federal Regulations listed below, or any other parts, subparts, and sections referred to by such parts, subparts, and sections, in existence and effective as of January 1, 2012, are adopted as part of Nebraska law and shall be applicable to all motor carriers whether engaged in interstate or intrastate commerce, drivers of such motor carriers, and vehicles of such motor carriers:

(1) Part 107 - Hazardous Materials Program Procedures, subpart F-Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers;

(2) Part 107 - Hazardous Materials Program Procedures, subpart G-Registration of Persons Who Offer or Transport Hazardous Materials;

(3) Part 171 - GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS;

(4) Part 172 - HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS;

(5) Part 173 - SHIPPERS - GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS;

(6) Part 177 - CARRIAGE BY PUBLIC HIGHWAY;

(7) Part 178 - SPECIFICATIONS FOR PACKAGINGS; and

(8) Part 180 - CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS.

Source: Laws 1986, LB 301, § 2; Laws 1987, LB 538, § 1; Laws 1988, LB 884, § 2; Laws 1990, LB 980, § 30; Laws 1991, LB 854, § 4; Laws 1993, LB 410, § 2; Laws 1994, LB 1061, § 6; Laws 1995, LB 461, § 2; Laws 1996, LB 938, § 5; Laws 1997, LB 722, § 2; Laws 1998, LB 1056, § 9; Laws 1999, LB 161, § 2; Laws 2000, LB 1361, § 12; Laws 2001, LB 375, § 2; Laws 2002, LB 499, § 6; Laws 2003, LB 480, § 3; Laws 2004, LB 878, § 2; Laws 2005, LB 83, § 2; Laws 2006, LB 1007, § 15; Laws 2007, LB239, § 9; Laws 2008, LB756, § 29; Laws 2009, LB48, § 2; Laws 2009, LB331, § 16; Laws 2010, LB805, § 14; Laws 2011, LB178, § 22; Laws 2011, LB212, § 8; Laws 2012, LB751, § 50. Operative date April 7, 2012.

75-366 Enforcement powers.

For the purpose of enforcing Chapter 75, article 3, any officer of the Nebraska State Patrol may, upon demand, inspect the accounts, records, and equipment of any motor carrier or shipper. Any officer of the Nebraska State Patrol shall have the authority to enforce the federal motor carrier safety regulations, as such regulations existed on January 1, 2012, and federal

hazardous materials regulations, as such regulations existed on January 1, 2012, and is authorized to enter upon, inspect, and examine any and all lands, buildings, and equipment of any motor carrier, any shipper, and any other person subject to the federal Interstate Commerce Act, the federal Department of Transportation Act, and other related federal laws and to inspect and copy any and all accounts, books, records, memoranda, correspondence, and other documents of a motor carrier, a shipper, and any other person subject to Chapter 75, article 3, for the purposes of enforcing Chapter 75, article 3. To promote uniformity of enforcement, the carrier enforcement division of the Nebraska State Patrol shall cooperate and consult with the Public Service Commission and the Division of Motor Carrier Services.

Source: Laws 1986, LB 301, § 4; Laws 1987, LB 538, § 2; Laws 1990, LB 980, § 31; Laws 1995, LB 424, § 48; Laws 1996, LB 1218, § 60; Laws 2002, LB 93, § 18; Laws 2003, LB 480, § 4; Laws 2012, LB751, § 51.
Operative date April 7, 2012.

(l) UNIFIED CARRIER REGISTRATION PLAN AND AGREEMENT

75-393 Unified carrier registration plan and agreement; director; powers.

The director may participate in the unified carrier registration plan and agreement pursuant to the Unified Carrier Registration Act of 2005, 49 U.S.C. 13908, as the act existed on January 1, 2012, and may file on behalf of this state the plan required by such plan and agreement for enforcement of the act in this state.

Source: Laws 2007, LB358, § 2; Laws 2009, LB331, § 19; Laws 2011, LB212, § 9; Laws 2012, LB751, § 52.
Operative date April 7, 2012.

ARTICLE 5
PIPELINE CARRIERS

Section
75-502. Pipeline carriers; powers.

75-502 Pipeline carriers; powers.

Pipeline carriers which are declared common carriers under section 75-501, pipeline carriers approved under the Major Oil Pipeline Siting Act, and pipeline carriers for which the Governor approves a route under section 57-1503 may store, transport, or convey any liquid or gas, or the products thereof, and make reasonable charges therefor, may lay down, construct, maintain, and operate pipelines, tanks, pump stations, connections, fixtures, storage plants, and such machinery, apparatus, devices, and arrangement as may be necessary to operate such pipes or pipelines between different points in this state, and may use and occupy such lands, rights-of-way, easements, franchises, buildings, and structures as may be necessary to construct and maintain them.

Source: Laws 1963, c. 425, art. V, § 2, p. 1416; Laws 1994, LB 414, § 98; Laws 2011, First Spec. Sess., LB1, § 20.
Effective date November 23, 2011.

Cross References

Major Oil Pipeline Siting Act, see section 57-1401.

CHAPTER 76
REAL PROPERTY

Article.
2. Conveyances.
   (a) Definitions. 76-201 to 76-203.
   (d) Formalities of Execution. 76-214, 76-215.
   (f) Recording. 76-238, 76-246.
   (h) Special Kinds of Conveyances. 76-277.
   (p) Disclosure Statement. 76-2,120.
   (t) Filing of Death Certificate. 76-2,126.
5. Abstracters.
   (e) Abstracters Act. 76-545 to 76-550.
7. Eminent Domain. 76-710.04.
9. Documentary Stamp Tax. 76-902 to 76-908.
10. Trust Deeds. 76-1002 to 76-1009.
12. Relocation Assistance. 76-1221, 76-1228.
15. Agricultural Lands, Special Provisions.
   (b) Trusts Holding Agricultural Lands. 76-1507 to 76-1517.
   (d) Reports on Farming or Ranching. 76-1521, 76-1523.
22. Real Property Appraiser Act. 76-2202 to 76-2249.
24. Agency Relationships. 76-2402 to 76-2430.
30. Wind Agreements. 76-3001, 76-3004.
31. Private Transfer Fee Obligation Act. 76-3101 to 76-3112.
32. Nebraska Appraisal Management Company Registration Act. 76-3201 to 76-3220.
33. Oil Pipeline Reclamation Act. 76-3301 to 76-3308.
34. Nebraska Uniform Real Property Transfer on Death Act. 76-3401 to 76-3423.

ARTICLE 2
CONVEYANCES

(a) DEFINITIONS

Section
76-201. Real estate, defined.
76-202. Purchaser, defined.
76-203. Deed, defined.

(d) FORMALITIES OF EXECUTION

76-214. Deed, memorandum of contract, or land contract; recorded; death certificate filed; statement required; access.
76-215. Statement; failure to furnish; penalty.

(f) RECORDING

76-238. Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.
76-246. Conveyances; power of attorney; how revoked.

(h) SPECIAL KINDS OF CONVEYANCES

76-277. Conveyances; claims and improvements upon public lands; law applicable.

(p) DISCLOSURE STATEMENT

76-2,120. Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

Section

(t) FILING OF DEATH CERTIFICATE

76-2,126. Certain conveyances; filing of death certificate with register of deeds.

(a) DEFINITIONS

76-201 Real estate, defined.

For purposes of sections 76-201 to 76-281 and 76-2,126, the term real estate shall be construed as coextensive in meaning with lands, tenements, and hereditaments, and as embracing all chattels real, except leases for a term not exceeding one year.

Source: R.S.1866, c. 43, § 49, p. 290; R.S.1913, § 6187; C.S.1922, § 5586; C.S.1929, § 76-101; R.S.1943, § 76-201; Laws 2012, LB536, § 26. Operative date January 1, 2013.

76-202 Purchaser, defined.

The term purchaser, as used in sections 76-201 to 76-281 and 76-2,126, shall be construed to embrace every person to whom any real estate or interest therein shall be conveyed for valuable consideration and also any assignee of mortgage or lease or other conditional estate.

Source: R.S.1866, c. 43, § 50, p. 291; R.S.1913, § 6188; C.S.1922, § 5587; C.S.1929, § 76-102; R.S.1943, § 76-202; Laws 2012, LB536, § 27. Operative date January 1, 2013.

76-203 Deed, defined.

The term deed, as used in sections 76-201 to 76-281 and 76-2,126, shall be construed to embrace every instrument in writing by which any real estate or interest therein is created, aliened, mortgaged, or assigned or by which the title to any real estate may be affected in law or equity, except last wills and leases for one year or for a less time.

Source: R.S.1866, c. 43, § 51, p. 291; R.S.1913, § 6189; C.S.1922, § 5588; C.S.1929, § 76-103; R.S.1943, § 76-203; Laws 2012, LB536, § 28. Operative date January 1, 2013.

(d) FORMALITIES OF EXECUTION

76-214 Deed, memorandum of contract, or land contract; recorded; death certificate filed; statement required; access.

(1) Every grantee who has a deed to real estate recorded and every purchaser of real estate who has a memorandum of contract or land contract recorded shall, at the time such deed, memorandum of contract, or land contract is presented for recording, file with the register of deeds a completed statement as prescribed by the Tax Commissioner. For all deeds and all memoranda of contract and land contracts recorded on and after January 1, 2001, the statement shall not require the social security number of the grantee or purchaser or the federal employer identification number of the grantee or purchaser. This statement may require the recitation of any information contained in the deed, memorandum of contract, or land contract, the total consideration paid, the amount of the total consideration attributable to factors other than the purchase of the real estate itself, and other factors which may

influence the transaction. If a death certificate is recorded as provided in subsection (2) of this section, this statement may require a date of death, the name of the decedent, and whether the title is affected as a result of a transfer on death deed, a joint tenancy deed, or the expiration of a life estate or by any other means. This statement shall be signed and filed by the grantee, the purchaser, or his or her authorized agent. The register of deeds shall forward the statement to the county assessor. If the grantee or purchaser fails to furnish the prescribed statement, the register of deeds shall not record the deed, memorandum of contract, or land contract. The register of deeds shall indicate on the statement the book and page or computer system reference where the deed, memorandum of contract, or land contract is recorded and shall immediately forward the statement to the county assessor. The county assessor shall process the statement according to the instructions of the Property Tax Administrator and shall, pursuant to the rules and regulations of the Tax Commissioner, forward the statement to the Tax Commissioner.

(2)(a) The statement described in subsection (1) of this section shall be filed at the time that a certified or authenticated copy of the grantor's death certificate is filed if such death certificate is required to be filed under section 76-2,126.

(b) The statement described in subsection (1) of this section shall not be required to be filed at the time that a transfer on death deed is filed or at the time that an instrument of revocation of a transfer on death deed as described in subdivision (a)(1)(B) of section 76-3413 is filed.

(3) Any person shall have access to the statements at the office of the Tax Commissioner, county assessor, or register of deeds if the statements are available and have not been disposed of pursuant to the records retention and disposition schedule as approved by the State Records Administrator.

Source: Laws 1917, c. 224, § 1, p. 549; C.S.1922, § 5662; C.S.1929, § 76-268; R.S.1943, § 76-214; Laws 1965, c. 456, § 1, p. 1450; Laws 1965, c. 457, § 1, p. 1451; Laws 1981, LB 28, § 1; Laws 1981, LB 179, § 1; Laws 1984, LB 679, § 13; Laws 1985, LB 273, § 37; Laws 1986, LB 1027, § 200; Laws 1994, LB 902, § 13; Laws 1994, LB 1275, § 6; Laws 1995, LB 490, § 26; Laws 1995, LB 527, § 1; Laws 2000, LB 968, § 21; Laws 2007, LB334, § 12; Laws 2008, LB965, § 1; Laws 2009, LB348, § 1; Laws 2012, LB536, § 29.
Operative date January 1, 2013.

Cross References

Violation of section, penalty, see section 76-215.

76-215 Statement; failure to furnish; penalty.

Any person who fails to obey the provisions of subsection (1) of section 76-214 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor exceeding five hundred dollars.

Source: Laws 1917, c. 224, § 2, p. 550; C.S.1922, § 5663; C.S.1929, § 76-269; R.S.1943, § 76-215; Laws 1965, c. 456, § 2, p. 1450; Laws 1965, c. 457, § 2, p. 1452; Laws 1994, LB 1275, § 7; Laws 2012, LB536, § 30.
Operative date January 1, 2013.

(f) RECORDING

76-238 Deeds and other instruments; recording; when effective as notice; possession of real estate; not effective as notice; when.

(1) Except as otherwise provided in sections 76-3413 to 76-3415, all deeds, mortgages, and other instruments of writing which are required to be or which under the laws of this state may be recorded, shall take effect and be in force from and after the time of delivering such instruments to the register of deeds for recording, and not before, as to all creditors and subsequent purchasers in good faith without notice. All such instruments are void as to all creditors and subsequent purchasers without notice whose deeds, mortgages, or other instruments are recorded prior to such instruments. However, such instruments are valid between the parties to the instrument.

(2) For purposes of this section, possession of agricultural real estate or residential real estate by a party related to the owner of record of the real estate within the third degree of consanguinity or affinity shall not serve as notice to a creditor or subsequent purchaser in any case in which such party is claiming rights in such real estate pursuant to a lease (a) entered into on or after July 16, 2004; (b) purporting to extend beyond a term of one year; and (c) which has not satisfied the requirements of section 76-211, unless the creditor or subsequent purchaser, in advance of recording a deed, mortgage, or other instrument, has received a written copy of such lease.

(3) For purposes of this section:

(a) Agricultural products includes grain and feed crops; forages and sod crops; and animal production, including breeding, feeding, or grazing of cattle, horses, swine, sheep, goats, bees, or poultry;

(b) Agricultural real estate means land which is primarily used for the production of agricultural products, including waste land lying in or adjacent to and in common ownership with land used for the production of agricultural products;

(c) Related within the third degree of consanguinity or affinity includes parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same and any partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree of consanguinity or affinity; and

(d) Residential real estate means real estate containing not more than four units designed for use for residential purposes. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units for nonresidential purposes.

Source: R.S.1866, c. 43, § 16, p. 283; Laws 1887, c. 30, § 16, p. 369; R.S.1913, § 6213; C.S.1922, § 5612; C.S.1929, § 76-218; Laws 1941, c. 154, § 1, p. 599; C.S.Supp.,1941, § 76-218; R.S.1943, § 76-238; Laws 2004, LB 155, § 6; Laws 2012, LB536, § 32. Operative date January 1, 2013.

76-246 Conveyances; power of attorney; how revoked.

No instrument containing a power to convey, or in any manner to affect real estate, executed, acknowledged or proved, and certified and recorded in con-

formity with the requirements of sections 76-211 to 76-245 and 76-2,126, can be revoked by any act of the party or parties thereto until the instrument of revocation is executed, acknowledged or proved, and certified and filed for record with the register of deeds of the county in which the power is recorded.

Source: R.S.1866, c. 43, § 22, p. 285; Laws 1887, c. 30, § 17, p. 369; R.S.1913, § 6216; C.S.1922, § 5615; C.S.1929, § 76-221; R.S.1943, § 76-246; Laws 2012, LB536, § 33.
Operative date January 1, 2013.

(h) SPECIAL KINDS OF CONVEYANCES

76-277 Conveyances; claims and improvements upon public lands; law applicable.

Sections 76-201 to 76-281 and 76-2,126 apply to the conveyance of all claims and improvements upon the public lands.

Source: R.S.1866, c. 43, § 35, p. 287; R.S.1913, § 6231; C.S.1922, § 5630; C.S.1929, § 76-236; R.S.1943, § 76-277; Laws 2012, LB536, § 34.
Operative date January 1, 2013.

Cross References

For other provisions for conveyance of public lands and buildings, see Chapter 72.

(p) DISCLOSURE STATEMENT

76-2,120 Written disclosure statement required, when; contents; delivery; liability; noncompliance; effect; State Real Estate Commission; rules and regulations.

(1) For purposes of this section:

(a) Ground lease coupled with improvements shall mean a lease for a parcel of land on which one to four residential dwelling units have been constructed;

(b) Purchaser shall mean a person who acquires, attempts to acquire, or succeeds to an interest in land;

(c) Residential real property shall mean real property which is being used primarily for residential purposes on which no fewer than one or more than four dwelling units are located; and

(d) Seller shall mean an owner of real property who sells or attempts to sell, including lease with option to purchase, residential real property, whether an individual, partnership, limited liability company, corporation, or trust. A sale of a residential dwelling which is subject to a ground lease coupled with improvements shall be a sale of residential real property for purposes of this subdivision.

(2) Each seller of residential real property located in Nebraska shall provide the purchaser with a written disclosure statement of the real property's condition. The disclosure statement shall be executed by the seller. The requirements of this section shall also apply to a sale of improvements which contain residential real property when the improvements are sold coupled with a ground lease and to any lease with the option to purchase residential real property.

(3) The disclosure statement shall include language at the beginning which states:

(a) That the statement is being completed and delivered in accordance with Nebraska law;

(b) That Nebraska law requires the seller to complete the statement;

(c) The real property's address and legal description;

(d) That the statement is a disclosure of the real property's condition as known by the seller on the date of disclosure;

(e) That the statement is not a warranty of any kind by the seller or any agent representing a principal in the transaction;

(f) That the statement should not be accepted as a substitute for any inspection or warranty that the purchaser may wish to obtain;

(g) That even though the information provided in the statement is not a warranty, the purchaser may rely on the information in deciding whether and on what terms to purchase the real property;

(h) That any agent representing a principal in the transaction may provide a copy of the statement to any other person in connection with any actual or possible sale of the real property; and

(i) That the information provided in the statement is the representation of the seller and not the representation of any agent and that the information is not intended to be part of any contract between the seller and purchaser.

(4) In addition to the requirements of subsection (3) of this section, the disclosure statement shall disclose the condition of the real property and any improvements on the real property, including:

(a) The condition of all appliances that are included in the sale and whether the appliances are in working condition;

(b) The condition of the electrical system;

(c) The condition of the heating and cooling systems;

(d) The condition of the water system;

(e) The condition of the sewer system;

(f) The condition of all improvements on the real property and any defects that materially affect the value of the real property or improvements;

(g) Any hazardous conditions, including substances, materials, and products on the real property which may be an environmental hazard;

(h) Any title conditions which affect the real property, including encroachments, easements, and zoning restrictions;

(i) The utility connections and whether they are public, private, or community; and

(j) The existence of any private transfer fee obligation as defined in section 76-3107.

(5) The disclosure statement shall be completed to the best of the seller's belief and knowledge as of the date the disclosure statement is completed and signed by the seller. If any information required by the disclosure statement is unknown to the seller, the seller may indicate that fact on the disclosure statement and the seller shall be in compliance with this section. On or before the effective date of any contract which binds the purchaser to purchase the real property, the seller shall update the information on the disclosure statement whenever the seller has knowledge that information on the disclosure statement is no longer accurate.

(6) This section shall not apply to a transfer:

(a) Pursuant to a court order, a foreclosure sale, or a sale by a trustee under a power of sale in a deed of trust;

(b) By a trustee in bankruptcy;

(c) To a mortgagee by a mortgagor or successor in interest or to a beneficiary of a deed of trust by a trustor or successor in interest;

(d) By a mortgagee, a beneficiary under a deed of trust, or a seller under a land contract who has acquired the real property at a sale conducted pursuant to a power of sale under a deed of trust, at a sale pursuant to a court-ordered foreclosure, or by a deed in lieu of foreclosure;

(e) By a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust except when the fiduciary is also the occupant or was an occupant of one of the dwelling units being sold;

(f) From one or more co-owners to one or more other co-owners;

(g) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(h) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to such a decree;

(i) Pursuant to a merger, consolidation, sale, or transfer of assets of a corporation pursuant to a plan of merger or consolidation filed with the Secretary of State;

(j) To or from any governmental entity;

(k) Of newly constructed residential real property which has never been occupied; or

(l) From a third-party relocation company if the third-party relocation company has provided the prospective purchaser a disclosure statement from the most immediate seller unless the most immediate seller meets one of the exceptions in this section. If a disclosure statement is required, and if a third-party relocation company fails to supply a disclosure statement from its most immediate seller on or before the effective date of any contract which binds the purchaser to purchase the real property, the third-party relocation company shall be liable to the prospective purchaser to the same extent as a seller under this section.

(7) The disclosure statement and any update to the statement shall be delivered by the seller or the agent of the seller to the purchaser or the agent of the purchaser on or before the effective date of any contract which binds the purchaser to purchase the real property, and the purchaser shall acknowledge in writing receipt of the disclosure statement or update.

(8) The seller shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement if the error, inaccuracy, or omission was not within the personal knowledge of the seller.

(9) A person representing a principal in the transaction shall not be liable under this section for any error, inaccuracy, or omission of any information in a disclosure statement unless that person has knowledge of the error, inaccuracy, or omission on the part of the seller.

(10) A person licensed as a salesperson or broker pursuant to the Nebraska Real Estate License Act shall not be required to verify the accuracy or

completeness of any disclosure statement prepared pursuant to this section, and the only obligation of a buyer's agent pursuant to this section is to assure that a copy of the statement is delivered to the buyer on or before the effective date of any purchase agreement which binds the buyer to purchase the property subject to the disclosure statement. This subsection does not limit the duties and obligations provided in section 76-2418 or in subsection (9) of this section with respect to a buyer's agent.

(11) A transfer of an interest in real property subject to this section may not be invalidated solely because of the failure of any person to comply with this section.

(12) If a conveyance of real property is not made in compliance with this section, the purchaser shall have a cause of action against the seller and may recover the actual damages, court costs, and reasonable attorney's fees. The cause of action created by this section shall be in addition to any other cause of action that the purchaser may have. Any action to recover damages under the cause of action shall be commenced within one year after the purchaser takes possession or the conveyance of the real property, whichever occurs first.

(13) The State Real Estate Commission shall adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 642, § 1; Laws 2002, LB 863, § 1; Laws 2011, LB26, § 13.

Cross References

Nebraska Real Estate License Act, see section 81-885.

(t) FILING OF DEATH CERTIFICATE

76-2,126 Certain conveyances; filing of death certificate with register of deeds.

If a conveyance of real estate was pursuant to (1) a transfer on death deed due to the death of the transferor or the death of a surviving joint tenant of the transferor, (2) a joint tenancy deed due to the death of a joint tenant, or (3) the expiration of a life estate, then a death certificate shall be filed with the register of deeds to document the transfer of title to the beneficiary of the transfer on death deed, to the surviving joint tenant or joint tenants, or to the holder of an interest in real estate which receives that interest as a result of the death of a life tenant.

Source: Laws 2012, LB536, § 31.
Operative date January 1, 2013.

ARTICLE 5

ABSTRACTERS

(e) ABSTRACTERS ACT

Section

(e) ABSTRACTERS ACT

76-545 Business of abstracting; requirements; certificate of authority; authority; fee.

Any individual or business entity desiring to engage in the business of abstracting in this state shall make application to the board for a certificate of authority. Such application shall be in a form prepared by the board and shall contain such information as may be necessary to assist the board in determining whether the applicant has complied with the Abstracters Act. Such application shall be accompanied by an application fee of not less than twenty-five dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The applicant shall furnish proof that such applicant is or has employed a registered abstracter and shall provide the name and address of a resident agent for service of process under the act. When this section has been complied with, the board shall issue a certificate of authority in such form as it may prescribe, attesting to the same, and such certificate shall be prominently displayed in the place of business of the applicant.

Source: Laws 1965, c. 453, § 14, p. 1442; Laws 1969, c. 615, § 11, p. 2499; R.S.1943, (1981), § 76-522; Laws 1985, LB 47, § 15; Laws 2002, LB 1071, § 6; Laws 2010, LB1051, § 1.

76-547 Certificates; term; renewal; requirements; fees.

(1) All certificates of authority issued pursuant to section 76-545 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than fifty dollars or more than four hundred dollars. The board shall establish such fee based on the administrative costs of the board.

(2) All certificates of registration, including duplicate certificates of registration, issued pursuant to section 76-543 shall expire on April 1 of each even-numbered year irrespective of when issued. Such certificates shall be renewed, as provided in this section, for a two-year period upon payment of a renewal fee of not less than twenty dollars or more than two hundred dollars. The board shall establish such fee based on the administrative costs of the board. The board shall not renew the certificate of registration or duplicate certificate of registration for any registered abstracter who has failed to complete the professional development requirements set forth in section 76-544, unless the registered abstracter has shown good cause why he or she was unable to comply with such requirements. If the board determines that good cause was shown for not completing the professional development requirements, the board shall permit the registered abstracter to make up all outstanding hours of professional development within six months of the renewal of such certificates. If the hours are not completed in six months, such certificates shall be revoked.

(3) Thirty to sixty days prior to the expiration date of the certificates, the board shall cause a notice of expiration and application for renewal, including a statement for the fee for each certificate, to be mailed to each of the holders of such certificates. The notice and application shall be in a form prepared by the board.

Source: Laws 1965, c. 453, § 15, p. 1442; Laws 1973, LB 330, § 4; R.S.1943, (1981), § 76-523; Laws 1985, LB 47, § 17; Laws 2002, LB 1071, § 7; Laws 2005, LB 640, § 1; Laws 2010, LB1051, § 2.

76-549 Abstracters Board of Examiners Cash Fund; created; investment; board members and director; compensation.

(1) All fees collected pursuant to the Abstracters Act shall be deposited in the state treasury to be credited to the Abstracters Board of Examiners Cash Fund which is hereby created. All actual and necessary expenses of the board shall be paid from such fund.

(2) No member of the board shall receive a salary. Each member of the board shall receive as compensation for each day or part thereof of actual service while attending meetings or otherwise engaged upon the business of the board fifty dollars and expenses incurred in the performance of official duties. The director shall be paid a salary to be determined by the board.

(3) Transfers may be made from the Abstracters Board of Examiners Cash Fund to the General Fund at the direction of the Legislature. Any money in the Abstracters Board of Examiners 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 1965, c. 453, § 5, p. 1438; Laws 1969, c. 615, § 6, p. 2497; Laws 1971, LB 25, § 1; Laws 1973, LB 330, § 2; Laws 1981, LB 204, § 147; R.S.1943, (1981), § 76-513; Laws 1985, LB 47, § 19; Laws 2009, First Spec. Sess., LB3, § 52.

Cross References

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

76-550 Register and roster of applicants and abstracters.

The board shall keep a register of the name of each applicant for certification, with his or her place of business and such other information as may be deemed appropriate, including a notation of the action taken by the board thereon, the date upon which the certificate of registration or certificate of authority is issued, and the date of renewal of such certificates. The board shall maintain other records, registers, and files as may be necessary for the proper administration of its duties pursuant to the Abstracters Act. A roster showing the names and places of business of abstracters holding an operative certificate of registration shall be prepared by the director during the month of June of each even-numbered year, sent to all registered abstracters, and furnished to the public on request at the cost of producing such roster.

Source: Laws 1965, c. 453, § 7, p. 1439; Laws 1981, LB 409, § 7; R.S.1943, (1981), § 76-515; Laws 1985, LB 47, § 20; Laws 2010, LB1051, § 3.

ARTICLE 7
EMINENT DOMAIN

Section
76-710.04. Economic development purpose; restriction on use of eminent domain.

76-710.04 Economic development purpose; restriction on use of eminent domain.

(1) A condemner may not take property through the use of eminent domain under sections 76-704 to 76-724 if the taking is primarily for an economic development purpose.

(2) For purposes of this section, economic development purpose means taking property for subsequent use by a commercial for-profit enterprise or to increase tax revenue, tax base, employment, or general economic conditions.

(3) This section does not affect the use of eminent domain for:

(a) Public projects or private projects that make all or a major portion of the property available for use by the general public or for use as a right-of-way, aqueduct, pipeline, transmission line, or similar use;

(b) Removing harmful uses of property if such uses constitute an immediate threat to public health and safety;

(c) Leasing property to a private person who occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(d) Acquiring abandoned property;

(e) Clearing defective property title;

(f) Taking private property for use by a utility or railroad;

(g) Taking private property based upon a finding of blighted or substandard conditions under the Community Development Law if the private property is not agricultural land or horticultural land as defined in section 77-1359; and

(h) Taking private property for a transmission line to serve a privately developed facility generating electricity using wind, solar, biomass, or landfill gas. Nothing in this subdivision shall be construed to grant the power of eminent domain to a private entity.

Source: Laws 2006, LB 924, § 2; Laws 2010, LB1048, § 9.

Cross References

Community Development Law, see section 18-2101.

ARTICLE 9
DOCUMENTARY STAMP TAX

Section
76-902. Tax; exemptions.
76-903. Design; collection of tax; refund; procedure; disbursement.
76-908. Documentary stamp tax; refund; procedure.

76-902 Tax; exemptions.

The tax imposed by section 76-901 shall not apply to:

(1) Deeds recorded prior to November 18, 1965;

(2) Deeds to property transferred by or to the United States of America, the State of Nebraska, or any of their agencies or political subdivisions;

(3) Deeds which secure or release a debt or other obligation;

(4) Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded but which do not extend or limit existing title or interest;

(5)(a) Deeds between spouses, between ex-spouses for the purpose of conveying any rights to property acquired or held during the marriage, or between parent and child, without actual consideration therefor, and (b) deeds to or from a family corporation, partnership, or limited liability company when all

the shares of stock of the corporation or interest in the partnership or limited liability company are owned by 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, and their spouses, for no consideration other than the issuance of stock of the corporation or interest in the partnership or limited liability company to such family members or the return of the stock to the corporation in partial or complete liquidation of the corporation or deeds in dissolution of the interest in the partnership or limited liability company. In order to qualify for the exemption for family corporations, partnerships, or limited liability companies, the property shall be transferred in the name of the corporation or partnership and not in the name of the individual shareholders, partners, or members;

(6) Tax deeds;

(7) Deeds of partition;

(8) Deeds made pursuant to mergers, consolidations, sales, or transfers of the assets of corporations pursuant to plans of merger or consolidation filed with the office of Secretary of State. A copy of such plan filed with the Secretary of State shall be presented to the register of deeds before such exemption is granted;

(9) Deeds made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of the subsidiary's stock;

(10) Cemetery deeds;

(11) Mineral deeds;

(12) Deeds executed pursuant to court decrees;

(13) Land contracts;

(14) Deeds which release a reversionary interest, a condition subsequent or precedent, a restriction, or any other contingent interest;

(15) Deeds of distribution executed by a personal representative conveying to devisees or heirs property passing by testate or intestate succession;

(16) Transfer on death deeds or revocations of transfer on death deeds;

(17) Certified or authenticated death certificates pertaining to transfer on death deeds;

(18) Deeds transferring property located within the boundaries of an Indian reservation if the grantor or grantee is a reservation Indian;

(19) Deeds transferring property into a trust if the transfer of the same property would be exempt if the transfer was made directly from the grantor to the beneficiary or beneficiaries under the trust. No such exemption shall be granted unless the register of deeds is presented with a signed statement certifying that the transfer of the property is made under such circumstances as to come within one of the exemptions specified in this section and that evidence supporting the exemption is maintained by the person signing the statement and is available for inspection by the Department of Revenue;

(20) Deeds transferring property from a trustee to a beneficiary of a trust;

(21) Deeds which convey property held in the name of any partnership or limited liability company not subject to subdivision (5) of this section to any partner in the partnership or member of the limited liability company or to his or her spouse;

(22) Leases;

(23) Easements; or

(24) Deeds which transfer title from a trustee to a beneficiary pursuant to a power of sale exercised by a trustee under a trust deed.

Source: Laws 1965, c. 463, § 2, p. 1473; Laws 1969, c. 619, § 1, p. 2506; Laws 1969, c. 620, § 1, p. 2507; Laws 1971, LB 825, § 1; Laws 1974, LB 610, § 1; Laws 1978, LB 815, § 1; Laws 1980, LB 650, § 1; Laws 1983, LB 194, § 2; Laws 1984, LB 795, § 1; Laws 1984, LB 1105, § 23; Laws 1991, LB 193, § 1; Laws 1993, LB 121, § 481; Laws 2001, LB 516, § 5; Laws 2012, LB536, § 35. Operative date January 1, 2013.

76-903 Design; collection of tax; refund; procedure; disbursement.

The Tax Commissioner shall design such stamps in such denominations as in his or her judgment will be the most advantageous to all persons concerned. When any deed subject to the tax imposed by section 76-901 is offered for recordation, the register of deeds shall ascertain and compute the amount of the tax due thereon and shall collect such amount as a prerequisite to acceptance of the deed for recordation. If a dispute arises concerning the taxability of the transfer, the register of deeds shall not record the deed until the disputed tax is paid. If a disputed tax has been paid, the taxpayer may file for a refund pursuant to section 76-908. The taxpayer may also seek a declaratory ruling pursuant to rules and regulations adopted and promulgated by the Department of Revenue. From each two dollars and twenty-five cents of tax collected pursuant to section 76-901, the register of deeds shall retain fifty cents to be placed in the county general fund and shall remit the balance to the State Treasurer who shall credit ninety-five cents of such amount to the Affordable Housing Trust Fund, twenty-five cents of such amount to the Site and Building Development Fund, twenty-five cents of such amount to the Homeless Shelter Assistance Trust Fund, and thirty cents of such amount to the Behavioral Health Services Fund.

Source: Laws 1965, c. 463, § 3, p. 1473; Laws 1969, c. 618, § 2, p. 2505; Laws 1983, LB 194, § 3; Laws 1985, LB 236, § 2; Laws 1992, LB 1192, § 10; Laws 1997, LB 864, § 16; Laws 2001, LB 516, § 6; Laws 2001, Spec. Sess., LB 3, § 5; Laws 2005, LB 40, § 7; Laws 2011, LB388, § 14.

76-908 Documentary stamp tax; refund; procedure.

Any person paying the documentary stamp tax imposed by section 76-901 may claim a refund if the payment of such tax was (1) the result of a misunderstanding or honest mistake of the taxpayer, (2) the result of a clerical error on the part of the register of deeds or the taxpayer, or (3) invalid for any reason. Within two years after payment of such tax, the taxpayer shall file in the office of the register of deeds of the county in which the tax was paid a written claim on a form prescribed by the Tax Commissioner and evidence in support thereof, stating the reason for the claim. The register of deeds shall, within thirty days after such filing, make a recommendation of approval or denial and forward the recommendation together with a copy of the claim and evidence filed to the Tax Commissioner. Within thirty days after the forwarding of such recommendation the Tax Commissioner shall, upon consideration of the recom-

mendation of the register of deeds and the claim and evidence filed by the taxpayer, render his or her decision approving or rejecting the claim for a refund in whole or in part. A copy of the decision of the Tax Commissioner shall be mailed to the register of deeds and to the last-known address of the taxpayer within ten days after the decision is rendered. Upon approval by the Tax Commissioner of a refund for all or a portion of the documentary stamp tax paid, the register of deeds is authorized to make such refund from the currently collected documentary stamp tax funds presently in the office of the register of deeds. A taxpayer denied a refund under this section, in whole or in part, may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1981, LB 179, § 2; Laws 1988, LB 352, § 148; Laws 2012, LB727, § 27.
Operative date April 12, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 10
TRUST DEEDS

Section
76-1002. Transfers in trust; real property; purpose.
76-1004. Successor trustee; appointment by beneficiary; effect; substitution of trustee; recording; form.
76-1009. Sale of trust property; public auction; bids; postponement of sale; notice.

76-1002 Transfers in trust; real property; purpose.

(1) Transfers in trust of real property may be made to secure (a) existing debts or obligations created simultaneously with the execution of the trust deed, (b) future advances necessary to protect the security, (c) any future advances to be made at the option of the parties, or (d) the performance of an obligation of any other person named in the trust deed to a beneficiary.

(2) Future advances necessary to protect the security shall include, but not be limited to, advances for payment of real property taxes, special assessments, prior liens, hazard insurance premiums, maintenance charges imposed under a condominium declaration or other covenant, and costs of repair, maintenance, or improvements.

(3)(a) Except as provided in subdivision (b) of this subsection, all items identified in subsection (1) of this section are equally secured by the trust deed from the time of filing the trust deed as provided by law and have the same priority as the trust deed over the rights of all other persons who acquire any rights in or liens upon the trust property subsequent to the time the trust deed was filed.

(b)(i) The trustor or his or her successor in title may limit the amount of optional future advances secured by the trust deed under subdivision (1)(c) of this section by filing a notice for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated. A copy of such notice shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed. The amount of such secured optional

future advances shall be limited to not less than the amount actually advanced at the time of receipt of such notice by the beneficiary.

(ii) If any optional future advance is made by the beneficiary to the trustor or his or her successor in title after receiving written notice of the filing for record of any trust deed, mortgage, lien, or claim against such trust property, then the amount of such optional future advance shall be junior to such trust deed, mortgage, lien, or claim. The notice under this subdivision shall be sent by certified mail to the beneficiary at the address of the beneficiary set forth in the trust deed.

(iii) Subdivisions (b)(i) and (ii) of this subsection shall not limit or determine the priority of optional future advances as against construction liens governed by section 52-139.

(4) The reduction to zero or elimination of the obligation evidenced by any of the transfers in trust authorized by this section shall not invalidate the operation of this section as to any future advances unless a notice or release to the contrary is filed for record as provided by law. All right, title, interest, and claim in and to the trust property acquired by the trustor or his or her successors in interest subsequent to the execution of the trust deed shall inure to the trustee as security for the obligation or obligations for which the trust property is conveyed in like manner as if acquired before execution of the trust deed.

Source: Laws 1965, c. 451, § 2, p. 1424; Laws 1984, LB 679, § 17; Laws 1988, LB 984, § 1; Laws 1999, LB 277, § 1; Laws 2002, LB 876, § 80; Laws 2002, LB 957, § 31; Laws 2011, LB43, § 1.

76-1004 Successor trustee; appointment by beneficiary; effect; substitution of trustee; recording; form.

(1) The beneficiary may appoint a successor trustee at any time by filing for record in the office of the register of deeds of each county in which the trust property or some part thereof is situated a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the power, duties, authority, and title of the trustee named in the deed of trust and of any successor trustee.

(2) The substitution shall identify the trust deed by stating the names of the original parties thereto, the date of recordation, the full legal description of the realty affected, and the book and page or computer system reference where the trust deed is recorded, shall state the name of the new trustee, and shall be executed and acknowledged by all of the beneficiaries under the trust deed or their successors in interest.

(3) The recorded substitution shall also contain or have attached to it an affidavit that a copy of the substitution has, by regular United States mail with postage prepaid, been mailed to the last-known address of the trustee being replaced or an affidavit of personal service of a copy thereof or of publication of notice thereof, which notice shall be published one time in a newspaper having general circulation in any county in which the trust property or some part thereof is situated.

(4) Any affidavit contained in or attached to the substitution shall constitute prima facie evidence of the facts required to be stated and conclusive evidence

of such facts as to bona fide purchasers and encumbrancers for value of the trust property or of any beneficial interest in the trust deed.

(5) On and after April 3, 1997, no recorded substitution filed for record shall be required to contain or have attached to it an affidavit pursuant to subsection (3) of this section, and any recorded substitution filed for record without containing or having attached to it an affidavit pursuant to such subsection prior to April 3, 1997, shall not be deemed incomplete or defective because such affidavit was not contained therein or attached.

(6) On and after March 4, 2010, there shall be no requirement for a beneficiary, in connection with the recording of the substitution of trustee, to provide notice of the substitution by mail, personal service, publication, or in any other manner to the trustee being replaced, and any recorded substitution filed for record prior to March 4, 2010, without having provided such notice, shall not be deemed incomplete or defective because such notice was not provided.

(7) A substitution of trustee shall be sufficient if made in substantially the following form:

Substitution of Trustee

(insert name and address of new trustee)

is hereby appointed successor trustee under the trust deed executed by ..... as trustor, in which ..... is named beneficiary and ..... as trustee, and filed for record ....., 20...., and recorded in book ...., page .... (or computer system reference .....), Records of ..... County, Nebraska. The trust property affected is legally described as follows:

.....

.....

.....

.....

Signature .....

Source: Laws 1965, c. 451, § 4, p. 1424; Laws 1984, LB 679, § 18; Laws 1989, LB 334, § 1; Laws 1993, LB 547, § 1; Laws 1995, LB 288, § 2; Laws 1997, LB 284, § 1; Laws 2004, LB 813, § 28; Laws 2010, LB738, § 1.

76-1009 Sale of trust property; public auction; bids; postponement of sale; notice.

On the date and at the time and place designated in the notice of sale, the trustee shall sell the property at public auction to the highest bidder. The attorney for the trustee may conduct the sale. Any person, including the beneficiary, may bid at the sale. Every bid shall be deemed an irrevocable offer. If the purchaser refuses to pay the amount bid by him or her for the property struck off to him or her at the sale, the trustee may again sell the property at any time to the highest bidder, except that notice of the sale shall be given again in the same manner as the original notice of sale was required to be given. The party refusing to pay shall be liable for any loss occasioned thereby, and the trustee may also, in his or her discretion, thereafter reject any other bid of such person.

The person conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice thereof shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1965, c. 451, § 9, p. 1428; Laws 2004, LB 999, § 45; Laws 2010, LB732, § 4.

ARTICLE 12

RELOCATION ASSISTANCE

Section
76-1221. Displaced person, defined.
76-1228. Payment to displaced person; amount.

76-1221 Displaced person, defined.

(1) Displaced person means:

(a) Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a result of a written notice of the intent to acquire, the initiation of negotiations for, or the acquisition of such real property, in whole or in part, for a publicly financed project;

(b) Any person who, as a result of a publicly financed project, moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended, conducts a farm operation, or conducts a business, as a direct result of rehabilitation, demolition, or other displacing activity when such displacement is permanent; or

(c) Solely for purposes of sections 76-1228, 76-1229, and 76-1238, any person who moves from or moves his or her personal property from real property as a direct result of (i) written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation or (ii) the rehabilitation, demolition, or other displacing activity of other real property on which such person conducts a business or a farm operation, when such displacement is permanent.

(2) Displaced person does not include:

(a) A person who is determined by the displacing agency to be in unlawful occupancy of the real property prior to or after the initiation of negotiations for acquisition of the real property or a person who has been evicted for cause;

(b) In any case in which the displacing agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after the property has been acquired by the displacing agency or for a period subject to termination when the property is needed for the project;

(c) A person who moves before the initiation of negotiations for acquisition of the real property unless the agency determines that the person was displaced as a direct result of the program or project;

(d) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(e) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended;

(f) A person who is not required to relocate permanently as a direct result of a project;

(g) An owner-occupant who moves as a result of the rehabilitation or demolition of the real property or an owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property meets all the following conditions:

(i) No specific site or real property needs to be acquired, although the agency may limit its search for alternative sites to a general geographic area;

(ii) The real property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the real property within the area is to be acquired within specific time limits;

(iii) The agency will not acquire the real property if negotiations fail to result in an amicable agreement and the owner is so informed in writing; and

(iv) The agency informs the owner in writing of what it believes to be the market value of the real property.

Subdivision (g) of this subsection does not apply to any tenant who must move as a direct result of the acquisition, rehabilitation, or demolition of real property;

(h) An owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property is for a program or project undertaken by an agency or person that does not have authority to acquire real property by eminent domain, if such agency or person:

(i) Prior to making an offer for the real property, clearly advises the owner that it is unable to acquire the real property if negotiations fail to result in an agreement; and

(ii) Informs the owner in writing of what it believes to be the market value of the real property.

Subdivision (h) of this subsection does not apply to any tenant who must move as a direct result of the acquisition of real property;

(i) A person who the agency determines is not displaced as a direct result of a partial acquisition;

(j) A person who, after receiving a notice of the intent to acquire, the initiation of negotiations, or the acquisition of the real property, is notified in writing that he or she will not be displaced for a project;

(k) A person who retains the right of use and occupancy of the real property for life following its acquisition by the agency;

(l) Tenants required to move as a result of the sale of their dwelling to a person using downpayment assistance authorized by section 102 of the American Dream Downpayment Act, 42 U.S.C. 12821, as amended; or

(m) A person who has otherwise been determined to be ineligible for relocation assistance pursuant to rules and regulations adopted and promulgated according to law by the lead agency and consistent with 49 C.F.R. 24.208, as amended.

Source: Laws 1989, LB 254, § 8; Laws 2011, LB167, § 1.

76-1228 Payment to displaced person; amount.

(1) Whenever a program or project to be undertaken by a displacing agency will result in the displacement of any person, the head of the displacing agency shall provide for the payment to the displaced person of:

(a) Actual reasonable expenses in moving himself or herself and his or her family, business, farm operation, or other personal property;

(b) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency;

(c) Actual reasonable expenses in searching for a replacement business or farm; and

(d) Actual reasonable expenses necessary to reestablish at its new site a displaced farm, nonprofit organization, or small business as defined by criteria established by the lead agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended, but not to exceed ten thousand dollars.

(2) The lead agency may adopt and promulgate rules and regulations establishing a reasonable maximum payment under subdivision (1)(c) of this section which are consistent with regulations adopted by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended.

Source: Laws 1989, LB 254, § 15; Laws 2011, LB167, § 2.

ARTICLE 15

AGRICULTURAL LANDS, SPECIAL PROVISIONS

(b) TRUSTS HOLDING AGRICULTURAL LANDS

(d) REPORTS ON FARMING OR RANCHING

(b) TRUSTS HOLDING AGRICULTURAL LANDS

76-1507 Definitions, sections found.

For purposes of sections 76-1507 to 76-1516, unless the context otherwise requires, the definitions found in sections 76-1508 to 76-1514 shall be used.

Source: Laws 1981, LB 9, § 1; Laws 2011, LB160, § 1.

76-1516 Violations; penalty; injunction; Attorney General, county attorney, duties.

Any trust, other than a family trust, authorized trust, or testamentary trust, violating sections 76-1507 to 76-1516 shall upon conviction be punished by a fine of not more than fifty thousand dollars and shall divest itself of any land acquired in violation of sections 76-1507 to 76-1516 within one year after conviction. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The Attorney General or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of sections 76-1507 to 76-1516.

Source: Laws 1981, LB 9, § 10; Laws 2011, LB160, § 2.

76-1517 Repealed. Laws 2011, LB 160, § 5.

(d) REPORTS ON FARMING OR RANCHING

76-1521 Reports; form; contents; Secretary of State; duties.

(1) The report required by section 76-1520 shall be on a form provided by the Secretary of State. The Secretary of State may incorporate the form with other forms required to be filed by entities identified in subsection (1) of section 76-1520. If there has been no change in the information contained in the previous report filed by the reporting entity, the reporting entity may so indicate in a space provided on the reporting form for that purpose.

(2) The Secretary of State shall include a list of exemptions to the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska and a means by which persons filing the form may indicate, if applicable, which exemptions apply to the reporting entity. The reporting entity may include or attach a statement indicating the basis upon which the reporting entity claims exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska.

(3) The Secretary of State shall annually prepare a report indicating the total number of entities reporting under sections 76-1520 to 76-1524, the number of entities reporting as a corporation, as a limited partnership, as a limited liability partnership, as a limited liability company, and as a trust and the basis upon which the reporting entities claim exemption from the prohibitions contained in Article XII, section 8, of the Constitution of Nebraska. The Secretary of State shall deliver the report electronically to the Clerk of the Legislature on or before January 1 each year.

Source: Laws 1998, LB 1193, § 2; Laws 2012, LB782, § 134.
Operative date July 19, 2012.

76-1523 Corporate trustee; fine; when.

(1) Any corporate trustee failing to report the information required by section 76-1520 or filing false information shall be punished by a fine of not more than five hundred dollars.

(2) Any fines received 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.

Source: Laws 1998, LB 1193, § 4; Laws 2011, LB160, § 3.

ARTICLE 22
REAL PROPERTY APPRAISER ACT

Section

76-2202 Legislative findings.

The Legislature finds that as a result of the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, as the act existed on January 1, 2012, and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2012, Nebraska's laws providing for regulation of real property appraisers require restructuring in order to comply with such acts. Compliance with the acts is necessary to ensure an adequate number of appraisers in Nebraska to conduct appraisals of real estate involved in federally related transactions as defined in such acts.

Source: Laws 1990, LB 1153, § 2; Laws 1991, LB 203, § 7; Laws 1994, LB 1107, § 7; Laws 2006, LB 778, § 14; Laws 2010, LB931, § 1; Laws 2012, LB714, § 1.
Effective date March 8, 2012.

76-2206 Appraisal report, defined.

Appraisal report means any communication, written, oral, or by electronic means, of an appraisal. The testimony of a real property appraiser dealing with

the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is deemed to be an oral appraisal report.

Source: Laws 1990, LB 1153, § 6; Laws 2006, LB 778, § 19; Laws 2010, LB931, § 2.

76-2207 Repealed. Laws 2010, LB 931, § 30.

76-2209 Repealed. Laws 2010, LB 931, § 30.

76-2211 Repealed. Laws 2010, LB 931, § 30.

76-2213 Licensed residential real property appraiser, defined.

Licensed residential real property appraiser means a person who holds a valid credential as a licensed residential real property appraiser issued under the Real Property Appraiser Act. Licensed residential real property appraiser includes persons defined as licensed real property appraisers prior to April 15, 2010.

Source: Laws 1990, LB 1153, § 13; Laws 1991, LB 203, § 16; Laws 2006, LB 778, § 30; Laws 2007, LB186, § 4; Laws 2010, LB931, § 3.

76-2213.01 Uniform Standards of Professional Appraisal Practice, defined.

Uniform Standards of Professional Appraisal Practice means the standards promulgated by the Appraisal Foundation as the standards existed on January 1, 2012.

Source: Laws 2001, LB 162, § 11; R.S.1943, (2003), § 76-2218.01; Laws 2006, LB 778, § 31; Laws 2007, LB186, § 5; Laws 2008, LB1011, § 2; Laws 2010, LB931, § 4; Laws 2012, LB714, § 2.
Effective date March 8, 2012.

76-2216 Real property appraiser, defined.

Real property appraiser means a person (1) who engages in real property appraisal activity, (2) who advertises or holds himself or herself out to the general public as a real property appraiser, or (3) who offers, attempts, or agrees to perform or performs real property appraisal activity. Real property appraiser includes persons defined as real estate appraisers prior to July 14, 2006.

Source: Laws 1990, LB 1153, § 16; Laws 2001, LB 162, § 8; Laws 2006, LB 778, § 34; Laws 2010, LB931, § 5.

76-2221 Act; exemptions.

The Real Property Appraiser Act shall not apply to:

(1) Any real property appraiser who is a salaried employee of (a) the federal government, (b) any agency of the state government or a political subdivision which appraises real estate, (c) any insurance company authorized to do business in this state, or (d) any bank, savings bank, savings and loan association, building and loan association, credit union, or small loan company licensed by the state or supervised or regulated by or through federal enactments covering financial institutions, except that any employee of the entities listed in subdivisions (a) through (d) of this subdivision who signs an appraisal report as a credentialed real property appraiser shall be subject to the act and

the Uniform Standards of Professional Appraisal Practice. Any salaried employee of the entities listed in subdivisions (a) through (d) of this subdivision who does not sign an appraisal report as a credentialed real property appraiser shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act;

(2) A person referred to in subsection (1) of section 81-885.16;

(3) Any person who provides assistance (a) in obtaining the data upon which an appraisal is based, (b) in the physical preparation of an appraisal report, such as taking photographs, preparing charts, maps, or graphs, or typing or printing the report, or (c) that does not directly involve the exercise of judgment in arriving at the analyses, opinions, or conclusions concerning real estate or real property set forth in the appraisal report;

(4) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is for the purpose of real estate taxation, or any other person who renders such an estimate or opinion of value when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(5) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of real estate or any interest in real estate or damages thereto when such estimate or opinion is offered as testimony in any condemnation proceeding, or any other person who renders such an estimate or opinion when that estimate or opinion requires a specialized knowledge that a real property appraiser would not have, except that a real property appraiser or a person licensed under the Nebraska Real Estate License Act is not exempt under this subdivision;

(6) Any owner of real estate, employee of the owner, or attorney licensed to practice law in the State of Nebraska representing the owner who renders an estimate or opinion of value of the real estate or any interest in the real estate when such estimate or opinion is offered in connection with a legal matter involving real property; or

(7) Any person appointed by a county board of equalization to act as a referee pursuant to section 77-1502.01, except that any person who also practices as an independent real property appraiser for others shall be subject to the Real Property Appraiser Act and shall be credentialed prior to engaging in such other appraising. Any appraiser appointed to act as a referee pursuant to section 77-1502.01 and who prepares an appraisal report for the county board of equalization shall not sign such appraisal report as a credentialed appraiser and shall include the following disclosure prominently with such report: This opinion of value may not meet the minimum standards contained in the Uniform Standards of Professional Appraisal Practice and is not governed by the Real Property Appraiser Act.

Source: Laws 1990, LB 1153, § 21; Laws 1991, LB 203, § 22; Laws 1994, LB 1107, § 17; Laws 1999, LB 618, § 5; Laws 2001, LB 162,

§ 13; Laws 2003, LB 131, § 35; Laws 2005, LB 676, § 1; Laws 2006, LB 778, § 41; Laws 2008, LB1011, § 4; Laws 2010, LB931, § 6.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2223 Real Property Appraiser Board; powers and duties; rules and regulations.

(1) The Real Property Appraiser Board shall administer and enforce the Real Property Appraiser Act and may:

(a) Receive applications for credentialing under the act, process such applications and regulate the issuance of credentials to qualified applicants, and maintain a directory of the names and addresses of persons who receive credentials under the act;

(b) Hold meetings, public hearings, informal conferences, and administrative hearings, prepare or cause to be prepared specifications for all appraiser classifications, solicit bids and enter into contracts with one or more testing services, and administer or contract for the administration of examinations approved by the Appraiser Qualifications Board in such places and at such times as deemed appropriate;

(c) Develop the specifications for credentialing examinations, including timing, location, and security necessary to maintain the integrity of the examinations;

(d) Review the procedures and criteria of a contracted testing service to ensure that the testing meets with the approval of the Appraiser Qualifications Board;

(e) Collect all fees required or permitted by the act. The Real Property Appraiser Board shall remit all such receipts to the State Treasurer for credit to the Real Property Appraiser Fund. In addition, the board may collect and transmit to the appropriate federal authority any fees established under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2012;

(f) Establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the Real Property Appraiser Act;

(g) Issue subpoenas to compel the attendance of witnesses and the production of books, documents, records, and other papers, administer oaths, and take testimony and require submission of and receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the Real Property Appraiser Board may make application to the district court of Lancaster County to require the attendance and testimony of witnesses and the production of documentary evidence. If any person fails to obey an order of the court, he or she may be punished by the court as for contempt thereof;

(h) Deny, censure, suspend, or revoke an application or credential if it finds that the applicant or credential holder has committed any of the acts or omissions set forth in section 76-2238 or otherwise violated the act. Any disciplinary matter may be resolved through informal disposition pursuant to section 84-913;

(i) Take appropriate disciplinary action against a credential holder if the Real Property Appraiser Board determines that a credential holder has violated any

provision of the act or the Uniform Standards of Professional Appraisal Practice;

(j) Enter into consent decrees and issue cease and desist orders upon a determination that a violation of the act has occurred;

(k) Promote research and conduct studies relating to the profession of real property appraisal, sponsor real property appraisal educational activities, and incur, collect fees for, and pay the necessary expenses in connection with activities which shall be open to all credential holders;

(l) Establish and adopt minimum standards for appraisals as required under section 76-2237;

(m) Adopt and promulgate rules and regulations to carry out the act. The rules and regulations may include provisions establishing minimum standards for schools, courses, and instructors. The rules and regulations shall be adopted pursuant to the Administrative Procedure Act; and

(n) Do all other things necessary to carry out the Real Property Appraiser Act.

(2) The Real Property Appraiser Board shall also administer and enforce the Nebraska Appraisal Management Company Registration Act.

Source: Laws 1990, LB 1153, § 23; Laws 1991, LB 203, § 24; Laws 1994, LB 1107, § 19; Laws 2001, LB 162, § 15; Laws 2006, LB 778, § 43; Laws 2007, LB186, § 8; Laws 2008, LB1011, § 6; Laws 2010, LB931, § 7; Laws 2011, LB410, § 21; Laws 2012, LB714, § 3.
Effective date March 8, 2012.

Cross References

Administrative Procedure Act, see section 84-920.
Nebraska Appraisal Management Company Registration Act, see section 76-3201.

76-2225 Civil and criminal immunity.

The members of the board and the board's employees or persons under contract with the board shall be immune from any civil action or criminal prosecution for initiating or assisting in any lawful investigation of the actions of or any disciplinary proceeding concerning a credential holder pursuant to the Real Property Appraiser Act if such action is taken without malicious intent and in the reasonable belief that it was taken pursuant to the powers vested in the members of the board or such employees or persons.

Source: Laws 1990, LB 1153, § 25; Laws 1991, LB 203, § 26; Laws 1994, LB 1107, § 21; Laws 2001, LB 162, § 16; Laws 2006, LB 778, § 45; Laws 2010, LB931, § 8.

76-2226 Real Property Appraiser Fund; created; use; investment.

There is hereby created the Real Property Appraiser Fund. The board may use the fund for the administration and enforcement of the Real Property Appraiser Act and to meet the necessary expenditures of the board. The fund shall include a sufficient cash fund balance as determined by the board. The expense of administering and enforcing the act shall not exceed the money collected by the board under the act. Transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Real Property Appraiser 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 1990, LB 1153, § 26; Laws 1991, LB 203, § 27; Laws 1994, LB 1066, § 78; Laws 1994, LB 1107, § 22; Laws 2001, LB 162, § 17; Laws 2006, LB 778, § 46; Laws 2007, LB186, § 9; Laws 2009, First Spec. Sess., LB3, § 53.

Cross References

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

76-2228 Appraisers; classification.

There shall be five classes of credentials issued to real property appraisers as follows:

(1) Trainee real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2228.01;

(2) Registered real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2229.01;

(3) Licensed residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2230;

(4) Certified residential real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2231.01; and

(5) Certified general real property appraiser, which classification shall consist of those persons who meet the requirements set forth in section 76-2232.

Source: Laws 1990, LB 1153, § 28; Laws 1991, LB 203, § 29; Laws 1994, LB 1107, § 24; Laws 2001, LB 162, § 19; Laws 2006, LB 778, § 48; Laws 2007, LB186, § 11; Laws 2008, LB1011, § 7; Laws 2010, LB931, § 9.

76-2228.01 Trainee real property appraiser; applicant; qualifications; upgraded credential; requirements.

(1) To qualify for a credential as a trainee real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than seventy-five class hours in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary

school, or such other educational provider as may be approved by the Real Property Appraiser Board and shall be, at a minimum, fifteen class hours in length. Each course shall include an examination pertinent to the material presented. The applicant shall have completed the class hours within the five-year period immediately preceding submission of the application and shall have completed the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course within the two-year period immediately preceding submission of the application;

(d) Be subject to direct supervision by a supervising appraiser or appraisers who are certified residential real property appraisers or certified general real property appraisers in good standing. The supervising appraiser shall be responsible for the training and direct supervision of the trainee by accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice, reviewing the trainee appraisal reports, and personally inspecting each appraised property with the trainee as is consistent with his or her scope of practice until the supervising appraiser determines the trainee is competent in accordance with the competency rule of the Uniform Standards of Professional Appraisal Practice. The trainee shall maintain an appraisal log for each supervising appraiser in accordance with standards set by rule and regulation of the board; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) To qualify for an upgraded credential, a trainee real property appraiser shall satisfy at least one of the appropriate requirements as follows:

(a) For a credential as a licensed residential real property appraiser, he or she shall (i) complete seventy-five additional hours of designated core curriculum education and (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2230;

(b) For a credential as a certified residential real property appraiser, he or she shall (i) complete one hundred twenty-five additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2231.01, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2231.01; or

(c) For a credential as a certified general real property appraiser, he or she shall (i) complete two hundred twenty-five additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2232, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2232.

(3) If a trainee real property appraiser remains in the classification in excess of two years, the trainee shall be required in the third and successive years to successfully complete no fewer than fourteen hours of instruction in courses or seminars for each year of the period preceding the renewal and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course, as the course existed on January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board, at a minimum of every two years. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commis-

sion, a proprietary school, or such other educational provider as may be approved by the board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(4) The application for a credential as a trainee real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 2006, LB 778, § 49; Laws 2007, LB186, § 12; Laws 2010, LB931, § 10; Laws 2012, LB714, § 4.
Effective date March 8, 2012.

76-2229 Use of titles; restrictions.

(1) No person other than a registered real property appraiser shall assume or use the title registered real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a registered real property appraiser by this state. No person other than a licensed residential real property appraiser shall assume or use the title licensed residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a licensed residential real property appraiser by this state. No person other than a certified residential real property appraiser shall assume or use the title certified residential real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified residential real property appraiser by this state. No person other than a certified general real property appraiser shall assume or use the title certified general real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a certified general real property appraiser by this state. No person other than a trainee real property appraiser shall assume or use the title trainee real property appraiser or any title, designation, or abbreviation likely to create the impression of credentialing as a trainee real property appraiser by this state. A real property appraiser shall state whether he or she is a registered real property appraiser, licensed residential real property appraiser, certified residential real property appraiser, certified general real property appraiser, or trainee real property appraiser whenever he or she identifies himself or herself as a real property appraiser, including on all reports which are signed individually or as cosigner.

(2) The terms registered real property appraiser, licensed residential real property appraiser, certified residential real property appraiser, certified general real property appraiser, and trainee real property appraiser may only be used to refer to a person who is credentialed as such under the Real Property Appraiser Act and may not be used following or immediately in connection with the name or signature of a corporation, partnership, limited liability company, firm, or group or in such manner that it might be interpreted as referring to a corporation, partnership, limited liability company, firm, or group or to anyone other than the credential holder. This requirement shall not be construed to prevent a credential holder from signing an appraisal report on behalf of a corporation, partnership, limited liability company, firm, or group if it is clear that only the individual holds the credential and that the corporation, partnership, limited liability company, firm, or group does not.

Source: Laws 1990, LB 1153, § 29; Laws 1991, LB 203, § 30; Laws 1993, LB 121, § 491; Laws 1994, LB 1107, § 25; Laws 2001, LB 162, § 20; Laws 2006, LB 778, § 50; Laws 2007, LB186, § 13; Laws 2008, LB1011, § 8; Laws 2010, LB931, § 11.

76-2229.01 Credential as a registered real property appraiser; applicant; qualifications; upgraded credential; requirements.

(1) To qualify for a credential as a registered real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than ninety class hours in board-approved courses of study which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, or such other educational provider as may be approved by the Real Property Appraiser Board and shall be, at a minimum, fifteen class hours in length. Each course of study shall include an examination pertinent to the material presented;

(d) Within the twelve months following approval of the applicant by the Real Property Appraiser Board, pass an examination approved by the Appraiser Qualifications Board as of January 1, 2012, and administered by a contracted testing service which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the basic principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(e) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) To qualify for an upgraded credential, a registered real property appraiser shall satisfy at least one of the appropriate requirements as follows:

(a) For a credential as a licensed residential real property appraiser, he or she shall (i) complete sixty additional hours of designated core curriculum

education and (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2230;

(b) For a credential as a certified residential real property appraiser, he or she shall (i) complete one hundred ten additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2231.01, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2231.01; or

(c) For a credential as a certified general real property appraiser, he or she shall (i) complete two hundred twenty-five additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2232, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2232.

(3) The application for registration shall include the applicant's social security number and such other information as the Real Property Appraiser Board may require.

(4) The scope of practice of a registered real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units having a transaction value of less than two hundred fifty thousand dollars.

(5) An applicant shall receive no more than three successive annual renewals for credentialing as a registered real property appraiser. Notwithstanding any other provision of section 76-2228 to the contrary, the board shall not approve any initial application for credentialing as a registered real property appraiser on and after January 1, 2012.

Source: Laws 1991, LB 203, § 31; Laws 1994, LB 1107, § 26; Laws 1997, LB 752, § 204; Laws 2001, LB 162, § 21; Laws 2006, LB 778, § 51; Laws 2007, LB186, § 14; Laws 2008, LB1011, § 9; Laws 2010, LB931, § 12; Laws 2012, LB714, § 5.
Effective date March 8, 2012.

76-2230 Credential as a licensed residential real property appraiser; applicant; qualifications; upgraded credential; requirements.

(1) To qualify for a credential as a licensed residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b) Hold a high school diploma or a certificate of high school equivalency or have education acceptable to the board;

(c) Have successfully completed no fewer than one hundred fifty class hours, which may include the class hours set forth in section 76-2229.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary

school, or such other educational provider as may be approved by the Real Property Appraiser Board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twelve months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twelve months following approval of the applicant by the board, pass an examination approved by the Appraiser Qualifications Board as of January 1, 2012, and administered by a contracted testing service which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) To qualify for an upgraded credential, a licensed residential real property appraiser shall satisfy at least one of the appropriate requirements as follows:

(a) For a credential as a certified residential real property appraiser, he or she shall (i) complete fifty additional hours of designated core curriculum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2231.01, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2231.01; or

(b) For a credential as a certified general real property appraiser, he or she shall (i) complete one hundred fifty additional hours of designated core curricu-

lum education, (ii) meet the experience requirements pursuant to subdivision (1)(d) of section 76-2232, and (iii) meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2232.

(3) The scope of practice for a licensed residential real property appraiser shall be limited to the appraisal of noncomplex property having one, two, three, or four residential units with a transaction value of less than one million dollars and complex property having one, two, three, or four residential units with a transaction value of less than two hundred fifty thousand dollars.

(4) If an applicant is applying for renewal of a credential as a licensed residential real property appraiser, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only when the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the Real Property Appraiser Board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(5) The application for the credential as a licensed residential real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 30; Laws 1991, LB 203, § 33; Laws 1994, LB 1107, § 28; Laws 1997, LB 29, § 1; Laws 1997, LB 752, § 205; Laws 2001, LB 162, § 22; Laws 2006, LB 778, § 52; Laws 2007, LB186, § 15; Laws 2008, LB1011, § 10; Laws 2010, LB931, § 13; Laws 2012, LB714, § 6.
Effective date March 8, 2012.

76-2231.01 Credential as a certified residential real property appraiser; applicant; qualifications; upgraded credential; requirements.

(1) To qualify for a credential as a certified residential real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold an associate degree, or higher, from an accredited, degree-awarding university, college, or community college; or

(ii) Have successfully completed, as verified by the board, twenty-one semester hours of coursework or its equivalent from an accredited, degree-awarding university, college, or community college that shall have included English composition; principles of macroeconomics or microeconomics; finance; alge-

bra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; and business or real estate law;

(c) Have successfully completed no fewer than two hundred class hours, which may include the class hours set forth in sections 76-2229.01 and 76-2230, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the Real Property Appraiser Board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than two thousand five hundred hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than twenty-four months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twelve months following approval of the applicant by the board, pass an examination approved by the Appraiser Qualifications Board as of January 1, 2012, and administered by a contracted testing service which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) To qualify for an upgraded credential as a certified general real property appraiser, a certified residential real property appraiser shall satisfy the following requirements:

(a) Complete one hundred additional hours of designated core curriculum education;

(b) Meet the experience requirements pursuant to subdivision (1)(d) of section 76-2232; and

(c) Meet the postsecondary educational requirements pursuant to subdivision (1)(b)(i) or (ii) of section 76-2232.

(3) The scope of practice of a certified residential real property appraiser shall be limited to the appraisal of property having one, two, three, or four residential units without regard to transaction value or complexity.

(4) If an applicant is applying for renewal of a credential as a certified residential real property appraiser, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the Real Property Appraiser Board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(5) The application for a credential as a certified residential real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1994, LB 1107, § 29; Laws 1997, LB 29, § 2; Laws 1997, LB 752, § 206; Laws 2001, LB 162, § 23; Laws 2006, LB 778, § 53; Laws 2007, LB186, § 16; Laws 2008, LB1011, § 11; Laws 2010, LB931, § 14; Laws 2012, LB714, § 7.
Effective date March 8, 2012.

76-2232 Credential as a certified general real property appraiser; applicant; qualifications.

(1) To qualify for a credential as a certified general real property appraiser, an applicant shall:

(a) Be at least nineteen years of age;

(b)(i) Hold a bachelor's degree, or higher, from an accredited, degree-awarding university or college; or

(ii) Have successfully completed, as verified by the board, thirty semester hours of coursework or its equivalent from an accredited, degree-awarding university or college that shall have included English composition; macroeconomics; microeconomics; finance; algebra, geometry, or higher mathematics; statistics; introduction to computers, including word processing and spread sheets; business or real estate law; and two elective courses in accounting, geography, agricultural economics, business management, or real estate;

(c) Have successfully completed no fewer than three hundred class hours, which may include the class hours set forth in sections 76-2229.01, 76-2230, and 76-2231.01, in board-approved courses of study which relate to appraisal and which include completion of the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board. The fifteen-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the Real Property Appraiser Board and shall be, at a minimum, fifteen class hours in length. Each course shall include a closed-book examination pertinent to the material presented;

(d) Have no fewer than three thousand hours of experience in any combination of the following: Fee and staff appraisal; ad valorem tax appraisal; condemnation appraisal; technical review appraisal; appraisal analysis; real estate consulting; highest-and-best-use analysis; and feasibility analysis or study. The required experience shall not be limited to the listed items but shall be acceptable to the board and subject to review and determination as to conformity with the Uniform Standards of Professional Appraisal Practice. The experience shall have occurred during a period of no fewer than thirty months. If requested, evidence acceptable to the board concerning the experience shall be presented by the applicant in the form of written reports or file memoranda;

(e) Within the twelve months following approval of the applicant by the board, pass an examination approved by the Appraiser Qualifications Board as of January 1, 2012, and administered by a contracted testing service which demonstrates that the applicant has:

(i) Knowledge of technical terms commonly used in or related to appraisal and the writing of appraisal reports;

(ii) Knowledge of depreciation theories, cost estimating, methods of capitalization, market data analysis, appraisal mathematics, and economic concepts applicable to real estate;

(iii) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and processing of data involved in the valuation of real property;

(iv) Knowledge of the appraisal of various types of and interests in real property for various functions and purposes;

(v) An understanding of basic real estate law;

(vi) An understanding of the types of misconduct for which disciplinary proceedings may be initiated;

(vii) An understanding of the Uniform Standards of Professional Appraisal Practice;

(viii) An understanding of the recognized methods and techniques necessary for the development and communication of a credible appraisal; and

(ix) Knowledge of such other principles and procedures as may be appropriate to produce a credible appraisal; and

(f) Not have been convicted of any felony or, if so convicted, have had his or her civil rights restored.

(2) If an applicant is applying for renewal of a credential as a certified general real property appraiser, the applicant shall have successfully completed no fewer than fourteen hours of instruction in courses or seminars for each year of the two-year continuing education period during which the application is submitted and shall have completed the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board, at a minimum of every two years. The seven-hour course shall be taught by a Uniform Standards of Professional Appraisal Practice Instructor who is certified by the Appraiser Qualifications Board and who is a state-certified appraiser in good standing. Credit toward a classroom hour requirement may be granted only if the length of the educational offering is at least two hours. The courses of study shall be conducted by an accredited, degree-awarding university, college, or community college, an appraisal society, institute, or association, a state or federal agency or commission, a proprietary school, or such other educational provider as may be approved by the Real Property Appraiser Board. Credit may be granted for educational offerings and for participation other than as a student as approved by the board.

(3) The application for a credential as a certified general real property appraiser shall include the applicant's social security number and such other information as the board may require.

Source: Laws 1990, LB 1153, § 32; Laws 1991, LB 203, § 34; Laws 1994, LB 1107, § 30; Laws 1997, LB 29, § 3; Laws 1997, LB 752, § 207; Laws 2001, LB 162, § 24; Laws 2006, LB 778, § 54; Laws 2007, LB186, § 17; Laws 2008, LB1011, § 12; Laws 2010, LB931, § 15; Laws 2012, LB714, § 8.
Effective date March 8, 2012.

76-2233 Nonresident; credential; issuance; when.

(1) A nonresident of this state may obtain a credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser by (a) complying with all of the

provisions of the Real Property Appraiser Act relating to the appropriate classification of credentialing, (b) submitting an application on a form approved by the board, and (c) submitting an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state.

(2) If, in the determination of the board, another state or territory or the District of Columbia has substantially equivalent requirements to the requirements of this state, an applicant who is a resident of that state, territory, or district and is currently credentialed to appraise real estate and real property under the laws of that state, territory, or district may through reciprocity become credentialed under the act. To qualify for reciprocal credentialing, the applicant shall:

(a) Submit evidence that he or she is currently a resident of the state, territory, or District of Columbia in which he or she is credentialed to appraise real estate and real property and that such credential is in good standing, along with his or her social security number and such other information as the board may require;

(b) Certify that disciplinary proceedings are not pending against him or her or state the nature of any pending disciplinary proceedings;

(c) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities as a real property appraiser in this state;

(d) Pay fees as established in section 76-2241; and

(e) Comply with such other terms and conditions as may be determined by the board.

Source: Laws 1990, LB 1153, § 33; Laws 1991, LB 203, § 35; Laws 1994, LB 1107, § 31; Laws 1997, LB 752, § 208; Laws 2001, LB 162, § 25; Laws 2006, LB 778, § 55; Laws 2007, LB186, § 18; Laws 2008, LB1011, § 13; Laws 2010, LB931, § 16.

76-2233.01 Nonresident; temporary credential; issuance; when.

A nonresident may obtain a temporary credential as a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for the issuance of a temporary credential, an applicant shall:

(1) Submit an application on a form approved by the board;

(2) Submit an irrevocable consent that service of process upon him or her may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant in an action against the applicant in a court of this state arising out of the applicant's activities in this state;

(3) Submit evidence that he or she is credentialed as a licensed or certified appraiser of real estate and real property and is currently in good standing in

the jurisdiction of residency, along with his or her social security number and such other information as the board may require;

(4) Certify that disciplinary proceedings are not pending against the applicant in the applicant's state of domicile or in any other jurisdiction or state the nature of any pending disciplinary proceedings; and

(5) Pay an application fee in an amount established by the board.

A temporary credential issued under this section shall be expressly limited to a grant of authority to perform the appraisal work required by the contract for appraisal services in this state. Each temporary credential shall expire upon the completion of the appraisal work required by the contract for appraisal services or upon the expiration of a period of six months from the date of issuance, whichever occurs first. A temporary credential may be renewed for one additional six-month period.

Source: Laws 1991, LB 203, § 36; Laws 1994, LB 1107, § 32; Laws 1997, LB 752, § 209; Laws 2001, LB 162, § 26; Laws 2006, LB 778, § 56; Laws 2007, LB186, § 19; Laws 2010, LB931, § 17.

76-2233.02 Credential; expiration; renewal.

A credential issued under the Real Property Appraiser Act other than a temporary credential shall remain in effect until December 31 of the designated year unless surrendered, revoked, suspended, or canceled prior to such date. To renew a valid credential, the credential holder shall file an application on a form approved by the board and pay the prescribed renewal fee to the board not later than November 30 of the designated year. In every second year of renewal, as specified in section 76-2236, evidence of completion of continuing education requirements shall accompany renewal application or be on file with the board prior to renewal.

If a credential holder fails to apply and meet the requirements for renewal by November 30 of the designated year, such credential holder may obtain a renewal of such credential by satisfying all of the requirements for renewal and paying a late renewal fee if such late renewal takes place prior to July 1 of the following year. The board may refuse to renew any credential if the credential holder has continued to perform real property appraisal activities or other related activities in this state following the expiration of his or her credential.

Source: Laws 1991, LB 203, § 37; Laws 1994, LB 1107, § 33; Laws 2001, LB 162, § 27; Laws 2006, LB 778, § 57; Laws 2010, LB931, § 18.

76-2236 Continuing education; requirements.

Every credential holder shall furnish evidence to the board that he or she has satisfactorily completed no fewer than twenty-eight hours of approved continuing education activities in each two-year continuing education period. Hours of satisfactorily completed approved continuing education activities cannot be carried over from one two-year continuing education period to another. As prescribed by rule or regulation of the board and at least once every two years, the seven-hour National Uniform Standards of Professional Appraisal Practice Update Course as approved by the Appraiser Qualifications Board as of January 1, 2012, or the equivalent of the course as approved by the Real Property Appraiser Board, shall be included in the continuing education requirement of each credential holder. As prescribed by rule or regulation of the Real Property

Appraiser Board and at least once every four years, a seven-hour report writing update course shall be included in the continuing education requirement of each credential holder. The Real Property Appraiser Board shall approve continuing education activities which it determines would protect the public by improving the competency of credential holders. Evidence of completion of such continuing education activities for the two-year continuing education period may be submitted to the board as each activity is completed. A person who holds a temporary or reciprocal credential shall not have to meet any continuing education requirements in this state.

Source: Laws 1990, LB 1153, § 36; Laws 1991, LB 203, § 40; Laws 1994, LB 1107, § 37; Laws 1997, LB 29, § 4; Laws 2001, LB 162, § 28; Laws 2006, LB 778, § 58; Laws 2007, LB186, § 20; Laws 2010, LB931, § 19; Laws 2012, LB714, § 9.
Effective date March 8, 2012.

76-2237 Uniform Standards of Professional Appraisal Practice; rules and regulations.

Each credential holder shall comply with the Uniform Standards of Professional Appraisal Practice. The board shall adopt and promulgate rules and regulations which conform to the Uniform Standards of Professional Appraisal Practice. The board shall review such rules and regulations annually. A copy of each such rule or regulation shall be transmitted electronically to each credential holder and shall be made available on the board's web site.

Source: Laws 1990, LB 1153, § 37; Laws 1991, LB 203, § 41; Laws 1994, LB 1107, § 38; Laws 2001, LB 162, § 29; Laws 2006, LB 778, § 59; Laws 2007, LB186, § 21; Laws 2010, LB931, § 20.

76-2238 Disciplinary action; denial of application; grounds.

The following acts and omissions shall be considered grounds for disciplinary action or denial of an application by the board:

(1) Failing to meet the minimum qualifications for credentialing established by or pursuant to the Real Property Appraiser Act;

(2) Procuring or attempting to procure a credential under the act by knowingly making a false statement, submitting false information, or making a material misrepresentation in an application filed with the board or procuring or attempting to procure a credential through fraud or misrepresentation;

(3) Paying money or other valuable consideration other than the fees provided for by the act to any member or employee of the board to procure a credential;

(4) An act or omission involving real estate or appraisal practice which constitutes dishonesty, fraud, or misrepresentation with or without the intent to substantially benefit the credential holder or another person or with the intent to substantially injure another person;

(5) Entry of a final civil or criminal judgment against a credential holder on grounds of fraud, misrepresentation, or deceit involving real estate or in the making of an appraisal;

(6) Conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is related to the qualifications, functions, or duties of a real property appraiser;

(7) Engaging in the business of real property appraising under an assumed or fictitious name;

(8) Paying a finder's fee or a referral fee to any person in connection with the appraisal of real estate or real property, except that an intracompany payment for business development shall not be considered to be unethical or a violation of this subdivision;

(9) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(10) Any violation of the act or any rule or regulation adopted and promulgated pursuant to the act;

(11) Violation of the confidential nature of any information to which a credential holder gained access through employment for evaluation assignments or valuation assignments;

(12) Acceptance of a fee for performing a real property appraisal valuation assignment or evaluation assignment when the fee is or was contingent upon (a) the real property appraiser reporting a predetermined analysis, opinion, or conclusion, (b) the analysis, opinion, conclusion, or valuation reached, or (c) the consequences resulting from the appraisal;

(13) Failure or refusal to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(14) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal, including failure to follow the standards and ethical rules adopted by the board;

(15) Failure to maintain, or to make available for inspection and copying, records required by the board;

(16) Demonstrating negligence, incompetence, or unworthiness to act as an appraiser, whether of the same or of a different character as otherwise specified in this section;

(17) Suspension or revocation of an appraisal credential or a license in another regulated occupation, trade, or profession in this or any other jurisdiction;

(18) Failure to comply with terms of a consent agreement or settlement agreement;

(19) Failure to submit or produce books, records, documents, work files, appraisal reports, or other materials requested by the board concerning any matter under investigation;

(20) Failure of an educational provider to produce records, documents, reports, or other materials, including, but not limited to, required student attendance reports, to the board;

(21) Presentation to the board of any check which is returned to the State Treasurer unpaid, whether payment of fee is for an initial or renewal credential or for examination; and

(22) Failure to pass the examination.

Source: Laws 1990, LB 1153, § 38; Laws 1991, LB 203, § 42; Laws 1994, LB 1107, § 39; Laws 2001, LB 162, § 30; Laws 2006, LB 778, § 60; Laws 2010, LB931, § 21.

76-2240 Complaints; hearing; decision; order; appeal.

(1) The administrative hearing on the allegations in the complaint filed pursuant to section 76-2239 shall be heard by a hearing officer at the time and place prescribed by the board and in accordance with the Administrative Procedure Act. If, at the conclusion of the hearing, the hearing officer determines that the credential holder is guilty of the violation, the board shall take such disciplinary action as the board deems appropriate. Disciplinary actions which may be taken shall include, but not be limited to, revocation, suspension, probation, admonishment, letter of reprimand, and formal censure, with publication, of the credential holder and may or may not include an education requirement. Costs incurred for an administrative hearing, including fees of counsel, the hearing officer, court reporters, investigators, and witnesses, shall be taxed as costs in such action as the board may direct.

(2) The decision and order of the board shall be final. Any decision or order of the board may be appealed. The appeal shall be on questions of law only and otherwise shall be in accordance with the Administrative Procedure Act.

Source: Laws 1990, LB 1153, § 40; Laws 1991, LB 203, § 44; Laws 1994, LB 1107, § 41; Laws 2001, LB 162, § 32; Laws 2010, LB931, § 22.

Cross References

Administrative Procedure Act, see section 84-920.

76-2241 Fees.

The board shall charge and collect appropriate fees for its services under the Real Property Appraiser Act as follows:

(1) An application fee of one hundred fifty dollars;

(2) An examination fee of no more than three hundred dollars. The board may direct applicants to pay the fee directly to a third party who has contracted to administer the examination;

(3) An initial and renewal credentialing fee, other than temporary credentialing, of no more than three hundred dollars;

(4) A late renewal fee of twenty-five dollars for each month or portion of a month the fee is late;

(5) A temporary credential application fee for a licensed residential real property appraiser, a certified residential real property appraiser, or a certified general real property appraiser of no more than one hundred dollars; and

(6) A pocket card fee of no more than fifty dollars for a licensed residential real property appraiser, certified residential real property appraiser, or certified general real property appraiser holding a temporary credential under the act.

All fees for credentialing through reciprocity shall be the same as those paid by others pursuant to this section.

In addition to the fees set forth in this section, the board may collect and transmit to the appropriate federal authority any fees established under the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2012. The board may establish such fees as it deems appropriate for special examinations and other services provided by the board. All fees and other revenue collected pursuant to the Real

Property Appraiser Act shall be remitted by the board to the State Treasurer for credit to the Real Property Appraiser Fund.

Source: Laws 1990, LB 1153, § 41; Laws 1991, LB 203, § 45; Laws 1994, LB 1107, § 42; Laws 2001, LB 162, § 33; Laws 2006, LB 778, § 62; Laws 2007, LB186, § 22; Laws 2008, LB1011, § 14; Laws 2010, LB931, § 23; Laws 2012, LB714, § 10.
Effective date March 8, 2012.

76-2249 Directory of appraisers; information; distribution.

(1) The board may prepare a printed directory showing the name and place of business of credential holders under the Real Property Appraiser Act. Copies of the directory shall be made available to the public at such reasonable price per copy as may be fixed by the board and shall be provided to federal authorities as required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as the act existed on January 1, 2012.

(2) The board shall provide without charge to any credential holder under the act a set of rules and regulations adopted and promulgated by the board and any other information which the board deems important in the area of real property appraisal in the State of Nebraska. The information may be printed in a booklet, a pamphlet, or any other form the board determines appropriate. The board may update such material as often as it deems necessary. The board may provide such material to any other person upon request and may charge a fee for the material. The fee shall be reasonable and shall not exceed any reasonable or necessary costs of producing the material for distribution.

Source: Laws 1990, LB 1153, § 49; Laws 1991, LB 203, § 53; Laws 1993, LB 842, § 1; Laws 1994, LB 1107, § 46; Laws 2001, LB 162, § 41; Laws 2006, LB 778, § 69; Laws 2008, LB1011, § 16; Laws 2010, LB931, § 24; Laws 2012, LB714, § 11.
Effective date March 8, 2012.

ARTICLE 24

AGENCY RELATIONSHIPS

Section

76-2402 Definitions, where found.

For purposes of sections 76-2401 to 76-2430, the definitions found in sections 76-2403 to 76-2415 shall be used.

Source: Laws 1994, LB 883, § 2; Laws 2011, LB25, § 1.

76-2404.01 Asset management company, defined.

Asset management company means a business firm or association that, pursuant to a contractual agreement, common-law agency agreement, power of attorney, or other legal authorization, sells, conveys, or otherwise offers an interest in real property that belongs to a (1) bank, savings and loan association, or other financial institution created and regulated pursuant to state or federal law, (2) mortgage-holding entity chartered by Congress, or (3) federal, state, or local governmental entity.

Source: Laws 2011, LB25, § 2.

76-2405 Brokerage relationship, defined.

Brokerage relationship shall mean the relationship created between a designated broker and a client pursuant to sections 76-2401 to 76-2430 relating to the performance of services of a broker as defined in section 81-885.01 and shall also mean the relationship created between the client and the designated broker's affiliated licensees pursuant to sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 5; Laws 2011, LB25, § 3.

76-2407 Client, defined.

Client shall mean a seller, landlord, buyer, or tenant who has entered into a brokerage relationship with a licensee pursuant to sections 76-2401 to 76-2430 and is the seller, landlord, buyer, or tenant to whom the licensee owes the duty as set forth in such sections.

Source: Laws 1994, LB 883, § 7; Laws 2002, LB 863, § 3; Laws 2011, LB25, § 4.

76-2416 Licensee; act as agent, when; agency relationships authorized; compensation, when.

(1) When engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as a limited agent in any transaction as a single agent, subagent, or dual agent. The licensee's general duties and obligations arising from the limited agency relationship shall be disclosed to the seller and the buyer or to the landlord and the tenant pursuant to sections 76-2420 to 76-2422. Alternatively, when engaged in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee may act as an agent in any transaction in accordance with a written contract as described in subsection (6) of section 76-2422.

(2) A licensee shall be considered a buyer's or tenant's limited agent unless:

(a) The designated broker enters into a written seller's agent or landlord's agent agreement with the party to be represented pursuant to subsection (2) of section 76-2422;

(b) The designated broker enters into a subagency agreement with another designated broker pursuant to subsection (5) of section 76-2422;

(c) The designated broker enters into a written dual agency agreement with the parties to be represented pursuant to subsection (4) of section 76-2422; or

(d) The designated broker enters into a written agency agreement pursuant to subsection (6) of section 76-2422.

(3) Sections 76-2401 to 76-2430 shall not obligate any buyer or tenant to pay compensation to a licensee unless the buyer or tenant has entered into a written agreement with the designated broker specifying the compensation terms in accordance with subsection (3) of section 76-2422.

(4) A licensee may work with a single party in separate transactions pursuant to different relationships, including, but not limited to, selling one property as a seller's agent and working with that seller in buying another property as a buyer's agent or as a subagent if the licensee complies with sections 76-2401 to 76-2430 in establishing the relationships for each transaction.

Source: Laws 1994, LB 883, § 16; Laws 2011, LB25, § 5.

76-2417 Seller's agent or landlord's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of the written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(iii) Disclosing in writing to the client all adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

(2) A licensee acting as a seller's or landlord's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a seller's or landlord's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a seller's or landlord's agent owes no duty or obligation to a buyer, a tenant, or a prospective buyer or tenant, except that a licensee shall disclose in writing to the buyer, tenant, or prospective buyer or tenant all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts pertaining to: (i) Any environmental hazards affecting the property which are required by law to be disclosed; (ii) the physical condition of the property; (iii) any material defects in the property; (iv) any material defects in the title to the property; or (v) any material limitation on the client's ability to perform under the terms of the contract.

(b) A seller's or landlord's agent owes no duty to conduct an independent inspection of the property for the benefit of the buyer, tenant, or prospective buyer or tenant and owes no duty to independently verify the accuracy or completeness of any statement made by the client or any independent inspector.

(4) A seller's or landlord's agent may show alternative properties not owned by the client to prospective buyers or tenants and may list competing properties for sale or lease without breaching any duty or obligation to the client.

(5)(a) A seller or landlord may agree in writing with a seller's or landlord's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the seller's or landlord's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 17; Laws 2002, LB 863, § 4; Laws 2011, LB25, § 6.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2418 Buyer's agent or tenant's agent; powers and duties; confidentiality; immunity; disclosures required.

(1) A licensee representing a buyer or tenant as a buyer's or tenant's agent shall be a limited agent with the following duties and obligations:

(a) To perform the terms of any written agreement made with the client;

(b) To exercise reasonable skill and care for the client;

(c) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(i) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be obligated to seek other properties while the client is a party to a contract to purchase property or to a lease or letter of intent to lease;

(ii) Except as provided in section 76-2422.01, presenting all written offers to and from the client in a timely manner regardless of whether the client is

already a party to a contract to purchase property or is already a party to a contract or a letter of intent to lease;

(iii) Disclosing in writing to the client adverse material facts actually known by the licensee; and

(iv) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(d) To account in a timely manner for all money and property received;

(e) To comply with all requirements of sections 76-2401 to 76-2430, the Nebraska Real Estate License Act, and any rules and regulations promulgated pursuant to such sections or act; and

(f) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes or regulations.

(2) A licensee acting as a buyer's or tenant's agent shall not disclose any confidential information about the client unless disclosure is required by statute, rule, or regulation or failure to disclose the information would constitute fraudulent misrepresentation. No cause of action for any person shall arise against a licensee acting as a buyer's or tenant's agent for making any required or permitted disclosure.

(3)(a) A licensee acting as a buyer's or tenant's agent owes no duty or obligation to a seller, a landlord, or a prospective seller or landlord, except that the licensee shall disclose in writing to any seller, landlord, or prospective seller or landlord all adverse material facts actually known by the licensee. The adverse material facts may include, but are not limited to, adverse material facts concerning the client's financial ability to perform the terms of the transaction.

(b) A buyer's or tenant's agent owes no duty to conduct an independent investigation of the client's financial condition for the benefit of the customer and owes no duty to independently verify the accuracy or completeness of statements made by the client or any independent inspector.

(4) A buyer's or tenant's agent may show properties in which the client is interested to other prospective buyers or tenants without breaching any duty or obligation to the client. This section shall not be construed to prohibit a buyer's or tenant's agent from showing competing buyers or tenants the same property and from assisting competing buyers or tenants in attempting to purchase or lease a particular property.

(5)(a) A client may agree in writing with a buyer's or tenant's agent that other designated brokers may be retained and compensated as subagents.

(b) Any designated broker acting as a subagent on the buyer's or tenant's behalf shall be a limited agent with the obligations and responsibilities set forth in subsections (1) through (4) of this section.

Source: Laws 1994, LB 883, § 18; Laws 2002, LB 863, § 5; Laws 2011, LB25, § 7.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2421 Licensee offering brokerage services; duties.

(1) At the earliest practicable opportunity during or following the first substantial contact with a seller, landlord, buyer, or tenant who has not entered into a written agreement for brokerage services with a designated broker, the licensee who is offering brokerage services to that person or who is providing brokerage services for that property shall:

(a) Provide that person with a written copy of the current brokerage disclosure pamphlet which has been prepared and approved by the commission; and

(b) Disclose in writing to that person the types of brokerage relationships the designated broker and affiliated licensees are offering to that person or disclose in writing to that person which party the licensee is representing.

(2) When a seller, landlord, buyer, or tenant has already entered into a written agreement for brokerage services with a designated broker or when a buyer or tenant has a brokerage relationship under sections 76-2401 to 76-2430 without a written agreement, no other licensee shall be required to make the disclosures required by this section.

(3) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the seller or landlord with a buyer or tenant who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the seller or landlord and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a seller's or landlord's agent or subagent may perform with the customer.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a licensee working as an agent or subagent of the buyer or tenant with a seller or landlord who is not represented by a licensee shall provide a written disclosure to the customer which contains the following:

(a) A statement that the licensee is an agent for the buyer or tenant and is not an agent for the customer; and

(b) A list of the tasks that the agent acting as a buyer's or tenant's agent or subagent may perform with the customer.

(5) The written disclosure required pursuant to subsections (1), (3), and (4) of this section shall contain a signature block for the client or customer to acknowledge receipt of the disclosure. The customer's acknowledgment of disclosure shall not constitute a contract with the licensee. If the customer fails or refuses to sign the disclosure, the licensee shall note that fact on a copy of the disclosure and retain the copy.

(6) A licensee shall not be required to give the written disclosures required by this section to a corporation, limited liability company, partnership, limited liability partnership, or similar entity or to any entity which, if doing business in the State of Nebraska, would be required to be registered with the Secretary of State when such corporation, limited liability company, partnership, limited liability partnership, or entity is purchasing, leasing, or selling real property (a) on which there are five or more residential dwelling units, (b) which is subdivided for five or more residential dwelling units, or (c) any portion of which is zoned or assessed by the county assessor as commercial or industrial property.

(7) Disclosures made in accordance with sections 76-2401 to 76-2430 shall be sufficient to disclose brokerage relationships to the public.

Source: Laws 1994, LB 883, § 21; Laws 2002, LB 863, § 7; Laws 2011, LB25, § 8.

76-2422 Written agreements for brokerage services; when required.

(1) All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker. A copy of a written agreement for brokerage services shall be left with the client or clients.

(2) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to establish a single agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. Except as provided in section 76-2422.01, the agreement shall include a licensee's duties and responsibilities specified in section 76-2417, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker, except that if a licensee is a limited seller's agent for a builder, the terms of compensation may be established for a specific new construction property on or before the builder's acceptance of a contract to sell.

(3) Before or while engaging in any of the acts enumerated in subdivision (2) of section 81-885.01, a designated broker acting as a single agent for a buyer or tenant may enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 76-2418, the terms of compensation, a fixed date of expiration of the agreement, and whether an offer of subagency may be made to any other designated broker.

(4) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a dual agent shall obtain the written consent of the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The consent shall include a licensee's duties and responsibilities specified in section 76-2419. The requirements of this subsection are met as to a seller or landlord if the written agreement entered into with the seller or landlord complies with this subsection. The requirements of this subsection are met as to a buyer or tenant if a consent or buyer's or tenant's agency agreement is signed by a potential buyer or tenant which complies with this subsection. The consent of the buyer or tenant does not need to refer to a specific property and may refer generally to all properties for which the buyer's or tenant's agent may also be acting as a seller's or landlord's agent and would be a dual agent. If a licensee is acting as a dual agent with regard to a specific property, the seller and buyer or landlord and tenant shall confirm in writing the dual-agency status and the party or parties responsible for paying any compensation prior to or at the time a contract to purchase property or a lease or letter of intent to lease is entered into for the specific property.

(5) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker intending to act as a subagent shall enter into a written contract with the primary designated broker for the client.

If a designated broker has made a unilateral offer of subagency, another designated broker can enter into the subagency relationship by the act of disclosing to the customer that he or she is a subagent of the client.

(6) Before engaging in any of the activities enumerated in subdivision (2) of section 81-885.01, a designated broker who intends to establish an agency relationship with any party or parties to a transaction in which the designated broker's duties and responsibilities exceed those contained in sections 76-2417 and 76-2418 shall enter into a written agency agreement with a party or parties to the transaction to perform services on their behalf. The agreement shall specify the agent's duties and responsibilities, including any duty of confidentiality, and the terms of compensation. Any agreement under this subsection shall be subject to the common-law requirements of agency applicable to real estate licensees.

Source: Laws 1994, LB 883, § 22; Laws 2002, LB 863, § 8; Laws 2005, LB 88, § 1; Laws 2011, LB25, § 9.

76-2422.01 Licensee; asset management company client; exempt from certain requirements.

(1) A licensee shall be exempt from the requirements of subdivision (1)(c)(ii) of section 76-2417 and subdivision (1)(c)(ii) of section 76-2418 if the client to whom the written offer is required to be presented by such licensee is an asset management company.

(2) A licensee shall be exempt from the provision contained in subsection (2) of section 76-2422 that requires the inclusion of specific duties and responsibilities specified in section 76-2417 in the written agreement if the client is an asset management company.

Source: Laws 2011, LB25, § 10.

76-2423 Representation; commencement and termination; when.

(1)(a) The relationships set forth in sections 76-2401 to 76-2430 shall commence at the time that the licensee begins representing a client and continue until performance or completion of the representation.

(b) If the representation is not performed or completed for any reason, the relationship shall end at the earlier of:

(i) The date of expiration agreed upon by the parties; or

(ii) The termination or relinquishment of the relationship by the parties.

(2) Except as otherwise agreed in writing, a licensee shall owe no further duty or obligation after termination or expiration of the contract or representation or completion of performance except the duties of:

(a) Accounting for all money and property related to and received during the relationship; and

(b) Keeping confidential all information received during the course of the relationship which was made confidential by sections 76-2401 to 76-2430, by instructions from the client, or by the policy of the designated broker unless:

(i) The client to whom the information pertains grants written consent to disclose the information; or

(ii) Disclosure of the information is required by law.

Source: Laws 1994, LB 883, § 23; Laws 2011, LB25, § 11.

76-2425 Violation; unfair trade practice; commission; powers.

Violation of any provision of sections 76-2401 to 76-2430 by a licensee shall constitute an unfair trade practice pursuant to section 81-885.24 for which the commission may investigate and take administrative action against the licensee pursuant to the Nebraska Real Estate License Act.

Source: Laws 1994, LB 883, § 25; Laws 2011, LB25, § 12.

Cross References

Nebraska Real Estate License Act, see section 81-885.

76-2427 Designated broker; appointment of limited agent; effect.

A designated broker entering into a limited agency agreement with a client for the listing of property or for the purpose of representing that person in the buying, selling, exchanging, renting, or leasing of real estate may appoint in writing those affiliated licensees who will be acting as limited agents of that client to the exclusion of all other affiliated licensees. A designated broker shall not be considered to be a dual agent solely because he or she makes an appointment under this section, except that any licensee who personally represents both the seller and buyer or both the landlord and tenant in a particular transaction shall be a dual agent and shall be required to comply with the provisions of sections 76-2401 to 76-2430 governing dual agents.

Source: Laws 1994, LB 883, § 27; Laws 2011, LB25, § 13.

76-2429 Sections; supersede common law; extent; construction.

Sections 76-2401 to 76-2430 shall supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a principal, except as provided in subsection (6) of section 76-2422. Sections 76-2401 to 76-2430 shall be construed broadly to accomplish their purposes.

Source: Laws 1994, LB 883, § 29; Laws 2011, LB25, § 14.

76-2430 Commission; rules and regulations.

The commission shall adopt and promulgate rules and regulations to carry out sections 76-2401 to 76-2430.

Source: Laws 1994, LB 883, § 30; Laws 2011, LB25, § 15.

ARTICLE 30

WIND AGREEMENTS

Section
76-3001. Terms, defined.
76-3004. Interest in wind or solar resource; restriction on severance from surface estate.

76-3001 Terms, defined.

For purposes of sections 76-3001 to 76-3004:

(1) Decommissioning security means a security instrument that is posted or given by a wind developer to a municipality or other governmental entity to ensure sufficient funding is available for removal of a wind energy conversion system and reclamation at the end of the useful life of such a system; and

(2) Wind agreement means a right, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, wind easement, wind option, or lease or lease option securing land for the study or production of wind-generated energy or any other instrument executed by or on behalf of any owner of land or air space for the purpose of allowing another party to study the potential for, or to develop, a wind energy conversion system as defined in section 66-909.02 on the land or in the air space.

Source: Laws 2009, LB568, § 1; Laws 2011, LB208, § 5; Laws 2012, LB828, § 16.
Effective date March 8, 2012.

76-3004 Interest in wind or solar resource; restriction on severance from surface estate.

No interest in any wind or solar resource located on a tract of land and associated with the production or potential production of wind or solar energy on the tract of land may be severed from the surface estate.

Source: Laws 2009, LB568, § 4; Laws 2012, LB828, § 17.
Effective date March 8, 2012.

ARTICLE 31

PRIVATE TRANSFER FEE OBLIGATION ACT

Section
76-3101. Act, how cited.
76-3102. Legislative findings and declarations.
76-3103. Definitions, where found.
76-3104. Environmental covenant, defined.
76-3105. Payee, defined.
76-3106. Private transfer fee, defined.
76-3107. Private transfer fee obligation, defined.
76-3108. Transfer, defined.
76-3109. Private transfer fee obligation; how treated.
76-3110. Recordation of or agreement imposing a private transfer fee obligation; liability.
76-3111. Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.
76-3112. Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

76-3101 Act, how cited.

Sections 76-3101 to 76-3112 shall be known and may be cited as the Private Transfer Fee Obligation Act.

Source: Laws 2011, LB26, § 1.

76-3102 Legislative findings and declarations.

The Legislature finds and declares that the public policy of this state favors the marketability of real property and the transferability of interests in real property free of title defects or unreasonable restraints on alienation. The Legislature further finds and declares that private transfer fee obligations violate this public policy by impairing the marketability and transferability of real property and by constituting an unreasonable restraint on alienation regardless of the duration of the obligation to pay a private transfer fee, the amount of a private transfer fee, or the method by which any private transfer

fee is created or imposed. The Legislature finds and declares that a private transfer fee obligation should not run with the title to property or otherwise bind subsequent owners of property under any common-law or equitable principle.

Source: Laws 2011, LB26, § 2.

76-3103 Definitions, where found.

For purposes of the Private Transfer Fee Obligation Act, the definitions in sections 76-3104 to 76-3108 shall be used.

Source: Laws 2011, LB26, § 3.

76-3104 Environmental covenant, defined.

Environmental covenant means a servitude that imposes activity and use limitations on real property and meets the requirements of section 76-2604.

Source: Laws 2011, LB26, § 4.

76-3105 Payee, defined.

Payee means the person who claims the right to receive or collect a private transfer fee payable under a private transfer fee obligation, whether or not the person has a pecuniary interest in the private transfer fee obligation.

Source: Laws 2011, LB26, § 5.

76-3106 Private transfer fee, defined.

Private transfer fee means a fee or charge payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee or charge is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. Private transfer fee does not include:

(1) Any consideration payable by the grantee to the grantor for the interest in real property being transferred, including any subsequent additional consideration for the property payable by the grantee based upon any subsequent appreciation, development, or sale of the property, if the additional consideration is payable on a one-time basis only and the obligation to make such payment does not bind successors in title to the property. For purposes of this subdivision, an interest in real property may include a separate mineral estate and its appurtenant surface access rights;

(2) Any commission payable to a licensed real estate broker or salesperson for the transfer of real property pursuant to an agreement between the broker or salesperson and the grantor or the grantee, including any subsequent additional commission for that transfer payable by the grantor or the grantee based upon any subsequent appreciation, development, or sale of the property;

(3) Any interest, charges, fees, or other amounts payable by a borrower to a lender pursuant to a loan secured by a mortgage or trust deed against real property, including any fee payable to the lender for consenting to an assumption of the loan or a transfer of the real property subject to the mortgage or trust deed, any fees or charges payable to the lender for estoppel letters or certificates, and any shared appreciation interest or profit participation or other consideration payable to the lender in connection with the loan;

(4) Any rent, reimbursement, charge, fee, or other amount payable by a lessee to a lessor under a lease, including any fee payable to the lessor for consenting to an assignment, subletting, encumbrance, or transfer of the lease;

(5) Any consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property for waiving, releasing, or not exercising the option or right upon the transfer of the real property to another person;

(6) Any tax, fee, charge, assessment, fine, or other amount payable to or imposed by a governmental authority;

(7) Any fee, charge, assessment, dues, fine, contribution, or other amount payable to a homeowners, condominium, cooperative, mobile home, or property owners association pursuant to a declaration or covenant or bylaw applicable to such association, including fees or charges payable for estoppel letters or certificates issued by the association or its authorized agent;

(8) Any fee, charge, assessment, dues, contribution, or other amount pertaining solely to the purchase or transfer of a club membership relating to real property owned by the member, including any amount determined by reference to the value, purchase price, or other consideration given for the transfer of the real property; or

(9) Any payment required pursuant to an environmental covenant.

Source: Laws 2011, LB26, § 6.

76-3107 Private transfer fee obligation, defined.

Private transfer fee obligation means an obligation arising under a declaration or covenant recorded against the title to real property, or under any other contractual agreement or promise, whether or not recorded, that requires or purports to require the payment of a private transfer fee upon a subsequent transfer of an interest in the real property.

Source: Laws 2011, LB26, § 7.

76-3108 Transfer, defined.

Transfer means sale, gift, conveyance, assignment, inheritance, or other transfer of an ownership interest in real property located in this state.

Source: Laws 2011, LB26, § 8.

76-3109 Private transfer fee obligation; how treated.

A private transfer fee obligation recorded or entered into in this state on or after March 11, 2011, does not run with the title to real property and is not binding on or enforceable at law or in equity against any subsequent owner, purchaser, mortgagee, or trustee of any interest in real property as an equitable servitude or otherwise. Any private transfer fee obligation that is recorded or entered into in this state on or after March 11, 2011, is void and unenforceable. This section shall not be construed to mean that a private transfer fee obligation recorded or entered into in this state before March 11, 2011, is presumed valid and enforceable.

Source: Laws 2011, LB26, § 9.

76-3110 Recordation of or agreement imposing a private transfer fee obligation; liability.

Any person who records or enters into an agreement imposing a private transfer fee obligation in his or her favor after March 11, 2011, shall be liable for (1) any and all damages resulting from the imposition of the private transfer fee obligation on the transfer of an interest in the real property, including the amount of any transfer fee paid by a party to the transfer, and (2) all attorney's fees, expenses, and costs incurred by a party to the transfer or mortgagee of the real property to recover any private transfer fee paid or in connection with an action to quiet title. If an agent acts on behalf of a principal to record or secure a private transfer fee obligation, liability shall be assessed to the principal rather than the agent.

Source: Laws 2011, LB26, § 10.

76-3111 Contract for sale of real property subject to private transfer fee obligation; requirements; failure to disclose; rights of buyer.

(1) Any contract for the sale of real property subject to a private transfer fee obligation shall include a provision disclosing the existence of that obligation, a description of the obligation, and a statement that private transfer fee obligations are subject to certain prohibitions under the Private Transfer Fee Obligation Act. A contract for sale of real property which does not conform to the requirements of this section shall not be enforceable by the seller against the buyer, nor shall the buyer be liable to the seller for damages under such a contract, and the buyer under such a contract shall be entitled to the return of all deposits made in connection with the sale of the real property.

(2) If a private transfer fee obligation is not disclosed under subsection (1) of this section and a buyer subsequently discovers the existence of such private transfer fee obligation after title to the property has passed to the buyer, the buyer shall have the right to recover (a) any and all damages resulting from the failure to disclose the private transfer fee obligation, including the amount of any private transfer fee paid by the buyer, or the difference between (i) the market value of the real property if it were not subject to a private transfer fee obligation and (ii) the market value of the real property as subject to a private transfer fee obligation, and (b) all attorney's fees, expenses, and costs incurred by the buyer in seeking the buyer's remedies under this subsection.

(3) Any provision in a contract for sale of real property that purports to waive the rights of a buyer under this section shall be void.

Source: Laws 2011, LB26, § 11.

76-3112 Receiver of fee; record document; contents; amendment; payee failure to comply; effect; affidavit; recording; effect.

(1) For a private transfer fee obligation in existence prior to March 11, 2011, the receiver of the fee shall, within thirty days after March 11, 2011, or before any transfer of real property subject to the private transfer fee, whichever period is shorter, record against the real property subject to the private transfer fee obligation a separate document in the register of deeds office of the county in which the real property is located that meets all of the following requirements:

(a) The title of the document shall be ''Notice of Private Transfer Fee Obligation'' in at least fourteen-point, boldface type;

(b) The amount, if the private transfer fee is a flat amount, or the percentage of the sales price constituting the cost of the private transfer fee, or such other basis by which the private transfer fee is to be calculated;

(c) The date or circumstances under which the private transfer fee obligation expires, if any;

(d) The purpose for which the funds from the private transfer fee obligation will be used;

(e) The name of the person to whom funds are to be paid and specific contact information regarding where the funds are to be sent;

(f) The acknowledged signature of the payee; and

(g) The legal description of the real property purportedly burdened by the private transfer fee obligation.

(2) The person to whom the private transfer fee is to be paid may file an amendment to the notice of private transfer fee obligation containing new contact information, but such amendment must contain the recording information of the notice of private transfer fee obligation which it amends and the legal description of the property burdened by the private transfer fee obligation.

(3) If the payee fails to comply fully with subsection (1) of this section, the grantor of any real property burdened by the private transfer fee obligation may proceed with the transfer of any interest in the real property to any grantee and in so doing shall be deemed to have acted in good faith and shall not be subject to any obligations under the private transfer fee obligation. In such event, any transfer of the real property thereafter shall be free and clear of the private transfer fee and private transfer fee obligation.

(4) If the payee fails to provide a written statement of the private transfer fee payable within thirty days after the date of a written request for the same sent to the address shown in the notice of private transfer fee obligation, then the grantor, on recording of the affidavit required under subsection (5) of this section, may transfer any interest in the real property to any grantee without payment of the private transfer fee and shall not be subject to any further obligations under the private transfer fee obligation. In such event, any transfer of the real property shall be free and clear of the private transfer fee and private transfer fee obligation.

(5) An affidavit stating the facts enumerated under subsection (6) of this section shall be recorded in the office of the register of deeds in the county in which the real property is situated prior to or simultaneously with a transfer pursuant to subsection (4) of this section of real property unburdened by a private transfer fee obligation. An affidavit filed under this subsection shall state that the affiant has actual knowledge of, and is competent to testify to, the facts in the affidavit and shall include the legal description of the real property burdened by the private transfer fee obligation, the name of the owner of such real property at the time of the signing of such affidavit, a reference by recording information to the instrument of record containing the private transfer fee obligation, and an acknowledgment that the affiant is testifying under penalty of perjury.

(6) When recorded, an affidavit as described in subsection (5) of this section shall constitute prima facie evidence that:

(a) A request for the written statement of the private transfer fee payable in order to obtain a release of the fee imposed by the private transfer fee obligation was sent to the address shown in the notification; and

(b) The entity listed on the notice of private transfer fee obligation failed to provide the written statement of the private transfer fee payable within thirty days after the date of the notice sent to the address shown in the notification.

Source: Laws 2011, LB26, § 12.

ARTICLE 32

NEBRASKA APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT

Section
76-3201. Act, how cited.
76-3202. Terms, defined.
76-3203. Registration; application; contents; form; surety bond; renewal.
76-3204. Act; exemptions.
76-3205. Company not domiciled in state; service of process.
76-3206. Board; fees.
76-3207. Applicant for registration; fingerprint submission; criminal history record check; costs.
76-3208. Prohibited acts.
76-3209. Verification of appraiser license or certification.
76-3210. Performance of Uniform Standards of Professional Appraisal Practice standard 3 appraisal review.
76-3211. Verification of license or certification status.
76-3212. Records; retention.
76-3213. Completed appraisal report; limit on change.
76-3214. Board; issue registration number; maintain list; disclosure on engagement documents.
76-3215. Payment of fees; appraiser added to appraiser panel; removal; complaint; hearing; board; duties.
76-3216. Board; violations; enforcement actions; fine; considerations.
76-3217. Violations; disciplinary hearings; notice; procedure.
76-3218. Rules and regulations.
76-3219. Appraisal Management Company Fund; created; use; investment.
76-3220. Material noncompliance; referral to board.

76-3201 Act, how cited.

Sections 76-3201 to 76-3220 shall be known and may be cited as the Nebraska Appraisal Management Company Registration Act.

Source: Laws 2011, LB410, § 1.

76-3202 Terms, defined.

For purposes of the Nebraska Appraisal Management Company Registration Act:

(1) Appraisal has the same meaning as in section 76-2204;

(2) Appraisal Foundation has the same meaning as in section 76-2205;

(3) Appraisal management company means, in connection with valuing real property collateralizing mortgage loans, mortgages, or trust deeds incorporated into a securitization, any external third party that oversees a network or panel of more than fifteen certified or licensed appraisers in this state or twenty-five or more certified or licensed appraisers nationally within a given year and that is authorized, either by a creditor of a consumer credit transaction secured by a

consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets:

(a) To recruit, select, and retain appraisers;

(b) To contract with certified or licensed appraisers to perform real property appraisal activity;

(c) To manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for appraisal services provided, and reimbursing appraisers for appraisal services performed; or

(d) To review and verify the work of appraisers;

(4) Appraisal practice has the same meaning as in section 76-2205.01;

(5) Appraisal report has the same meaning as in section 76-2206;

(6) Appraisal review means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of a real property appraisal activity, except that a quality control examination of an appraisal report shall not be an appraisal review;

(7) Appraisal services means residential valuation assignments performed by an individual acting as an appraiser, including, but not limited to, appraisal, appraisal review, or consulting services;

(8) Appraiser means an individual who holds a license or certification as an appraiser and is expected to perform valuation assignments competently and in a manner that is independent, impartial, and objective;

(9) Appraiser panel means a group of licensed or certified independent appraisers that have been selected to perform appraisal services for a third party;

(10) Board means the Real Property Appraiser Board;

(11) Consulting service has the same meaning as in section 76-2211.01;

(12) Controlling person means:

(a) An officer or director of, or owner of greater than a ten percent interest in, a corporation, partnership, or other business entity seeking to act or acting as an appraisal management company in this state;

(b) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter into a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and that has the authority to enter into agreements with appraisers for the performance of appraisals; or

(c) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

(13) Federal financial institution regulatory agency means the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successor of any of such agencies;

(14) Federally related transaction means any real estate-related financial transaction which:

(a) A federal financial institution regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and

(b) Requires the services of an appraiser;

(15) Owned and controlled means direct or indirect ownership or control of more than twenty-five percent of the voting shares of an appraisal management company;

(16) Person means an individual, firm, partnership, limited partnership, limited liability company, association, corporation, or other group engaged in joint business activities, however organized;

(17) Quality control examination means an examination of an appraisal report for compliance and completeness, including grammatical, typographical, or other similar errors;

(18) Real estate has the same meaning as in section 76-2214;

(19) Real estate-related financial transaction means any transaction involving:

(a) The sale, lease, purchase, investment in, or exchange of real property, including interests in real property or the financing thereof;

(b) The refinancing of real property or interests in real property; or

(c) The use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities;

(20) Real property has the same meaning as in section 76-2217;

(21) Real property appraisal activity has the same meaning as in section 76-2215;

(22) Relocation management company means a business entity in which the preponderance of its business services include relocation of employees as an agent or contracted service provider to the employer for the purposes of determining an anticipated sales price for the residence of an employee being relocated by the employer;

(23) Uniform Standards of Professional Appraisal Practice has the same meaning as in section 76-2213.01; and

(24) Valuation assignment has the same meaning as in section 76-2219.

Source: Laws 2011, LB410, § 2.

76-3203 Registration; application; contents; form; surety bond; renewal.

(1) It is unlawful for a person to directly or indirectly engage in or attempt to engage in business as an appraisal management company or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in this state without first obtaining a registration issued by the board.

(2) An application for the registration required by subsection (1) of this section shall include the following information:

(a) The name of the person seeking registration and any other name or names, if any, under which it will do business in this state;

(b) The business address of the person seeking registration;

(c) The telephone contact information of the person seeking registration;

(d) If the person seeking registration is not a corporation that is domiciled in this state, the name and contact information for the person's agent for service of process in this state;

(e) The name, address, and contact information for any person that owns ten percent or more of the person seeking registration;

(f) The name, address, and contact information for one controlling person designated as the main contact for all communication between the person seeking registration and the board;

(g) A certification that the person seeking registration has a system and process in place to verify that an appraiser selected to the appraiser panel of the person seeking registration holds a license or certification in good standing in this state pursuant to the Real Property Appraiser Act;

(h) A certification that the person seeking registration requires appraisers completing appraisal services at the person's request to comply with the Uniform Standards of Professional Appraisal Practice, including the requirements for geographic and product competence;

(i) A certification that the person seeking registration has a system in place to verify that only licensed or certified appraisers are used for federally related transactions;

(j) A certification that the person seeking registration has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under section 129E of the federal Truth in Lending Act, as amended, including the requirements for payment of a reasonable and customary fee to appraisers when the appraisal management company is providing appraisal services for a consumer credit transaction secured by the principal dwelling of a consumer;

(k) A certification that the person seeking registration maintains a detailed record of each request for appraisal services that it receives and the appraiser that performs the residential real estate appraisal services for the appraisal management company;

(l) If the person seeking registration is a nonresident, an irrevocable consent for service of process, if required pursuant to section 76-3205; and

(m) Any other information required by the board which is reasonably necessary to implement the Nebraska Appraisal Management Company Registration Act.

(3) An applicant for registration as an appraisal management company in this state shall submit to the board an application on a form or forms prescribed by the board.

(4) An applicant for registration as an appraisal management company in this state shall furnish to the board, at the time of making application, a surety bond in the amount of twenty-five thousand dollars. The surety bond required under this subsection shall be issued by a bonding company or insurance company authorized to do business in this state, and a copy of the bond shall be filed with the board. The bond shall be in favor of the state for the benefit of any person who is damaged by any violation of the Nebraska Appraisal Management Company Registration Act. The bond shall also be in favor of any person damaged by such a violation. Any person claiming against the bond for a violation of the act may maintain an action at law against the appraisal

management company and against the surety. The aggregate liability of the surety to all persons damaged by a violation of the act by an appraisal management company shall not exceed the amount of the bond. The bond shall be maintained until one year after the date that the appraisal management company ceases operation in this state.

(5) A registration issued pursuant to the Nebraska Appraisal Management Company Registration Act shall be valid for two years after the date on which it is issued. An application for the renewal of a registration shall include substantially similar information required for the initial registration as provided in subsection (2) of this section.

Source: Laws 2011, LB410, § 3.

Cross References

Real Property Appraiser Act, see section 76-2201.

76-3204 Act; exemptions.

The Nebraska Appraisal Management Company Registration Act does not apply to:

(1) A person that exclusively employs persons for the performance of appraisal services. The employer is responsible for ensuring that the appraisal services are performed by employees in accordance with the Uniform Standards of Professional Appraisal Practice;

(2) An appraisal management company that is owned and controlled by a financial institution regulated by a federal financial institution regulatory agency;

(3) An appraiser that enters into an agreement, written or oral, with an appraiser for the performance of appraisal services if upon the completion of the appraisal services the appraisal report is signed by both the appraiser who completed the appraisal services and the appraiser who requested the appraisal services; or

(4) A relocation management company.

Source: Laws 2011, LB410, § 4.

76-3205 Company not domiciled in state; service of process.

Each person seeking registration as an appraisal management company in this state that is not domiciled in this state shall submit an irrevocable consent that service of process upon such person may be made by delivery of the process to the director of the board if the plaintiff cannot, in the exercise of due diligence, effect personal service upon the person in an action against the applicant in a court of this state arising out of the person's activities in this state.

Source: Laws 2011, LB410, § 5.

76-3206 Board; fees.

The board shall charge and collect fees for its services under the Nebraska Appraisal Management Company Registration Act as follows: (1) An application fee of no more than three hundred fifty dollars; (2) an initial registration fee of no more than two thousand dollars; (3) a renewal registration fee of no more

than one thousand five hundred dollars; and (4) a late renewal fee of twenty-five dollars for each month or portion of a month the fee is late.

Source: Laws 2011, LB410, § 6.

76-3207 Applicant for registration; fingerprint submission; criminal history record check; costs.

(1) An appraisal management company applying for registration in this state shall not:

(a) In whole or in part, directly or indirectly, be owned by any person who has had an appraiser license or certificate in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; and

(b) Be more than ten percent owned by a person who is not of good moral character, which for purposes of this section shall require that such person has not been convicted of, or entered a plea of nolo contendere to, a felony relating to the appraisal practice or any crime involving fraud, misrepresentation, or moral turpitude.

(2) For purposes of subdivision (1)(b) of this section, each individual owner of more than ten percent of an appraisal management company shall, at the time an application for registration as an appraisal management company is made, submit two copies of legible ink-rolled fingerprint cards or equivalent electronic fingerprint submissions to the board for delivery to the Nebraska State Patrol in a form approved by both the Nebraska State Patrol and the Federal Bureau of Investigation. The board shall pay the Nebraska State Patrol the costs associated with conducting a fingerprint-based national criminal history record check through the Nebraska State Patrol and the Federal Bureau of Investigation with such record check to be carried out by the board.

Source: Laws 2011, LB410, § 7.

76-3208 Prohibited acts.

An appraisal management company that applies to the board for a registration to do business in this state as an appraisal management company shall not:

(1) Knowingly employ any individual to perform appraisal services who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked;

(2) Knowingly enter into any independent contractor arrangement to perform appraisal services, whether in verbal, written, or other form, with any individual who has had a license or certificate to act as an appraiser in this state or in any other state refused, denied, canceled, surrendered in lieu of revocation, or revoked; or

(3) Knowingly prohibit an appraiser from including within the body of an appraisal report that is submitted by the appraiser to the appraisal management company or its assignee the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal report.

Source: Laws 2011, LB410, § 8.

76-3209 Verification of appraiser license or certification.

Prior to assigning appraisal orders, an appraisal management company shall have a system in place to verify that an appraiser being added to the appraiser panel holds the appropriate appraiser license or certification in good standing.

Source: Laws 2011, LB410, § 9.

76-3210 Performance of Uniform Standards of Professional Appraisal Practice standard 3 appraisal review.

Any employee of or independent contractor to an appraisal management company that performs a Uniform Standards of Professional Appraisal Practice standard 3 appraisal review shall be an appraiser with the proper level of licensure in this state. Quality control examinations are exempt from this requirement as they are not considered a standard 3 review.

Source: Laws 2011, LB410, § 10.

76-3211 Verification of license or certification status.

Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis on a form prescribed by the board that the appraisal management company has a system in place to verify that an appraiser on the appraiser panel has not had a license or certification as an appraiser refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state in the previous twenty-four months.

Source: Laws 2011, LB410, § 11.

76-3212 Records; retention.

Each appraisal management company seeking to be registered in this state shall certify to the board on a biennial basis that it maintains a detailed record of each appraisal service request that it receives and of the appraiser who performs the appraisal services for the appraisal management company. Record retention requirements are for a period of five years after appraisal services are completed or two years after final disposition of a judicial proceeding related to the real property appraisal activity, whichever period expires later.

Source: Laws 2011, LB410, § 12.

76-3213 Completed appraisal report; limit on change.

An appraisal management company may not alter, modify, or otherwise change a completed appraisal report submitted by an appraiser without the appraiser's written consent.

Source: Laws 2011, LB410, § 13.

76-3214 Board; issue registration number; maintain list; disclosure on engagement documents.

(1) The board shall issue a unique registration number to each appraisal management company that is registered in this state.

(2) The board shall maintain a published list of the appraisal management companies that have registered with the board pursuant to the Nebraska Appraisal Management Company Registration Act and have been issued a registration number pursuant to subsection (1) of this section.

(3) An appraisal management company registered in this state shall disclose the registration number provided to it by the board on the engagement documents presented to the appraiser.

Source: Laws 2011, LB410, § 14.

76-3215 Payment of fees; appraiser added to appraiser panel; removal; complaint; hearing; board; duties.

(1) Each appraisal management company registered in this state, except in cases of noncompliance with the conditions of the engagement, shall make payment of fees to an appraiser for the completion of an appraisal or valuation assignment within sixty days after the date on which the appraiser transmits or otherwise provides the completed appraisal report or valuation assignment to the appraisal management company or its assignee.

(2) Except within the first ninety days after an appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company may not remove the appraiser from the appraiser panel of the appraisal management company or otherwise refuse to assign requests for appraisal services to an appraiser on the appraiser panel without:

(a) Notifying the appraiser in writing of the reasons why the appraiser is being removed from the appraiser panel of the appraisal management company; and

(b) Providing an opportunity for the appraiser to respond to the notification from the appraisal management company.

(3) An appraiser who is removed from the appraiser panel of an appraisal management company may file a complaint with the board for a review of the decision of the appraisal management company. The scope of the board's review in any such case is limited to determining that the appraisal management company has complied with subsection (2) of this section and whether a violation of the Real Property Appraiser Act has occurred.

(4) If an appraiser files a complaint against an appraisal management company pursuant to subsection (3) of this section, the board shall adjudicate the complaint within one hundred eighty days after the filing of the complaint.

(5) If, after opportunity for hearing and review, the board determines that an appraisal management company acted improperly in removing the appraiser from the appraiser panel, the board shall:

(a) Provide written findings to the involved parties;

(b) Provide an opportunity for the appraisal management company and the appraiser to respond to the findings; and

(c) Make recommendations for action.

Source: Laws 2011, LB410, § 15.

Cross References

Real Property Appraiser Act, see section 76-2201.

76-3216 Board; violations; enforcement actions; fine; considerations.

(1) To the extent permitted by any applicable federal legislation or regulation, the board may censure an appraisal management company, conditionally or unconditionally suspend or revoke the registration issued to the appraisal management company under the Nebraska Appraisal Management Company

Registration Act, or levy fines or impose civil penalties not to exceed five thousand dollars for a first offense and not to exceed ten thousand dollars for a second or subsequent offense, if the board determines that an appraisal management company is attempting to perform, has performed, or has attempted to perform any of the following:

(a) A material violation of the act;

(b) A violation of any rule or regulation adopted and promulgated by the board; or

(c) Procurement of a registration for itself or any other person by fraud, misrepresentation, or deceit.

(2) In order to promote voluntary compliance, encourage appraisal management companies to correct errors promptly, and ensure a fair and consistent approach to enforcement, the board shall endeavor to impose fines or civil penalties that are reasonable in light of the nature, extent, and severity of the violation. The board shall also take action against an appraisal management company's registration only after less severe sanctions have proven insufficient to ensure behavior consistent with the Nebraska Appraisal Management Company Registration Act. When deciding whether to impose a sanction permitted by subsection (1) of this section, determining the sanction that is most appropriate in a specific instance, or making any other discretionary decision regarding the enforcement of the act, the board shall consider whether an appraisal management company:

(a) Has an effective program reasonably designed to ensure compliance with the act;

(b) Has taken prompt and appropriate steps to correct and prevent the recurrence of any detected violations; and

(c) Has independently reported to the board any significant violations or potential violations of the act prior to an imminent threat of disclosure or investigation and within a reasonably prompt time after becoming aware of the occurrence of such violations.

Source: Laws 2011, LB410, § 16.

76-3217 Violations; disciplinary hearings; notice; procedure.

(1) The board shall conduct disciplinary hearings for any violation of the Nebraska Appraisal Management Company Registration Act in accordance with the Administrative Procedure Act.

(2) Before the board may censure, suspend, or revoke the registration of, or levy a fine or civil penalty against, a registered appraisal management company, the board shall notify the company in writing of any charges made under the Nebraska Appraisal Management Company Registration Act at least twenty days prior to the date set for the hearing and shall permit the appraisal management company an opportunity to be heard in person or by counsel. The notice shall be satisfied by personal service on the controlling person of the company or agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the address of the controlling person of the company that is on file with the board.

(3) Any hearing pursuant to this section shall be heard by a hearing officer at a time and place prescribed by the board. The hearing officer may make findings of fact and shall deliver such findings to the board. The board shall

take such disciplinary action as it deems appropriate, subject to the limitations contained within section 76-3216.

Source: Laws 2011, LB410, § 17.

Cross References

Administrative Procedure Act, see section 84-920.

76-3218 Rules and regulations.

The board may adopt and promulgate rules and regulations not inconsistent with the Nebraska Appraisal Management Company Registration Act which may be reasonably necessary to implement, administer, and enforce the provisions of the act.

Source: Laws 2011, LB410, § 18.

76-3219 Appraisal Management Company Fund; created; use; investment.

The board shall collect all fees and other revenue pursuant to the Nebraska Appraisal Management Company Registration Act and shall remit such fees and revenue to the State Treasurer for credit to the Appraisal Management Company Fund, which is hereby created. The fund shall be used to implement, administer, and enforce 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 2011, LB410, § 19.

Cross References

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

76-3220 Material noncompliance; referral to board.

An appraisal management company that has a reasonable basis to believe that an appraiser has failed to comply with applicable laws or the Uniform Standards of Professional Appraisal Practice shall refer the matter to the board if the failure to comply is material.

Source: Laws 2011, LB410, § 20.

ARTICLE 33

OIL PIPELINE RECLAMATION ACT

Section

76-3301 Act, how cited.

Sections 76-3301 to 76-3308 shall be known and may be cited as the Oil Pipeline Reclamation Act.

Source: Laws 2011, LB629, § 1; Laws 2012, LB845, § 1.
Effective date April 7, 2012.

76-3302 Terms, defined.

For purposes of the Oil Pipeline Reclamation Act:

(1) Oil means petroleum of any kind or in any form, including crude oil or any fraction of crude oil;

(2) Pipeline carrier means a person that engages in owning, operating, or managing a pipeline or part of a pipeline for the transportation of oil but does not include an entity under the jurisdiction of the Nebraska Oil and Gas Conservation Commission for in-field flow-lines and gathering lines;

(3) Reclamation means restoration of the areas through which a pipeline is constructed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction; and

(4) Reclamation costs include, but are not limited to, the costs of restoration of real and personal property, the costs of restoration of natural resources, the costs of rehabilitation of habitat or wildlife, and the costs of revegetation.

Source: Laws 2011, LB629, § 2.

76-3303 Purpose of act; legislative intent.

(1) The purpose of the Oil Pipeline Reclamation Act is to ensure that a pipeline carrier which owns, constructs, operates, or manages a pipeline through this state for the transportation of oil is financially responsible for reclamation costs relating to the construction, operation, and management of the pipeline in this state as prescribed in the act.

(2) It is the intent of the Legislature that proper reclamation is accomplished as part of the oil pipeline construction process, including restoration of areas through which a pipeline is constructed as close as reasonably practicable to the condition, contour, and vegetation that existed prior to construction, including stabilizing disturbed areas, establishing a diverse plant environment of native grasses and forbs to create a safe and stable landscape, restoring active cropland to its previous productive capability, mitigating noxious weeds, and managing invasive plants, unless otherwise agreed to by the landowner.

Source: Laws 2011, LB629, § 3; Laws 2012, LB845, § 2.
Effective date April 7, 2012.

76-3304 Pipeline carrier; responsible for reclamation costs; commencement of reclamation; period of obligation.

(1) A pipeline carrier owning, operating, or managing a pipeline or part of a pipeline for the transportation of oil in this state shall be responsible for all reclamation costs necessary as a result of constructing the pipeline as well as reclamation costs resulting from operating the pipeline, except to the extent another party is determined to be responsible.

(2) The pipeline carrier shall commence reclamation of the area through which a pipeline is constructed as soon as reasonably practicable after backfill as provided in sections 76-3307 and 76-3308.

(3) A pipeline carrier's obligation for reclamation and maintenance of the pipeline right-of-way shall continue until the pipeline is permanently decommissioned or removed.

Source: Laws 2011, LB629, § 4; Laws 2012, LB845, § 3.
Effective date April 7, 2012.

76-3305 Additional reclamation costs.

Nothing in the Oil Pipeline Reclamation Act prohibits a state agency, county board, city council, or village board from pursuing reclamation costs for the maintenance and repair of roads, bridges, or other infrastructure related to the construction, maintenance, or operation of a pipeline by a pipeline carrier who is subject to the act.

Source: Laws 2011, LB629, § 5.

76-3306 Act; minimum standards; effect of negotiated agreement with landowner; duties under federal law or permits.

The Oil Pipeline Reclamation Act provides the minimum standards to be met by a pipeline carrier. The act is not meant to affect the obligations of a pipeline carrier provided for in a negotiated agreement with a landowner and is not to affect the duties of a pipeline carrier under applicable federal law or permits.

Source: Laws 2011, LB629, § 6.

76-3307 Pipeline carrier; reclamation actions required within thirty days; exception.

A pipeline carrier shall complete final grading, topsoil replacement, installation of erosion control structures, seeding, and mulching within thirty days after backfill except when weather conditions, extenuating circumstances, or unforeseen developments do not permit the work to be done within such thirty-day period.

Source: Laws 2012, LB845, § 4.
Effective date April 7, 2012.

76-3308 Pipeline carrier; compliance with federal and state laws; plant, seed, and mulch use.

(1) A pipeline carrier shall ensure that all reclamation, including, but not limited to, choice of seed mixes, method of reseeding, and weed and erosion control measures and monitoring, is conducted in accordance with the Federal Seed Act, 7 U.S.C. 1551 et seq., the Nebraska Seed Law, and the Noxious Weed Control Act.

(2) A pipeline carrier shall ensure that genetically appropriate and locally adapted native plant materials and seeds are used based on site characteristics and surrounding vegetation as determined by a preconstruction site inventory.

(3) A pipeline carrier shall ensure that mulch is installed as required by site contours, seeding methods, or weather conditions or when requested by a landowner.

Source: Laws 2012, LB845, § 5.
Effective date April 7, 2012.

Cross References

Nebraska Seed Law, see section 81-2,147.
Noxious Weed Control Act, see section 2-945.01.

ARTICLE 34

NEBRASKA UNIFORM REAL PROPERTY TRANSFER ON DEATH ACT

Section

76-3401 Act, how cited.

Sections 76-3401 to 76-3423 shall be known and may be cited as the Nebraska Uniform Real Property Transfer on Death Act.

Source: Laws 2012, LB536, § 1.
Operative date January 1, 2013.

76-3402 Definitions.

For purposes of the Nebraska Uniform Real Property Transfer on Death Act:

(1) Beneficiary means a person that receives property under a transfer on death deed;

(2) Designated beneficiary means a person designated to receive property in a transfer on death deed;

(3) Joint owner means an individual who owns property concurrently with one or more other individuals with a right of survivorship. The term includes a joint tenant. The term does not include a tenant in common without a right of survivorship;

(4) Person means an individual, a corporation, an estate, a trustee of a trust, a partnership, a limited liability company, an association, a joint venture, a

public corporation, a government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(5) Property means an interest in real property located in this state which is transferable on the death of the owner;

(6) Transfer on death deed means a deed authorized under the Nebraska Uniform Real Property Transfer on Death Act; and

(7) Transferor means an individual who makes a transfer on death deed.

Source: Laws 2012, LB536, § 2.
Operative date January 1, 2013.

76-3403 Applicability.

The Nebraska Uniform Real Property Transfer on Death Act applies to a transfer on death deed made before, on, or after January 1, 2013, by a transferor dying on or after January 1, 2013. A transfer on death deed is subject to the common-law principles of equity except to the extent modified by the Nebraska Uniform Real Property Transfer on Death Act.

Source: Laws 2012, LB536, § 3.
Operative date January 1, 2013.

76-3404 Nonexclusivity.

The Nebraska Uniform Real Property Transfer on Death Act does not affect any method of transferring property otherwise permitted under the law of this state.

Source: Laws 2012, LB536, § 4.
Operative date January 1, 2013.

76-3405 Transfer on death deed authorized.

An individual may transfer property to one or more beneficiaries effective at the transferor's death by a transfer on death deed. If the property is agricultural land, the transferor may designate in the transfer on death deed the disposition of the transferor's interest in growing crops to the transferor's estate or to one or more of the designated beneficiaries. If the property is agricultural land and the transfer on death deed does not contain a designation of the disposition of the transferor's interest in growing crops, the transferor's interest in the growing crops shall pass to the transferor's estate.

Source: Laws 2012, LB536, § 5.
Operative date January 1, 2013.

76-3406 Transfer on death deed revocable.

A transfer on death deed is revocable even if the deed or another instrument contains a contrary provision.

Source: Laws 2012, LB536, § 6.
Operative date January 1, 2013.

76-3407 Transfer on death deed nontestamentary.

A transfer on death deed is nontestamentary.

Source: Laws 2012, LB536, § 7.
Operative date January 1, 2013.

76-3408 Capacity of transferor.

The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a will.

Source: Laws 2012, LB536, § 8.
Operative date January 1, 2013.

76-3409 Signature; witnesses; form.

A transfer on death deed shall be signed by the transferor or by some person in his or her presence and by his or her direction and shall be attested in writing by two or more disinterested witnesses, whose signatures along with the transferor's signature shall be made before an officer authorized to administer oaths under the laws of this state or under the laws of the state where execution occurs and evidenced by the officer's certificate, under official seal, in form and content substantially as follows:

I, ... the transferor, sign my name to this instrument this ..... day of ..... 20 ...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this transfer on death deed to transfer my interest in the described real property and that I sign it willingly or willingly direct another to sign for me, that I execute it as my free and voluntary act for the purposes therein expressed, that I am eighteen years of age or older or am not at this time a minor, and that I am of sound mind and under no constraint or undue influence.

Transferor .....

We, ... and ....., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the transferor signs and executes this transfer on death deed to transfer his or her interest in the described real property and that he or she signs it willingly or willingly directs another to sign for him or her, and that he or she executes it as his or her free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the transferor, hereby signs this deed as witness to the transferor's signing, and that to the best of his or her knowledge the transferor is eighteen years of age or older or is not at this time a minor and the transferor is of sound mind and under no constraint or undue influence.

Witness .....

Witness .....

THE STATE OF .....

COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ....., the transferor, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ..... 20... .

(SEAL)(Signed) .....

(Official capacity of officer) .....

Source: Laws 2012, LB536, § 9.
Operative date January 1, 2013.

76-3410 Transfer on death deed; essential elements and formalities; warning.

(a) A transfer on death deed:

(1) Except as otherwise provided in subdivision (2) of this subsection, must contain the essential elements and formalities of a properly recordable inter vivos deed;

(2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death;

(3) Must contain the warnings provided in subsection (b) of this section; and

(4) Must be recorded (i) within thirty days after being executed as required in section 76-3409, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the property is located.

(b)(1) A transfer on death deed shall contain the following warnings:

WARNING: The property transferred remains subject to inheritance taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties as provided by law.

WARNING: The designated beneficiary is personally liable, to the extent of the value of the property transferred, to account for medicaid reimbursement to the extent necessary to discharge any such claim remaining after application of the assets of the transferor's estate. The designated beneficiary may also be personally liable, to the extent of the value of the property transferred, for claims against the estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration to the extent needed to pay such amounts by the personal representative.

WARNING: The Department of Health and Human Services may require revocation of this deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order to qualify or remain qualified for medicaid assistance.

(2) No recorded transfer on death deed shall be invalidated because of any defects in the wording of the warnings required by this subsection.

Source: Laws 2012, LB536, § 10.
Operative date January 1, 2013.

76-3411 Notice, delivery, acceptance, consideration not required.

A transfer on death deed is effective without:

(1) Notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) Consideration.

Source: Laws 2012, LB536, § 11.
Operative date January 1, 2013.

76-3412 Statement; filing.

A completed statement as provided in subdivision (2)(a) of section 76-214 must be filed at the time that the conveyance of real estate transferred by a transfer on death deed becomes effective due to the death of the transferor or the death of a surviving joint tenant of the transferor.

Source: Laws 2012, LB536, § 12.
Operative date January 1, 2013.

76-3413 Revocation by instrument authorized; revocation by act not permitted.

(a) Subject to subsection (b) of this section, an instrument is effective to revoke a recorded transfer on death deed, or any part of it, only if the instrument:

(1) Is one of the following:

(A) A transfer on death deed that revokes the deed or part of the deed expressly or by inconsistency;

(B) An instrument of revocation that expressly revokes the deed or part of the deed and that is executed with the same formalities as required in section 76-3409; or

(C) An inter vivos deed that expressly or by inconsistency revokes the transfer on death deed or part of the deed; and

(2) Is acknowledged by the transferor after the acknowledgment of the deed being revoked and is recorded (i) within thirty days after being executed, (ii) before the transferor's death, and (iii) in the public records in the office of the register of deeds of the county where the deed is recorded.

(b) If a transfer on death deed is made by more than one transferor:

(1) Revocation by a transferor does not affect the deed as to the interest of another transferor; and

(2) A deed of joint owners is revoked only if it is revoked by all of the living joint owners who were transferors.

(c) After a transfer on death deed is recorded, it may not be revoked by a revocatory act on the deed.

(d) This section does not limit the effect of an inter vivos transfer of the property.

Source: Laws 2012, LB536, § 13.
Operative date January 1, 2013.

76-3414 Effect of transfer on death deed during transferor's life.

During a transferor's life, a transfer on death deed does not:

(1) Affect an interest or right of the transferor or any other owner, including the right to transfer or encumber the property;

(2) Affect an interest or right of a transferee, even if the transferee has actual or constructive notice of the deed;

(3) Affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) Affect the transferor's or designated beneficiary's eligibility for any form of public assistance except to the extent provided in section 76-3421;

(5) Create a legal or equitable interest in favor of the designated beneficiary; or

(6) Subject the property to claims or process of a creditor of the designated beneficiary.

Source: Laws 2012, LB536, § 14.
Operative date January 1, 2013.

76-3415 Effect of transfer on death deed at transferor's death.

(a) Except as otherwise provided in the transfer on death deed, in this section, or in sections 30-2313 to 30-2319 or section 30-2354, on the death of the transferor, the following rules apply to property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) Subject to subdivision (2) of this subsection, the interest in the property is transferred to the designated beneficiary in accordance with the deed;

(2) The interest of a designated beneficiary is contingent on the designated beneficiary surviving the transferor by one hundred twenty hours. If the deed provides for a different survival period, the deed shall determine the survival requirement for designated beneficiaries. The interest of a designated beneficiary that fails to survive the transferor by one hundred twenty hours or as otherwise provided in the deed shall be treated as if the designated beneficiary predeceased the transferor;

(3) Subject to subdivision (4) of this subsection, concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) If the transferor has identified two or more designated beneficiaries to receive concurrent interests in the property, the share of one which fails for any reason is transferred to the other, or to the others in proportion to the interest of each in the remaining part of the property held concurrently.

(b) A beneficiary takes the property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the property is subject at the transferor's death.

(c) If a transferor is a joint owner and is:

(1) Survived by one or more other joint owners, the property that is the subject of a transfer on death deed belongs to the surviving joint owner or owners with right of survivorship; or

(2) The last surviving joint owner, the transfer on death deed of the last surviving joint owner transferor is effective.

(d) A transfer on death deed transfers property without covenant or warranty of title even if the deed contains a contrary provision.

(e) If after recording a transfer on death deed the transferor is divorced or his or her marriage is dissolved or annulled, the divorce, dissolution, or annulment revokes any disposition or appointment of property made by the transfer on death deed to the former spouse unless the transfer on death deed expressly provides otherwise. Property prevented from passing to a former spouse under a transfer on death deed because of revocation by divorce, dissolution, or annulment passes as if the former spouse failed to survive the transferor. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

Source: Laws 2012, LB536, § 15.
Operative date January 1, 2013.

76-3416 Disclaimer.

A beneficiary may disclaim all or part of the beneficiary's interest as provided by section 30-2352.

Source: Laws 2012, LB536, § 16.
Operative date January 1, 2013.

76-3417 Liability for creditor claims and statutory allowances.

(a) If other assets of the estate of the transferor are insufficient to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration, a transfer under the Nebraska Uniform Real Property Transfer on Death Act subjects the beneficiary to personal liability as provided in this section to the extent needed to pay all claims against the transferor's estate, statutory allowances to the transferor's surviving spouse and children, and the expenses of administration.

(b)(1) A beneficiary who receives property through a transfer on death deed upon the death of the transferor is liable to account to the personal representative of the transferor's estate for a proportionate share of the fair market value of the equity in the interest received to the extent necessary to discharge the claims and allowances described in subsection (a) of this section remaining unpaid after application of the transferor's estate. For purposes of this subdivision (b)(1), the fair market value shall be determined as of the date of death of the transferor. For purposes of this subdivision (b)(1), the beneficiary's proportionate share means the proportionate share of all nonprobate transfers recovered by the personal representative for the payment of the claims and allowances under the Nebraska Uniform Real Property Transfer on Death Act and sections 30-2726, 30-2743, and 30-3850.

(2) A proceeding to assert the liability for claims against the estate and statutory allowances may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the transferor. The proceeding must be commenced within one year after the death of the transferor.

(c) A beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other transfer on death deed for the same transferor or any other asset of the transferor subject to sections 30-2726, 30-2743, and 30-3850.

(d) Assets recovered by the personal representative pursuant to this section shall be administered as part of the transferor's estate.

(e) Nothing in this section shall be construed to limit the rights of creditors under other laws of this state.

Source: Laws 2012, LB536, § 17.
Operative date January 1, 2013.

76-3418 Beneficiary; liability for medicaid reimbursement; liability for creditor claims and statutory allowances; limit.

A beneficiary to whom an interest is transferred by a transfer on death deed shall be personally liable to account for medicaid reimbursement pursuant to sections 68-919 and 76-3417 to the extent necessary to discharge any such claim remaining unpaid after application of the assets of the transferor's estate. Such liability shall be limited to the value of the interest transferred to the beneficiary. The right to recover applies to medical assistance provided before,

at the same time as, or after the signing of and the recording of the transfer on death deed.

Source: Laws 2012, LB536, § 18.
Operative date January 1, 2013.

76-3419 Certain contracts; requirements.

A contract to make a transfer on death deed, or not to revoke a transfer on death deed, can be established only by a writing evidencing the contract signed by the transferor after January 1, 2013.

Source: Laws 2012, LB536, § 19.
Operative date January 1, 2013.

76-3420 Transfer on death deed property; acquisition by purchaser or lender; protections; lien for inheritance tax.

(a) Except as otherwise provided in subsection (b) of this section, if property or any interest therein transferred to a beneficiary by a transfer on death deed is acquired by a purchaser or lender for value from a beneficiary of a transfer on death deed, the purchaser or lender takes title free of any claims of the estate, personal representative, surviving spouse, creditors, and any other person claiming by or through the transferor of the transfer on death deed and the purchaser or lender shall not incur any personal liability to the estate, personal representative, surviving spouse, creditors, or any other person claiming by or through the transferor of the transfer on death deed, whether or not the conveyance by the transfer on death deed was proper. Except as otherwise provided in subsection (b) of this section, to be protected under this section, a purchaser or lender need not inquire whether a transferor or beneficiary of the transfer on death deed acted properly in making the conveyance to the beneficiary by the transfer on death deed.

(b) A purchaser or lender for value from a beneficiary of a transfer on death deed does not take title free of any lien for inheritance tax under section 77-2003.

Source: Laws 2012, LB536, § 20.
Operative date January 1, 2013.

76-3421 Medicaid assistance; Department of Health and Human Services; powers.

The Department of Health and Human Services may require revocation of a transfer on death deed by a transferor, a transferor's spouse, or both a transferor and the transferor's spouse in order for the transferor to qualify or remain qualified for medicaid assistance.

Source: Laws 2012, LB536, § 21.
Operative date January 1, 2013.

76-3422 Uniformity of application and construction.

In applying and construing the Nebraska Uniform Real Property Transfer on Death Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

Source: Laws 2012, LB536, § 22.
Operative date January 1, 2013.

76-3423 Relation to federal Electronic Signatures in Global and National Commerce Act.

The Nebraska Uniform Real Property Transfer on Death Act modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

Source: Laws 2012, LB536, § 23.
Operative date January 1, 2013.

CHAPTER 77
REVENUE AND TAXATION

Article.

ARTICLE 1
DEFINITIONS

77-105 Tangible personal property, intangible personal property, defined.

The term tangible personal property includes all personal property possessing a physical existence, excluding money. The term tangible personal property also includes trade fixtures, which means machinery and equipment, regardless of the degree of attachment to real property, used directly in commercial, manufacturing, or processing activities conducted on real property, regardless of whether the real property is owned or leased, and all depreciable tangible personal property described in subsection (9) of section 77-202 used in the generation of electricity using wind as the fuel source. The term intangible personal property includes all other personal property, including money.

Source: Laws 1921, c. 133, art. I, § 4, p. 545; C.S.1922, § 5811; C.S.1929, § 77-104; Laws 1933, c. 156, § 2, p. 592; C.S.Supp.,1941, § 77-104; R.S.1943, § 77-105; Laws 1991, LB 829, § 6; Laws 2007, LB334, § 14; Laws 2010, LB1048, § 10; Laws 2011, LB360, § 1.

77-123 Omitted property, defined.

Omitted property means, for the current tax year, (1) any taxable real property that was not assessed on March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, any taxable real property that was not assessed on March 25, and (2) any taxable tangible personal property that was not assessed on May 1. Omitted property also means any taxable real or tangible personal property that was not assessed for any prior tax year. Omitted property does not include property exempt under subdivisions (1)(a) through (d) of section 77-202, listing errors of an item of property on the assessment roll of the county assessor, or clerical errors as defined in section 77-128.

Source: Laws 1997, LB 270, § 6; Laws 1998, LB 1104, § 5; Laws 1999, LB 194, § 6; Laws 1999, LB 271, § 3; Laws 2004, LB 973, § 5; Laws 2011, LB384, § 2.

ARTICLE 2
PROPERTY TAXABLE, EXEMPTIONS, LIENS

Section
77-202.09. Cemetery organization; exemption; application; procedure; late filing.
77-202.12. Public property; taxation status; county assessor; duties; appeal.

77-202 Property taxable; exemptions enumerated.

(1) The following property shall be exempt from property taxes:

(a) Property of the state and its governmental subdivisions to the extent used or being developed for use by the state or governmental subdivision for a public purpose. For purposes of this subdivision:

(i) Property of the state and its governmental subdivisions means (A) property held in fee title by the state or a governmental subdivision or (B) property beneficially owned by the state or a governmental subdivision in that it is used for a public purpose and is being acquired under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of legal title to the property to the state or a governmental subdivision upon payment of all amounts due thereunder. If the property to be beneficially owned by a governmental subdivision has a total acquisition cost that exceeds the threshold amount or will be used as the site of a public building with a total estimated construction cost that exceeds the threshold amount, then such property shall qualify for an exemption under this section only if the question of acquiring such property or constructing such public building has been submitted at a primary, general, or special election held within the governmental subdivision and has been approved by the voters of the governmental subdivision. For purposes of this subdivision, threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental subdivision that will beneficially own the property as of the end of the governmental subdivision's prior fiscal year; and

(ii) Public purpose means use of the property (A) to provide public services with or without cost to the recipient, including the general operation of government, public education, public safety, transportation, public works, civil and criminal justice, public health and welfare, developments by a public housing authority, parks, culture, recreation, community development, and cemetery purposes, or (B) to carry out the duties and responsibilities conferred by law with or without consideration. Public purpose does not include leasing of property to a private party unless the lease of the property is at fair market value for a public purpose. Leases of property by a public housing authority to low-income individuals as a place of residence are for the authority's public purpose;

(b) Unleased property of the state or its governmental subdivisions which is not being used or developed for use for a public purpose but upon which a payment in lieu of taxes is paid for public safety, rescue, and emergency services and road or street construction or maintenance services to all governmental units providing such services to the property. Except as provided in Article VIII, section 11, of the Constitution of Nebraska, the payment in lieu of taxes shall be based on the proportionate share of the cost of providing public safety, rescue, or emergency services and road or street construction or maintenance services unless a general policy is adopted by the governing body of the governmental subdivision providing such services which provides for a different method of determining the amount of the payment in lieu of taxes. The governing body may adopt a general policy by ordinance or resolution for

determining the amount of payment in lieu of taxes by majority vote after a hearing on the ordinance or resolution. Such ordinance or resolution shall nevertheless result in an equitable contribution for the cost of providing such services to the exempt property;

(c) Property owned by and used exclusively for agricultural and horticultural societies;

(d) Property owned by educational, religious, charitable, or cemetery organizations, or any organization for the exclusive benefit of any such educational, religious, charitable, or cemetery organization, and used exclusively for educational, religious, charitable, or cemetery purposes, when such property is not (i) owned or used for financial gain or profit to either the owner or user, (ii) used for the sale of alcoholic liquors for more than twenty hours per week, or (iii) owned or used by an organization which discriminates in membership or employment based on race, color, or national origin. For purposes of this subdivision, educational organization means (A) an institution operated exclusively for the purpose of offering regular courses with systematic instruction in academic, vocational, or technical subjects or assisting students through services relating to the origination, processing, or guarantying of federally reinsured student loans for higher education or (B) a museum or historical society operated exclusively for the benefit and education of the public. For purposes of this subdivision, charitable organization means an organization operated exclusively for the purpose of the mental, social, or physical benefit of the public or an indefinite number of persons; and

(e) Household goods and personal effects not owned or used for financial gain or profit to either the owner or user.

(2) The increased value of land by reason of shade and ornamental trees planted along the highway shall not be taken into account in the valuation of land.

(3) Tangible personal property which is not depreciable tangible personal property as defined in section 77-119 shall be exempt from property tax.

(4) Motor vehicles required to be registered for operation on the highways of this state shall be exempt from payment of property taxes.

(5) Business and agricultural inventory shall be exempt from the personal property tax. For purposes of this subsection, business inventory includes personal property owned for purposes of leasing or renting such property to others for financial gain only if the personal property is of a type which in the ordinary course of business is leased or rented thirty days or less and may be returned at the option of the lessee or renter at any time and the personal property is of a type which would be considered household goods or personal effects if owned by an individual. All other personal property owned for purposes of leasing or renting such property to others for financial gain shall not be considered business inventory.

(6) Any personal property exempt pursuant to subsection (2) of section 77-4105 or section 77-5209.02 shall be exempt from the personal property tax.

(7) Livestock shall be exempt from the personal property tax.

(8) Any personal property exempt pursuant to the Nebraska Advantage Act shall be exempt from the personal property tax.

(9) Any depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source shall be exempt from the property

tax levied on depreciable tangible personal property. Depreciable tangible personal property used directly in the generation of electricity using wind as the fuel source includes, but is not limited to, wind turbines, rotors and blades, towers, trackers, generating equipment, transmission components, substations, supporting structures or racks, inverters, and other system components such as wiring, control systems, switchgears, and generator step-up transformers.

(10) Any tangible personal property that is acquired by a person operating a data center located in this state, that is assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property, both in component form or that of an assembled product, for the purpose of subsequent use at a physical location outside this state by the person operating a data center shall be exempt from the personal property tax. Such exemption extends to keeping, retaining, or exercising any right or power over tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state. For purposes of this subsection, data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Source: Laws 1903, c. 73, § 13, p. 390; R.S.1913, § 6301; Laws 1921, c. 133, art. II, § 2, p. 547; C.S.1922, § 5821; C.S.1929, § 77-202; R.S.1943, § 77-202; Laws 1955, c. 290, § 1, p. 921; Laws 1965, c. 468, § 1, p. 1514; Laws 1965, c. 469, § 1, p. 1516; Laws 1967, c. 494, § 1, p. 1685; Laws 1967, c. 495, § 1, p. 1686; Laws 1971, LB 945, § 2; Laws 1975, LB 530, § 3; Laws 1980, LB 882, § 1; Laws 1980, LB 913, § 1; Laws 1982, LB 383, § 5; Laws 1984, LB 891, § 1; Laws 1985, LB 268, § 1; Laws 1986, LB 732, § 1; Laws 1987, LB 775, § 13; Laws 1988, LB 855, § 3; Laws 1989, Spec. Sess., LB 7, § 2; Laws 1991, LB 829, § 7; Laws 1992, LB 1063, § 53; Laws 1992, Second Spec. Sess., LB 1, § 51; Laws 1994, LB 961, § 7; Laws 1997, LB 271, § 39; Laws 1999, LB 271, § 4; Laws 2002, LB 994, § 10; Laws 2005, LB 312, § 4; Laws 2008, LB1027, § 1; Laws 2010, LB1048, § 11; Laws 2011, LB360, § 2; Laws 2012, LB902, § 1; Laws 2012, LB1080, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB902, section 1, with LB1080, section 1, to reflect all amendments.

Note: Changes made by LB902 became operative April 6, 2012. Changes made by LB1080 became operative January 1, 2013.

Cross References

Nebraska Advantage Act, see section 77-5701.

77-202.03 Property taxable; exempt status; period of exemption; change of status; late filing authorized; when; penalty; lien; new applications; reviewed; hearing; procedure; list.

(1) A properly granted exemption of real or tangible personal property, except real property used for cemetery purposes, provided for in subdivisions (1)(c) and (d) of section 77-202 shall continue for a period of four years if the statement of reaffirmation of exemption required by subsection (2) of this

section is filed when due. The four-year period shall begin with years evenly divisible by four.

(2) In each intervening year occurring between application years, the organization or society which filed the granted exemption application for the real or tangible personal property, except real property used for cemetery purposes, shall file a statement of reaffirmation of exemption with the county assessor on or before December 31 of the year preceding the year for which the exemption is sought, on forms prescribed by the Tax Commissioner, certifying that the ownership and use of the exempted property has not changed during the year. Any organization or society which misses the December 31 deadline for filing the statement of reaffirmation of exemption may file the statement of reaffirmation of exemption by June 30. Such filing shall maintain the tax-exempt status of the property without further action by the county and regardless of any previous action by the county board of equalization to deny the exemption due to late filing of the statement of reaffirmation of exemption. Upon any such late filing, the county assessor shall assess a penalty against the property of ten percent of the tax that would have been assessed had the statement of reaffirmation of exemption not been filed or one hundred dollars, whichever is less, for each calendar month or fraction thereof for which the filing of the statement of reaffirmation of exemption is late. The penalty shall be collected and distributed in the same manner as a tax on the property and interest shall be assessed at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date the tax would have been delinquent until paid. The penalty shall also become a lien in the same manner as a tax pursuant to section 77-203.

(3)(a) If any organization or society seeks a tax exemption for any real or tangible personal property acquired on or after January 1 of any year or converted to exempt use on or after January 1 of any year, the organization or society shall make application for exemption on or before July 1 of that year as provided in subsection (1) of section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, except that the exempt use shall be determined as of the date of application and the review by the county board of equalization shall be completed by August 15.

(b) If an organization as described in subdivision (1)(c) or (d) of section 77-202 purchases, between July 1 and the levy date, property that has been granted tax exemption and the property continues to be qualified for a property tax exemption, the purchaser shall on or before November 15 make application for exemption as provided in section 77-202.01. The procedure for reviewing the application shall be as in sections 77-202.01 to 77-202.05, and the review by the county board of equalization shall be completed by December 15.

(4) In any year, the county assessor or the county board of equalization may cause a review of any exemption to determine whether the exemption is proper. Such a review may be taken even if the ownership or use of the property has not changed from the date of the allowance of the exemption. If it is determined that a change in an exemption is warranted, the procedure for hearing set out in section 77-202.02 shall be followed, except that the published notice shall state that the list provided in the county assessor's office only includes those properties being reviewed. If an exemption is denied, the county board of equalization shall place the property on the tax rolls retroactive to January 1 of that year if on the date of the decision of the county board of equalization the property no longer qualifies for an exemption.

The county board of equalization shall give notice of the assessed value of the real property in the same manner as outlined in section 77-1507, and the procedures for filing a protest shall be the same as those in section 77-1502.

When personal property which was exempt becomes taxable because of lost exemption status, the owner or his or her agent has thirty days after the date of denial to file a personal property return with the county assessor. Upon the expiration of the thirty days for filing a personal property return pursuant to this subsection, the county assessor shall proceed to list and value the personal property and apply the penalty pursuant to section 77-1233.04.

(5) During the month of September of each year, the county board of equalization shall cause to be published in a paper of general circulation in the county a list of all real estate in the county exempt from taxation for that year pursuant to subdivisions (1)(c) and (d) of section 77-202. Such list shall be grouped into categories as provided by the Property Tax Administrator. A copy of the list and proof of publication shall be forwarded to the Property Tax Administrator.

Source: Laws 1963, c. 441, § 3, p. 1460; Laws 1965, c. 470, § 1, p. 1517; Laws 1969, c. 641, § 1, p. 2554; Laws 1973, LB 114, § 1; Laws 1973, LB 530, § 1; Laws 1976, LB 786, § 1; Laws 1979, LB 17, § 8; Laws 1980, LB 688, § 3; Laws 1981, LB 179, § 3; Laws 1983, LB 494, § 1; Laws 1986, LB 817, § 2; Laws 1989, LB 133, § 1; Laws 1990, LB 919, § 1; Laws 1993, LB 734, § 42; Laws 1995, LB 490, § 30; Laws 1996, LB 1122, § 2; Laws 1997, LB 270, § 14; Laws 1997, LB 271, § 42; Laws 1998, LB 1104, § 6; Laws 1999, LB 194, § 11; Laws 1999, LB 271, § 6; Laws 2000, LB 968, § 28; Laws 2004, LB 973, § 7; Laws 2007, LB166, § 4; Laws 2007, LB334, § 17; Laws 2010, LB708, § 1.

77-202.04 Property taxable; exempt status; delivery of copy of final decision; appeal; failure to give notice; effect.

(1) Notice of a county board of equalization's decision granting or denying an application for exemption from taxation for real or tangible personal property shall be mailed or delivered to the applicant and the county assessor by the county clerk within seven days after the date of the board's decision. Persons, corporations, or organizations may appeal denial of an application for exemption by a county board of equalization. Only the county assessor, the Tax Commissioner, or the Property Tax Administrator may appeal the granting of such an exemption by a county board of equalization. Appeals pursuant to this section shall be made to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision of the county board of equalization. The Tax Commissioner or Property Tax Administrator may in his or her discretion intervene in any such appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section. If the county assessor, Tax Commissioner, or Property Tax Administrator appeals a county board of equalization's final decision granting an exemption from property taxation, the person, corporation, or organization granted such exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed.

(2) A copy of the final decision by a county board of equalization shall be delivered electronically to the Tax Commissioner and the Property Tax Administrator within seven days after the date of the board's decision. The Tax Commissioner or the Property Tax Administrator shall have thirty days after the final decision to appeal the decision.

(3) Any owner may petition the Tax Equalization and Review Commission in accordance with section 77-5013, on or before December 31 of each year, to determine the taxable status of real property for that year if a failure to give notice as prescribed by this section prevented timely filing of a protest or appeal provided for in sections 77-202 to 77-202.25.

Source: Laws 1963, c. 441, § 4, p. 1461; Laws 1969, c. 642, § 1, p. 2556; Laws 1995, LB 490, § 31; Laws 1997, LB 271, § 43; Laws 2000, LB 968, § 29; Laws 2004, LB 973, § 8; Laws 2005, LB 15, § 3; Laws 2007, LB334, § 18; Laws 2010, LB877, § 1; Laws 2011, LB384, § 3.

77-202.09 Cemetery organization; exemption; application; procedure; late filing.

Any cemetery organization seeking a tax exemption for any real property used to maintain areas set apart for the interment of human dead shall apply for exemption to the county assessor on forms prescribed by the Tax Commissioner. An application for a tax exemption shall be made on or before December 31 of the year preceding the year for which the exemption is sought. The county assessor shall examine the application and recommend either taxable or exempt to the county board of equalization on or before February 1 following. If a cemetery organization seeks a tax exemption for any real or tangible personal property acquired for or converted to exempt use on or after January 1, the organization shall make application for exemption on or before July 1. The procedure for reviewing the application shall be the same as for other exemptions pursuant to subdivisions (1)(c) and (d) of section 77-202. Any cemetery organization which fails to file on or before December 31 for exemption may apply on or before June 30 pursuant to subsection (2) of section 77-202.01, and the penalty and procedures specified in section 77-202.01 shall apply.

Source: Laws 1997, LB 270, § 16; Laws 1999, LB 271, § 7; Laws 2007, LB334, § 20; Laws 2010, LB708, § 2.

77-202.12 Public property; taxation status; county assessor; duties; appeal.

(1) On or before March 1, the county assessor shall send notice to the state or to any governmental subdivision if it has property not being used for a public purpose upon which a payment in lieu of taxes is not made. Such notice shall inform the state or governmental subdivision that the property will be subject to taxation for property tax purposes. The written notice shall contain the legal description of the property and be given by first-class mail addressed to the state's or governmental subdivision's last-known address. If the property is leased by the state or the governmental subdivision to another entity and the lessor does not intend to pay the taxes for the lessee as allowed under subsection (4) of section 77-202.11, the lessor shall immediately forward the notice to the lessee.

(2) The state, governmental subdivision, or lessee may protest the determination of the county assessor that the property is not used for a public purpose to the county board of equalization on or before April 1. The county board of equalization shall issue its decision on the protest on or before May 1.

(3) The decision of the county board of equalization may be appealed to the Tax Equalization and Review Commission on or before June 1. The Tax Commissioner in his or her discretion may intervene in an appeal pursuant to this section within thirty days after notice by the Tax Equalization and Review Commission that an appeal has been filed pursuant to this section.

Source: Laws 1999, LB 271, § 9; Laws 2000, LB 968, § 32; Laws 2005, LB 263, § 5; Laws 2007, LB334, § 21; Laws 2011, LB384, § 4.

ARTICLE 3

DEPARTMENT OF REVENUE

Section

77-362.02 Department of Motor Vehicles; provide information to Department of Revenue.

In order to assist the Department of Revenue in carrying out its duties, the Department of Motor Vehicles shall provide information about individuals holding an operator's or driver's license or a state identification card under the Motor Vehicle Operator's License Act to the Department of Revenue in a manner agreed to by the Department of Revenue and the Department of Motor Vehicles. The information shall include:

(1) The individual's name;

(2) The individual's address of record;

(3) The individual's social security number, if available and permissible under law, and the individual's date of birth;

(4) The type of license, permit, or card held;

(5) The issuance date of the license, permit, or card;

(6) The expiration date of the license, permit, or card; and

(7) The status of the license, permit, or card.

The Department of Revenue may enter into agreements with the Director of Motor Vehicles to carry out this section.

Source: Laws 2010, LB879, § 5.

Cross References

Motor Vehicle Operator's License Act, see section 60-462.

77-367 Products and services to identify nonfilers of returns, underreporters, nonpayers of taxes, or improper or fraudulent payments; contract authorized; use of proceeds; report.

(1) The Department of Revenue may contract to procure products and services to develop, deploy, or administer systems or programs which identify nonfilers of returns, underreporters, or nonpayers of taxes administered by the department or improper or fraudulent payments made through programs administered by the department. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, interest, or other recovery actually collected and shall be paid only after the amount is collected. The Legislature intends to appropriate an amount from the tax, penalty, interest, and other recovery actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursements, costs incurred by the department, or other remuneration pursuant to this section. Vendors entering into a contract with the department pursuant to this section are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information.

(2) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to this section shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers, underreporters, nonpayers, and improper or fraudulent payments.

(3) The Tax Commissioner shall submit electronically an annual report to the Revenue Committee of the Legislature and Appropriations Committee of the Legislature on the amount of dollars generated during the previous fiscal year pursuant to this section.

Source: Laws 2011, LB642, § 1; Laws 2012, LB782, § 135.
Operative date July 19, 2012.

77-377.01 Delinquent tax collection; contract with collection agency; when authorized.

The Tax Commissioner may, for the purposes of collecting delinquent taxes due from a taxpayer and in addition to exercising those powers in section 77-27,107, contract with any collection agency licensed pursuant to the Collection Agency Act, within or without the state, for the collection of such delinquent taxes, including penalties and interest thereon. Such delinquent tax claims may be assigned to the collection agency, for the purpose of litigation in the agency's name and at the agency's expense, as a means of facilitating and expediting the collection process.

For purposes of this section, a delinquent tax claim shall be defined as a tax liability that is due and owing for a period longer than six months and for which the taxpayer has been mailed at least three notices requesting payment. At least one notice shall include a statement that the matter of such taxpayer's

delinquency may be referred to a collection agency in the taxpayer's home state.

Source: Laws 1981, LB 170, § 1; Laws 1993, LB 261, § 22; Laws 1993, LB 161, § 2; Laws 2012, LB727, § 28.
Operative date April 12, 2012.

Cross References

Collection Agency Act, see section 45-601.

77-378 Delinquent taxpayers; Department of Revenue and Department of Labor; prepare, maintain, and publish list; Tax Commissioner and Commissioner of Labor; duties.

(1) The Department of Revenue and the Department of Labor shall prepare, maintain, and publish a list of delinquent taxpayers who owe taxes or fees, including interest, penalties, and costs, in excess of twenty thousand dollars for which a notice of lien has been filed with the appropriate filing officer in accordance with the Uniform State Tax Lien Registration and Enforcement Act, except that no such list of delinquent taxpayers shall include any taxpayer that has not exhausted or waived all rights of appeal from a final balance of tax liability. The list may be posted on the web site of the Department of Revenue or the Department of Labor. The list shall include the name and address of the delinquent taxpayer, the type of tax or fee due, and the amount of tax or fee due, including interest, penalties, and costs.

(2) The Tax Commissioner and Commissioner of Labor shall update the list of delinquent taxpayers on a quarterly basis. The list shall not include (a) the name or related information of any taxpayer who has entered into a payment agreement with the Tax Commissioner or Commissioner of Labor and who is in compliance with that agreement or (b) the name or related information of any person who is protected by a stay that is in effect under the federal bankruptcy law. The name of a taxpayer shall be removed from the list within fifteen days after the payment in full of the debt or within fifteen days after the taxpayer enters into a payment agreement with the Tax Commissioner or Commissioner of Labor. A taxpayer may be placed back on the list if the taxpayer is more than fifteen days delinquent on a payment agreement.

(3) At least thirty days before the disclosure of the name of a delinquent taxpayer pursuant to subsection (1) of this section, the Tax Commissioner or Commissioner of Labor shall mail a written notice to the delinquent taxpayer at the taxpayer's last-known address informing the taxpayer that the failure to cure the tax delinquency could result in the taxpayer's name being included in a list of delinquent taxpayers that is published by the Tax Commissioner or Commissioner of Labor pursuant to this section.

Source: Laws 2010, LB879, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-382 Department; tax expenditure report; prepare; contents.

(1) The department shall prepare a tax expenditure report describing (a) the basic provisions of the Nebraska tax laws, (b) the actual or estimated revenue loss caused by the exemptions, deductions, exclusions, deferrals, credits, and preferential rates in effect on July 1 of each year and allowed under Nebraska's

tax structure and in the property tax, and (c) the elements which make up the tax base for state and local income, including income, sales and use, property, and miscellaneous taxes.

(2) The department shall review the major tax exemptions for which state general funds are used to reduce the impact of revenue lost due to a tax expenditure. The report shall indicate an estimate of the amount of the reduction in revenue resulting from the operation of all tax expenditures. The report shall list each tax expenditure relating to sales and use tax under the following categories:

(a) Agriculture, which shall include a separate listing for the following items: Agricultural machinery; agricultural chemicals; seeds sold to commercial producers; water for irrigation and manufacturing; commercial artificial insemination; mineral oil as dust suppressant; animal grooming; oxygen for use in aquaculture; animal life whose products constitute food for human consumption; and grains;

(b) Business across state lines, which shall include a separate listing for the following items: Property shipped out-of-state; fabrication labor for items to be shipped out-of-state; property to be transported out-of-state; property purchased in other states to be used in Nebraska; aircraft delivery to an out-of-state resident or business; state reciprocal agreements for industrial machinery; and property taxed in another state;

(c) Common carrier and logistics, which shall include a separate listing for the following items: Railroad rolling stock and repair parts and services; common or contract carriers and repair parts and services; common or contract carrier accessories; and common or contract carrier safety equipment;

(d) Consumer goods, which shall include a separate listing for the following items: Motor vehicles and motorboat trade-ins; merchandise trade-ins; certain medical equipment and medicine; newspapers; laundromats; telefloral deliveries; motor vehicle discounts for the disabled; and political campaign fundraisers;

(e) Energy, which shall include a separate listing for the following items: Motor fuels; energy used in industry; energy used in agriculture; aviation fuel; and minerals, oil, and gas severed from real property;

(f) Food, which shall include a separate listing for the following items: Food for home consumption; Supplemental Nutrition Assistance Program; school lunches; meals sold by hospitals; meals sold by institutions at a flat rate; food for the elderly, handicapped, and Supplemental Security Income recipients; and meals sold by churches;

(g) General business, which shall include a separate listing for the following items: Component and ingredient parts; manufacturing machinery; containers; film rentals; molds and dies; syndicated programming; intercompany sales; intercompany leases; sale of a business or farm machinery; and transfer of property in a change of business ownership;

(h) Lodging and shelter, which shall include a separate listing for the following item: Room rentals by certain institutions;

(i) Miscellaneous, which shall include a separate listing for the following items: Cash discounts and coupons; separately stated finance charges; casual sales; lease-to-purchase agreements; and separately stated taxes;

(j) Nonprofits, governments, and exempt entities, which shall include a separate listing for the following items: Purchases by political subdivisions of the state; purchases by churches and nonprofit colleges and medical facilities; purchasing agents for public real estate construction improvements; contractor as purchasing agent for public agencies; Nebraska lottery; admissions to school events; sales on Native American Indian reservations; school-supporting fundraisers; fine art purchases by a museum; purchases by the Nebraska State Fair Board; purchases by the Nebraska Investment Finance Authority and licensees of the State Racing Commission; purchases by the United States Government; public records; and sales by religious organizations;

(k) Recent sales tax expenditures, which shall include a separate listing for each sales tax expenditure created by statute or rule and regulation after July 19, 2012; and

(l) Telecommunications, which shall include a separate listing for the following items: Telecommunications access charges; prepaid calling arrangements; conference bridging services; and nonvoice data services.

(3) The report shall make recommendations relating to the elimination, in whole or in part, of particular tax expenditures or to the limiting of the duration of particular tax expenditures to a fixed number of years.

(4) It is the intent of the Legislature that nothing in the Tax Expenditure Reporting Act shall cause the valuation or assessment of any property exempt from taxation on the basis of its use exclusively for religious, educational, or charitable purposes.

Source: Laws 1979, LB 17, § 4; R.S.Supp.,1979, § 77-356; Laws 1980, LB 834, § 23; Laws 1991, LB 82, § 2; Laws 2012, LB962, § 1. Effective date July 19, 2012.

77-385 Tax expenditure report; summary; submission required.

The report required under section 77-382 and a summary of the report shall be submitted to the Governor, the Executive Board of the Legislative Council, and the chairpersons of the Legislature's Revenue and Appropriations Committees on or before October 15, 1991, and October 15 of every even-numbered year thereafter. The report submitted to the executive board and the committees shall be submitted electronically. The summary shall be included with or appended to the Governor's budget presented to the Legislature in odd-numbered years.

Source: Laws 1979, LB 17, § 7; R.S.Supp.,1979, § 77-359; Laws 1980, LB 834, § 26; Laws 1991, LB 82, § 3; Laws 2012, LB782, § 136. Operative date July 19, 2012.

77-3,110 Department of Revenue Miscellaneous Receipts Fund; created; use; investment.

All funds received pursuant to sections 77-3,109 and 77-3,118 shall be remitted to the State Treasurer for credit to the Department of Revenue Miscellaneous Receipts Fund which is hereby created. All money in the fund shall be administered by the Department of Revenue and shall be used to defray the cost of production of the publications listed in section 77-3,109 or of the listings described in section 77-3,118, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in

the Department of Revenue Miscellaneous Receipts 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 1986, LB 1027, § 212; Laws 1993, LB 345, § 10; Laws 1994, LB 1066, § 79; Laws 2009, First Spec. Sess., LB3, § 54.

Cross References

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

77-3,111 Repealed. Laws 2011, LB 378, § 37.

77-3,116 Study; cooperation with Department of Labor and other state agencies; contracts authorized; reports; department; duty.

(1) The Department of Revenue and the Department of Labor shall cooperate and participate in the collection of data for the study described in section 77-3,115. Other state agencies, including the University of Nebraska, shall assist in the study or the update as requested by the Department of Revenue and as any necessary funds are available. Any agency may contract with the Department of Revenue to provide such assistance. The Department of Revenue may also contract with an independent entity for the entity to conduct or assist in conducting such study or update. The department, other state agency, or independent entity preparing the material or study shall utilize and consider, along with other information, the results of any available study relating to the items listed in section 77-3,115 and conducted or contracted for by the Legislature in the year prior to April 16, 1992.

(2) A preliminary report of the initial study's models and initial findings shall be reported by the Department of Revenue to the chairpersons of the Appropriations Committee and Revenue Committee of the Legislature, the Clerk of the Legislature, and the Governor by December 1, 1992. The initial study shall be completed and the department shall report its findings to the same entities by December 1, 1993. The study shall be updated and the update shall be reported to the same entities on December 1, 2013, and every two years thereafter. The study submitted to the Appropriations Committee and Revenue Committee of the Legislature and the Clerk of the Legislature pursuant to this subsection shall be submitted electronically.

(3) Any models developed for the initial study or update shall be electronically shared with the Legislative Fiscal Analyst. The Department of Revenue shall include in its budget request for every other biennium following the 1991-93 biennium sufficient appropriation authority to conduct or contract for the required update.

Source: Laws 1992, LB 719A, § 218; Laws 2012, LB727, § 29; Laws 2012, LB782, § 137.
Operative date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB727, section 29, with LB782, section 137, to reflect all amendments.

77-3,119 Tax Commissioner; certify population of cities and villages.

(1) The Tax Commissioner shall certify the population of cities and villages to be used for purposes of calculations made pursuant to subdivision (4) of section 18-2603, subdivisions (3)(a) and (b) of section 35-1205, subdivision (1) of section 39-2517, and sections 39-2513 and 77-27,139.02. The Tax Commission-

er shall transmit copies of such certification to all interested parties upon request.

(2) The Tax Commissioner shall certify the population of each city and village based upon the most recent federal census. The Tax Commissioner shall determine the most recent federal census for each city and village by using the most recent federal census figures available from (a) the most recent federal decennial census, (b) the most recent federal census update or recount certified by the United States Bureau of the Census, or (c) the most recent federal census figure of the city or village plus the population of territory annexed as calculated in sections 18-1753 and 18-1754.

(3) The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 1994, LB 1127, § 1; Laws 1998, LB 1120, § 26; Laws 2000, LB 968, § 33; Laws 2011, LB383, § 2.

ARTICLE 6

ASSESSMENT AND EQUALIZATION OF RAILROAD PROPERTY

(a) RAILROAD OPERATING PROPERTY

Section
77-612. Railroad property; notice of valuation; appeal.

(a) RAILROAD OPERATING PROPERTY

77-612 Railroad property; notice of valuation; appeal.

On or before July 1, the Property Tax Administrator shall mail a draft appraisal to each railroad company required to file pursuant to section 77-603. The Property Tax Administrator shall, on or before July 15 of each year, notify by mail each railroad company of the total allocated value of its operating property. If a railroad company feels aggrieved, such railroad company may, on or before August 1, file with the Tax Commissioner an administrative appeal in writing stating that it claims the valuation is unjust or inequitable, the amount which it is claimed the valuation should be, and the excess therein and asking for an adjustment of the valuation by the Tax Commissioner. The Tax Commissioner shall act upon the appeal and shall issue a written order mailed to the company within seven days after the date of the order. The order may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1927, c. 174, § 1, p. 510; C.S.1929, § 77-509; R.S.1943, § 77-612; Laws 1985, LB 268, § 13; Laws 1988, LB 352, § 153; Laws 1995, LB 490, § 70; Laws 1997, LB 270, § 30; Laws 2004, LB 973, § 11; Laws 2007, LB334, § 35; Laws 2012, LB727, § 30. Operative date April 12, 2012.

ARTICLE 7

DEPARTMENT OF PROPERTY ASSESSMENT AND TAXATION

Section
77-701. Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights.
77-702. Property Tax Administrator; qualifications; duties.

77-701 Property assessment division; established; Property Tax Administrator; powers and duties; appeal rights.

(1) A division of state government to be known as the property assessment division of the Department of Revenue is established. The Property Tax Administrator shall be the chief administrative officer of the division but shall be under the general supervision of the Tax Commissioner.

(2) The goals and functions of the division shall be to: (a) Execute faithfully the property tax laws of the State of Nebraska; (b) provide for efficient, updated methods and systems of property tax reporting, enforcement, and related activities; and (c) continually seek to improve its system of administration.

(3) All employees, budget requirements, appropriations, encumbrances, and assets and liabilities of the Department of Property Assessment and Taxation for the administration of property valuation and equalization shall be transferred and delivered to the division. 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 Act.

(4) The Tax Commissioner or Property Tax Administrator may appeal any final decision of a county board of equalization relating to the granting or denying of an exemption of real or personal property to the Tax Equalization and Review Commission. If the Tax Commissioner or Property Tax Administrator files such an appeal, the person, corporation, or organization granted or denied the exemption by the county board of equalization shall be made a party to the appeal and shall be issued a notice of the appeal by the Tax Equalization and Review Commission within thirty days after the appeal is filed. The Tax Commissioner or Property Tax Administrator may appeal any final decision of the Tax Equalization and Review Commission relating to the granting or denying of an exemption of real or personal property or relating to the valuation or equalization of real property.

Source: Laws 1999, LB 36, § 21; Laws 2007, LB334, § 43; Laws 2010, LB877, § 2.

Cross References

State Employees Retirement Act, see section 84-1331.

77-702 Property Tax Administrator; qualifications; duties.

(1) The Governor shall appoint a Property Tax Administrator with the approval of a majority of the members of the Legislature. The Property Tax Administrator shall have experience and training in the fields of taxation and property appraisal and shall meet all the qualifications required for members of the Tax Equalization and Review Commission under subsections (1) and (2) of section 77-5004. The Property Tax Administrator shall adopt and promulgate rules and regulations to carry out his or her duties through June 30, 2007. Rules, regulations, and forms of the Property Tax Administrator in effect on July 1, 2007, shall be valid rules, regulations, and forms of the Department of Revenue beginning on July 1, 2007.

(2) In addition to any duties, powers, or responsibilities otherwise conferred upon the Property Tax Administrator, he or she shall administer and enforce all laws related to the state supervision of local property tax administration and

the central assessment of property subject to property taxation. The Property Tax Administrator shall also advise county assessors regarding the administration and assessment of taxable property within the state and measure assessment performance in order to determine the accuracy and uniformity of assessments.

Source: Laws 1999, LB 36, § 22; Laws 2001, LB 465, § 1; Laws 2007, LB334, § 44; Laws 2011, LB210, § 4; Laws 2011, LB384, § 5.

ARTICLE 8
PUBLIC SERVICE ENTITIES

Section
77-802. Property Tax Administrator; valuation; apportionment of tax.

77-802 Property Tax Administrator; valuation; apportionment of tax.

The Property Tax Administrator shall apportion the total taxable value including the franchise value to all taxing subdivisions in proportion to the ratio of the original cost of all operating real and tangible personal property of that public service entity having a situs in that taxing subdivision to the original cost of all operating real and tangible personal property of that public service entity having a situs in the state.

If the apportionment in accordance with this section does not fairly represent the proportion of the taxable value, including franchise value properly allocable to the county, the taxpayer may petition for or the Property Tax Administrator may require the inclusion of any other method to effectuate an equitable allocation of the value of the public service entity for purposes of taxation.

On or before July 25, the Property Tax Administrator shall mail a draft appraisal to each public service entity as defined in section 77-801.01. On or before August 10, the Property Tax Administrator shall, by mail, notify each public service entity of its taxable value and the distribution of that value to the taxing subdivisions in which the entity has situs. On or before August 10, the Property Tax Administrator shall also certify to the county assessors the taxable value so determined.

Source: Laws 1921, c. 133, art. IX, § 2, p. 587; C.S.1922, § 5891; C.S.1929, § 77-802; R.S.1943, § 77-802; Laws 1983, LB 353, § 2; Laws 1984, LB 835, § 6; Laws 1985, LB 269, § 3; Laws 1987, LB 508, § 26; Laws 1995, LB 490, § 88; Laws 1997, LB 270, § 40; Laws 1998, LB 306, § 20; Laws 2004, LB 973, § 14; Laws 2012, LB727, § 31.
Operative date April 12, 2012.

ARTICLE 9
INSURANCE COMPANIES

Section
77-908. Insurance companies; tax on gross premiums; rate; exceptions.
77-912. Tax; Director of Insurance; disposition; exceptions.
77-918. Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

77-908 Insurance companies; tax on gross premiums; rate; exceptions.

Every insurance company organized under the stock, mutual, assessment, or reciprocal plan, except fraternal benefit societies, which is transacting business

in this state shall, on or before March 1 of each year, pay a tax to the director of one percent of the gross amount of direct writing premiums received by it during the preceding calendar year for business done in this state, except that (1) for group sickness and accident insurance the rate of such tax shall be five-tenths of one percent and (2) for property and casualty insurance, excluding individual sickness and accident insurance, the rate of such tax shall be one percent. A captive insurer authorized under the Captive Insurers Act that is transacting business in this state shall, on or before March 1 of each year, pay to the director a tax of one-fourth of one percent of the gross amount of direct writing premiums received by such insurer during the preceding calendar year for business transacted in the state. The taxable premiums shall include premiums paid on the lives of persons residing in this state and premiums paid for risks located in this state whether the insurance was written in this state or not, including that portion of a group premium paid which represents the premium for insurance on Nebraska residents or risks located in Nebraska included within the group when the number of lives in the group exceeds five hundred. The tax shall also apply to premiums received by domestic companies for insurance written on individuals residing outside this state or risks located outside this state if no comparable tax is paid by the direct writing domestic company to any other appropriate taxing authority. Companies whose scheme of operation contemplates the return of a portion of premiums to policyholders, without such policyholders being claimants under the terms of their policies, may deduct such return premiums or dividends from their gross premiums for the purpose of tax calculations. Any such insurance company shall receive a credit on the tax imposed as provided in the Community Development Assistance Act and in the New Markets Job Growth Investment Act.

Source: Laws 1951, c. 256, § 2, p. 878; Laws 1984, LB 372, § 13; Laws 1986, LB 1114, § 10; Laws 1989, LB 92, § 275; Laws 1992, LB 1063, § 91; Laws 1992, Second Spec. Sess., LB 1, § 64; Laws 2001, LB 433, § 1; Laws 2002, Second Spec. Sess., LB 9, § 3; Laws 2006, LB 1248, § 83; Laws 2007, LB117, § 53; Laws 2007, LB367, § 5; Laws 2010, LB698, § 3; Laws 2012, LB1128, § 21. Operative date January 1, 2012.

Cross References

Captive Insurers Act, see section 44-8201.
Community Development Assistance Act, see section 13-201.
New Markets Job Growth Investment Act, see section 77-1101.

77-912 Tax; Director of Insurance; disposition; exceptions.

The Director of Insurance shall transmit fifty percent of the taxes paid in conformity with Chapter 44, article 1, and Chapter 77, article 9, to the State Treasurer, forty percent of such taxes paid to the General Fund, and ten percent of such taxes paid to the Mutual Finance Assistance Fund promptly upon completion of his or her audit and examination and in no event later than May 1 of each year, except that:

(1) All fire insurance taxes paid pursuant to sections 44-150 and 81-523 shall be remitted to the State Treasurer for credit to the General Fund;

(2) All workers' compensation insurance taxes paid pursuant to section 44-150 shall be remitted to the State Treasurer for credit to the Compensation Court Cash Fund; and

(3) Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, all premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state shall be remitted to the Comprehensive Health Insurance Pool Distributive Fund.

Source: Laws 1951, c. 256, § 6, p. 880; Laws 1986, LB 1114, § 13; Laws 1987, LB 302, § 8; Laws 1993, LB 757, § 35; Laws 1996, LB 693, § 8; Laws 1998, LB 1120, § 27; Laws 1999, LB 113, § 3; Laws 2000, LB 1253, § 44; Laws 2002, Second Spec. Sess., LB 9, § 4; Laws 2003, LB 408, § 3; Laws 2006, LB 1248, § 84; Laws 2007, LB296, § 702; Laws 2010, LB698, § 4.

77-918 Prepayment of tax; when due; Premium and Retaliatory Tax Suspense Fund; created; investment.

Insurers transacting insurance in this state whose annual tax for the preceding taxable year was four thousand dollars or more shall make prepayments of the annual taxes imposed pursuant to Chapter 77, article 9, and related retaliatory taxes imposed pursuant to Chapter 44, article 1.

Each insurer required to make prepayments shall remit such prepayments on or before April 15, June 15, and September 15 of the current taxable year. Remittance for such prepayments shall be accompanied by a prepayment form prescribed by the director.

The amount of each such prepayment shall be at least one-fourth of either (1) the total tax paid for the immediately preceding taxable year or (2) eighty percent of the actual tax due for the current taxable year.

The director, for good cause shown, may extend for not more than ten days the time for making a prepayment. The extension may be granted at any time if a request for such extension is filed with the director within or prior to the period for which the extension may be granted. Insurers who fail to pay any premium or retaliatory tax, including prepayments, when due shall pay interest at the rate prescribed by section 45-104.02, as such rate may from time to time be adjusted, until such tax is paid. Any insurer who fails to make the prepayments within the prescribed time period or to obtain an extension shall be subject to the penalties prescribed in section 77-911.

The director shall immediately deposit one-half of the prepayments received in the Premium and Retaliatory Tax Suspense Fund, which fund is hereby created, and one-half of the prepayments received in the General Fund. Commencing with the premium and related retaliatory taxes for the taxable year ending December 31, 2001, and for each taxable year thereafter, the director shall determine the amount of the premium and related retaliatory taxes imposed by section 44-150 or 77-908 paid by insurers writing health insurance in this state, except as otherwise set forth in subdivisions (1) and (2) of section 77-912, and such amount shall be credited to the Comprehensive Health Insurance Pool Distributive Fund. Except as provided in subsection (5) of section 44-4225, on May 1 of each year the director shall transfer all of the interest earned in the Premium and Retaliatory Tax Suspense Fund on the immediately preceding year's prepayments to the General Fund and transfer the balance of the preceding year's prepayments deposited in the Premium and Retaliatory Tax Suspense Fund to the Insurance Tax Fund. Any money in the Premium and Retaliatory Tax Suspense 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 1986, LB 1114, § 17; Laws 1992, Fourth Spec. Sess., LB 1, § 14; Laws 1994, LB 1066, § 81; Laws 2000, LB 1253, § 45; Laws 2011, LB73, § 7.

Cross References

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

ARTICLE 10

NEBRASKA ADVANTAGE TRANSFORMATIONAL TOURISM AND REDEVELOPMENT ACT

Section
77-1001. Act, how cited.
77-1002. Legislative findings and declarations.
77-1003. Definitions, where found.
77-1004. Tax terms, meaning.
77-1005. Approved cost, defined.
77-1006. Approved project, defined.
77-1007. Cultural development, defined.
77-1008. Destination dining, defined.
77-1009. Entertainment destination center, defined.
77-1010. Entitlement period, defined.
77-1011. Full-service restaurant, defined.
77-1012. Historical redevelopment, defined.
77-1013. Investment, defined.
77-1014. Lodging, defined.
77-1015. Mixed-use project, defined.
77-1016. Nebraska crafts and products center, defined.
77-1017. Project, defined.
77-1018. Qualified business, defined.
77-1019. Qualified property, defined.
77-1020. Recreation facility, defined.
77-1021. Redevelopment project, defined.
77-1022. Related persons, defined.
77-1023. Structured parking, defined.
77-1024. Taxpayer, defined.
77-1025. Tourism attraction, defined.
77-1026. Year, defined.
77-1027. Year of application, defined.
77-1028. Election required; procedures applicable.
77-1029. Verification of work eligibility status.
77-1030. Application; form; contents; confidentiality; fee; municipality; duties; certification; written agreement; contents; modification.
77-1031. Incentives; tiers; project requirements; refund of taxes.
77-1032. Department of Revenue; duties; review of projects; recapture of incentives; Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund; created; use; investment.
77-1033. Transfer of incentives; when; liability for recapture.
77-1034. Refunds; interest not allowable.
77-1035. Act; restrictions on use.

77-1001 Act, how cited.

Sections 77-1001 to 77-1035 shall be known and may be cited as the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 1.

77-1002 Legislative findings and declarations.

The Legislature hereby finds and declares that it is the policy of this state to utilize Nebraska's tax structure in order to encourage new businesses to relocate to Nebraska as a component of a program to develop new tourism attractions as well as to redevelop areas of municipalities which are suffering the effects of age. In addition, the policy of this state is to promote the creation and retention of new jobs in Nebraska and attract and retain Nebraska's best and brightest young people.

Source: Laws 2010, LB1018, § 2.

77-1003 Definitions, where found.

For purposes of the Nebraska Advantage Transformational Tourism and Redevelopment Act, the definitions found in sections 77-1004 to 77-1027 shall be used.

Source: Laws 2010, LB1018, § 3.

77-1004 Tax terms, meaning.

Any term shall have the same meaning as used in Chapter 77, article 27.

Source: Laws 2010, LB1018, § 4.

77-1005 Approved cost, defined.

Approved cost means:

(1) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material suppliers in connection with the acquisition, construction, equipping, and installation of a project;

(2) The cost of acquiring real property or rights in real property and any cost incidental thereto;

(3) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, and installation of a project which is not paid by the vendor, supplier, delivery person, or contractor or otherwise provided;

(4) The cost of architectural and engineering services, including, but not limited to, estimates, plans, specifications, preliminary investigations, and supervision of construction and installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, and installation of a project;

(5) The cost required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of a project;

(6) The cost required for the installation of utilities, including, but not limited to: Water; sewer; sewer treatment; gas; electricity; and communications, including offsite construction of facilities paid for by the project owner; and

(7) All other costs comparable with those described in this section.

Source: Laws 2010, LB1018, § 5.

77-1006 Approved project, defined.

Approved project means any project that is certified by a municipality under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 6.

77-1007 Cultural development, defined.

Cultural development means a real estate development with a primary purpose of promoting cultural education or development, such as a museum or related visual arts centers, performing arts facility, or facilities housing, incubating, developing, or promoting art, music, theater, dance, zoology, botany, natural history, cultural history, or the sciences.

Source: Laws 2010, LB1018, § 7.

77-1008 Destination dining, defined.

Destination dining means a real estate development primarily selling and serving prepared food and beverage to the public in a setting with sit-down dining. In addition, the development must offer a unique food or experience concept not found in this state within (1) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (2) a fifty-mile radius of the development.

Source: Laws 2010, LB1018, § 8.

77-1009 Entertainment destination center, defined.

Entertainment destination center means a facility containing a minimum of two hundred thousand square feet of gross leasable area adjacent or complementary to an existing tourism attraction, an approved tourism development project, or a convention facility, and which provides a variety of entertainment and leisure options that contain at least six full-service restaurants and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators, family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions, or other cultural and leisure-time activities. Entertainment, food, and drink options and adjacent lodging shall occupy a minimum of sixty percent of the total gross area. Other retail stores shall occupy no more than forty percent of the total gross area.

Source: Laws 2010, LB1018, § 9.

77-1010 Entitlement period, defined.

Entitlement period means the year during which the required increases in employment and investment were met or exceeded and each year thereafter until the end of the ninth year following the year of application.

Source: Laws 2010, LB1018, § 10.

77-1011 Full-service restaurant, defined.

Full-service restaurant means any public place (1) which is kept, used, maintained, advertised, and held out to the public as a place where meals are served and where meals are actually and regularly served, (2) which has no sleeping accommodations, (3) which has adequate and sanitary kitchen and dining room equipment and capacity and a sufficient number and kind of employees to prepare, cook, and serve suitable food for its guests to consume

on premise, and (4) which has wait staff and table service with an average per-table bill of at least fifteen dollars.

Source: Laws 2010, LB1018, § 11.

77-1012 Historical redevelopment, defined.

Historical redevelopment means a real estate development project that redevelops a historic building, as listed on either the National Register of Historic Places or the Nebraska Historic Buildings Survey. The reuse of the historic building can be any approved use, including retail for an entertainment destination center or a mixed-use project.

Source: Laws 2010, LB1018, § 12.

77-1013 Investment, defined.

Investment means the value of qualified property incorporated into or used at the project. For qualified property owned by the taxpayer, the value shall be the original cost of the property. Investment does not include real property for a tourism development project.

Source: Laws 2010, LB1018, § 13.

77-1014 Lodging, defined.

(1) Lodging means any lodging facility with the following attributes:

(a) The facility constitutes a portion of an approved project and represents less than fifty percent of the total approved cost of the tourism attraction project, or the facility is to be located on recreational property owned or leased by the state or the federal government and has received prior approval from the appropriate state or federal agency;

(b) The facility utilizes a historical redevelopment; or

(c) The facility involves the construction, reconstruction, restoration, rehabilitation, or upgrade of a full-service lodging facility having not less than two hundred fifty guestrooms, with reconstruction, restoration, rehabilitation, or upgrade costs exceeding the minimum. The hotel facilities or attached conference facility must also include a minimum of fifteen thousand square feet of net function space, including exhibit space, ballrooms, meeting rooms, or lecture halls.

(2) Lodging includes a lodging facility constructed as part of a development prior to the construction of retail development or a tourism attraction under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 14.

77-1015 Mixed-use project, defined.

Mixed-use project means a facility containing a minimum of fifty thousand square feet. The project must include at least two vertical stories of usable or leasable space and contain a minimum of two uses, such as restaurant, office, retail, or residential, not including parking. Retail stores shall occupy no more than forty percent of the total gross usable area.

Source: Laws 2010, LB1018, § 15.

77-1016 Nebraska crafts and products center, defined.

Nebraska crafts and products center means a real estate retail development primarily selling products created, grown, or assembled in Nebraska. Nebraska crafts and products must constitute a minimum of fifty percent of the total sales volume of the development.

Source: Laws 2010, LB1018, § 16.

77-1017 Project, defined.

Project means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction, and equipping of a tourism attraction or redevelopment project; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, and installation of a tourism attraction or redevelopment project, including, but not limited to, surveys; installation of utilities which may include water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; and offsite construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

Source: Laws 2010, LB1018, § 17.

77-1018 Qualified business, defined.

(1) For a tourism development project, qualified business means any business engaged in:

(a) Cultural development;

(b) Historical redevelopment;

(c) Recreation facilities;

(d) Entertainment destination centers;

(e) Lodging;

(f) Destination dining;

(g) Tourism attraction;

(h) Nebraska crafts and products center; or

(i) Any combination of the activities listed in this subsection.

(2) For a redevelopment project, qualified business means any business engaged in:

(a) Cultural development;

(b) Historical redevelopment;

(c) Recreation facilities;

(d) Entertainment destination centers;

(e) Mixed-use projects;

(f) Lodging;

(g) Full-service restaurants or destination dining;

(h) Residential development;

(i) Retail development;

(j) Structured parking;

(k) Tourism attraction;

(l) Nebraska crafts and products center; or

(m) Any combination of the activities listed in this subsection.

Source: Laws 2010, LB1018, § 18.

77-1019 Qualified property, defined.

(1) Qualified property means any tangible property of a type subject to depreciation, amortization, or other recovery under the Internal Revenue Code of 1986, as amended, or the components of such property, that will be located and used at the project.

(2) Qualified property does not include (a) aircraft, barges, motor vehicles, railroad rolling stock, or watercraft or (b) property that is rented by the taxpayer qualifying under the Nebraska Advantage Transformational Tourism and Redevelopment Act to another person.

Source: Laws 2010, LB1018, § 19.

77-1020 Recreation facility, defined.

Recreation facility means any real estate project with a primary purpose of promoting and hosting sports or recreation activities, including sports facilities, golf courses, beaches, parks, water parks, amusement parks, and related support amenities.

Source: Laws 2010, LB1018, § 20.

77-1021 Redevelopment project, defined.

Redevelopment project means a project proposed on a parcel or parcels previously developed with real property improvements. Current usage cannot include agriculture or livestock. The redevelopment project must be within the municipal limits of a municipality. The existing improvements must be more than ten years old or have been demolished prior to application.

Source: Laws 2010, LB1018, § 21.

77-1022 Related persons, defined.

Related persons means any corporations, partnerships, limited liability companies, or joint ventures which are or would otherwise be members of the same unitary group, if incorporated, or any persons who are considered to be related persons under either section 267(b) and (c) or section 707(b) of the Internal Revenue Code of 1986, as amended.

Source: Laws 2010, LB1018, § 22.

77-1023 Structured parking, defined.

Structured parking means a real estate development used primarily as a covered parking facility for automobiles or related personal vehicles. The parking facility must have a minimum of two levels of parking above or below ground.

Source: Laws 2010, LB1018, § 23.

77-1024 Taxpayer, defined.

(1) Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section

77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding.

(2) Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the Internal Revenue Code of 1986, as amended, hold an ownership interest of ten percent or more.

Source: Laws 2010, LB1018, § 24.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1025 Tourism attraction, defined.

Tourism attraction means a place of interest where tourists visit, typically for the inherent or exhibited cultural value, historical significance, natural or built beauty, or amusement opportunities, such as historical places, monuments, zoos, aquaria, museums, art galleries, botanical gardens, skyscrapers, parks, forests, natural recreation areas, theme parks, ethnic enclaves, historic transportation, and landmarks.

Source: Laws 2010, LB1018, § 25.

77-1026 Year, defined.

Year means the taxable year of the taxpayer.

Source: Laws 2010, LB1018, § 26.

77-1027 Year of application, defined.

Year of application means the year that a completed application is filed under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 27.

77-1028 Election required; procedures applicable.

The powers granted by the Nebraska Advantage Transformational Tourism and Redevelopment Act shall not be exercised unless and until the question of directing the proceeds of the local option sales tax as authorized under the act has been submitted at a primary, general, or special election held within the municipality and in which all registered voters are entitled to vote on such question. The officials of the municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk. The question may include any terms and conditions set forth in the resolution, such as a termination date, and shall include the following language: Shall the municipality direct the local option sales tax collected within an area defined by the municipality to require redevelopment or as a tourism development project for the benefit of that area? If a majority of the votes cast upon the question are in favor, the governing

body may so direct the tax. If a majority of those voting on the question are opposed, the governing body shall not so direct the tax. Once approved, the municipality may exercise the powers granted by the act for a period of ten years. Any election under this section shall be conducted in accordance with the procedures provided in the Election Act.

Source: Laws 2010, LB1018, § 28.

Cross References

Election Act, see section 32-101.

77-1029 Verification of work eligibility status.

A municipality shall not approve or grant to any person any incentive under the Nebraska Advantage Transformational Tourism and Redevelopment Act unless the taxpayer provides evidence satisfactory to the municipality that the taxpayer electronically verified the work eligibility status of all newly hired employees employed in Nebraska.

Source: Laws 2010, LB1018, § 29.

77-1030 Application; form; contents; confidentiality; fee; municipality; duties; certification; written agreement; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Transformational Tourism and Redevelopment Act, the taxpayer shall file an application, on a form developed by an association of municipalities organized statewide, requesting an agreement.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the municipality to support the plan and to define a project and a feasibility study. The plans shall include evidence that demonstrates that the project is feasible only with the incentives provided by the act;

(c) A nonrefundable application fee of two thousand five hundred dollars; and

(d) A timetable showing the expected local option sales tax refunds and what year they are expected to be claimed.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment and investment.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the municipality's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) The municipality shall conduct an internal review of the feasibility study. If the municipality determines that the feasibility study demonstrates that the project can meet the requirements of the act, then the municipality shall conduct its own study with an independent third party, the cost of which shall be paid in full by the applicant. The cost of the study required under this subsection shall be in addition to the fee required under subsection (2) of this section. The purpose of the study is to verify or nullify the results of the

feasibility study provided by the applicant. Additionally, the study shall examine the ability of the applicant to meet the requirements of the act. The study shall make a recommendation to the municipality on whether to proceed with the project or not.

(5) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Transformational Tourism and Redevelopment Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for incentives under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted, the municipality shall certify the application. Certification shall require approval by a majority vote by the members of the governing body of the municipality.

(6) After certification, the taxpayer and the municipality shall enter into a written agreement. The taxpayer shall agree to complete the project, and the municipality shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Transformational Tourism and Redevelopment Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the municipality annually on any changes in plans or circumstances which affect the timetable of local option sales tax refunds as set out in the application. If the company fails to comply with this requirement, the municipality may defer any pending local option sales tax refunds until the company does comply.

(7) A taxpayer and a municipality may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of incentives. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the municipality and taxpayer may amend the agreement.

(9) The agreement shall include performance-based metrics to insure compliance with the act.

Source: Laws 2010, LB1018, § 30.

77-1031 Incentives; tiers; project requirements; refund of taxes.

(1) Applicants may qualify for incentives under the Nebraska Advantage Transformational Tourism and Redevelopment Act as follows:

(a)(i) Tourism development project, investment in qualified property as required by this subdivision and a net employment increase to the state. Net employment from the project shall be determined at stabilization of the project, typically by the third year, and shall include any lost jobs from semi-competitive venues.

(ii) The investment requirement for a tourism development project is as follows:

(A) Tier 1, fifty million dollars exclusive of land for a project located in a municipality within a county in which the net taxable sales in the preceding calendar year were at least nine hundred million dollars or a municipality within a county bordered by two counties in which the total net taxable sales in the preceding calendar year were at least nine hundred million dollars;

(B) Tier 2, thirty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least two hundred million dollars but less than nine hundred million dollars;

(C) Tier 3, twenty million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were at least one hundred million dollars but less than two hundred million dollars; and

(D) Tier 4, ten million dollars exclusive of land for a project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars.

(iii) All complete project applications shall be considered by the municipality and certified if the project and taxpayer qualify for incentives. Agreements may be executed with regard to completed project applications. A tourism development project shall be unique and not duplicate any other qualified business in this state within (A) the same metropolitan statistical area as determined by the United States Office of Management and Budget and (B) a fifty-mile radius of the project; and

(b) Redevelopment project, investment in qualified property of at least ten million dollars and a net employment increase to the state, except that for a redevelopment project in a municipality within a county in which the net taxable sales in the preceding calendar year were less than one hundred million dollars, the requirements shall be investment in qualified property of at least seven million five hundred thousand dollars and a net employment increase to the state. Net employment from the project shall be determined by comparing the impact of the project to the impact of not having the project. Agreements may be executed with regard to completed project applications.

(2) In addition to the requirements of subsection (1) of this section:

(a) The project shall be open at least one hundred fifty days each calendar year;

(b) The applicant shall demonstrate that the project is not feasible but for the incentives provided under the act; and

(c) The applicant shall demonstrate that the project has conditional financing prior to completion of the application and final approval of financing before final approval of the application by the municipality.

(3) When the taxpayer has met the requirements contained in the agreement for the project, the taxpayer shall be entitled to the following incentives:

(a) A refund of local option sales tax up to a rate of one and one-half percent from the date of the application through the meeting of the requirements contained in the agreement for the project for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by the owner of the improvement to real estate that is incorporated into real estate as a part of a project; and

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate;

(b) Except as provided in subdivision (c) of this subsection for redevelopment projects, a refund of local option sales tax up to a rate of one and one-half percent paid on all types of purchases on which the local option sales tax is levied within the boundaries of the project during each year of the entitlement period in which the taxpayer meets the requirements contained in the agreement for the project; and

(c) For a redevelopment project, if the taxpayer has been collecting local option sales tax for more than twenty-four months prior to completion of the project, a refund of the increase in local option sales tax revenue collected by the taxpayer within the boundaries of the project each calendar year after the completion of the project.

Source: Laws 2010, LB1018, § 31.

77-1032 Department of Revenue; duties; review of projects; recapture of incentives; Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund; created; use; investment.

(1) The Department of Revenue shall contract with an independent consultant to review each project under the Nebraska Advantage Transformational Tourism and Redevelopment Act every fifth year following July 15, 2010. The review shall be paid for by each project owner. The review shall examine patronage from outside the metropolitan statistical area as defined by the United States Office of Management and Budget in which the project is located, sales data, and employment records to determine the project owner's continued compliance with the provisions of the act. The project owner shall comply with the provisions of this subsection or be subject to the recapture provisions of this section. If it is determined that the project owner was not in compliance, the municipality may recapture all or a portion of the incentives provided under the act.

(2) If the taxpayer fails to meet the requirements contained in the agreement for the project either by the end of the fourth year after the end of the year the application was submitted or for the entire entitlement period, all or a portion

of the incentives provided under the act shall be recaptured on behalf of the municipality.

(3) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of four years after the end of the entitlement period.

(4) Any amounts due under this section shall be recaptured notwithstanding other allowable incentives and shall not be subsequently refunded under any provision of the act unless the recapture was in error.

(5) The recapture required by this section shall not occur if (a) the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency or (b) the cost of recapture would exceed the amount to be recaptured in the opinion of the municipality.

(6) The Nebraska Advantage Transformational Tourism and Redevelopment Act Cash Fund is created. The fund shall be used by the department to carry out its duties under 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.

Source: Laws 2010, LB1018, § 32.

Cross References

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

77-1033 Transfer of incentives; when; liability for recapture.

(1) The incentives allowed under the Nebraska Advantage Transformational Tourism and Redevelopment Act may be transferred when a project covered by an agreement is transferred in its entirety by sale or lease to another taxpayer or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986, as amended.

(2) The acquiring taxpayer, as of the date of notification of the municipality of the completed transfer, shall be entitled to any future incentives allowable under the act.

(3) The acquiring taxpayer shall be liable for any recapture that becomes due after the date of the transfer for the repayment of any incentives received either before or after the transfer.

Source: Laws 2010, LB1018, § 33.

77-1034 Refunds; interest not allowable.

Interest shall not be allowable on any refunds paid because of incentives earned under the Nebraska Advantage Transformational Tourism and Redevelopment Act.

Source: Laws 2010, LB1018, § 34.

77-1035 Act; restrictions on use.

The Nebraska Advantage Transformational Tourism and Redevelopment Act may not be used for the construction or financing of a stadium or for support facilities for a stadium.

Source: Laws 2010, LB1018, § 35.

ARTICLE 11
NEW MARKETS JOB GROWTH INVESTMENT ACT

Section
77-1101. Act, how cited.
77-1102. Definitions, where found.
77-1103. Applicable percentage, defined.
77-1104. Credit allowance date, defined.
77-1105. Letter ruling, defined.
77-1106. Long-term debt security, defined.
77-1107. Purchase price, defined.
77-1108. Qualified active low-income community business, defined.
77-1109. Qualified community development entity, defined.
77-1110. Qualified equity investment, defined.
77-1111. Qualified low-income community investment, defined.
77-1112. Tax credit, defined.
77-1113. Vested tax credit; utilization.
77-1114. Tax credit; not refundable or transferable; allocation; carry forward.
77-1115. Tax Commissioner; limit tax credit utilization.
77-1116. Qualified community development entity; application; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.
77-1117. Recapture of tax credit.
77-1118. Recapture of tax credit; notice of noncompliance; cure period.
77-1119. Tax Commissioner; issue letter rulings; request; refusal to issue for good cause; letter ruling; effect.

77-1101 Act, how cited.

Sections 77-1101 to 77-1119 shall be known and may be cited as the New Markets Job Growth Investment Act.

Source: Laws 2012, LB1128, § 1.
Operative date January 1, 2012.

77-1102 Definitions, where found.

For purposes of the New Markets Job Growth Investment Act, the definitions in sections 77-1103 to 77-1112 apply.

Source: Laws 2012, LB1128, § 2.
Operative date January 1, 2012.

77-1103 Applicable percentage, defined.

Applicable percentage means zero percent for the first two credit allowance dates, seven percent for the third credit allowance date, and eight percent for the next four credit allowance dates.

Source: Laws 2012, LB1128, § 3.
Operative date January 1, 2012.

77-1104 Credit allowance date, defined.

Credit allowance date means, with respect to any qualified equity investment:

(1) The date on which such investment is initially made; and

(2) Each of the six anniversary dates of such date thereafter.

Source: Laws 2012, LB1128, § 4.
Operative date January 1, 2012.

77-1105 Letter ruling, defined.

Letter ruling means a written interpretation of law to a specific set of facts provided by the applicant requesting a letter ruling.

Source: Laws 2012, LB1128, § 5.
Operative date January 1, 2012.

77-1106 Long-term debt security, defined.

Long-term debt security means any debt instrument issued by a qualified community development entity, at par value or a premium, with an original maturity date of at least seven years after the date of its issuance, with no acceleration of repayment, amortization, or prepayment features prior to its original maturity date. The qualified community development entity that issues the debt instrument may not make cash interest payments on the debt instrument during the period beginning on the date of issuance and ending on the final credit allowance date that exceed the cumulative operating income as defined by regulations adopted under section 45D of the Internal Revenue Code of 1986, as amended, of the qualified community development entity for that period prior to giving effect to the expense of such cash interest payments. This in no way limits the holder's ability to accelerate payments on the debt instrument if the issuer has defaulted on covenants designed to ensure compliance with this section or section 45D of the code.

Source: Laws 2012, LB1128, § 6.
Operative date January 1, 2012.

77-1107 Purchase price, defined.

Purchase price means the amount paid to the issuer of a qualified equity investment for the qualified equity investment.

Source: Laws 2012, LB1128, § 7.
Operative date January 1, 2012.

77-1108 Qualified active low-income community business, defined.

Qualified active low-income community business has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, and 26 C.F.R. 1.45D-1. A business shall be considered a qualified active low-income community business for the duration of the qualified community development entity's investment in, or loan to, the business if the entity reasonably expects, at the time it makes the investment or loan, that the business will continue to satisfy the requirements for being a qualified active low-income community business throughout the entire period of the investment or loan. The term excludes any business that derives or projects to derive fifteen percent or more of its annual revenue from the rental or sale of real estate. This exclusion does not apply to a business that is controlled by, or under common control with, another business if the second business (1) does not derive or project to derive fifteen percent or more of its annual revenue from the rental or sale of real estate and (2) is the primary tenant of the real estate leased from the first business.

Source: Laws 2012, LB1128, § 8.
Operative date January 1, 2012.

77-1109 Qualified community development entity, defined.

Qualified community development entity has the meaning given such term in section 45D of the Internal Revenue Code of 1986, as amended, if such entity has entered into an allocation agreement with the Community Development Financial Institutions Fund of the United States Department of the Treasury with respect to credits authorized by section 45D of the code which includes the State of Nebraska within the service area set forth in such allocation agreement. The term includes affiliated entities and subordinate community development entities of any such qualified community development entity.

Source: Laws 2012, LB1128, § 9.
Operative date January 1, 2012.

77-1110 Qualified equity investment, defined.

(1) Qualified equity investment means any equity investment in, or long-term debt security issued by, a qualified community development entity that:

(a) Is acquired after January 1, 2012, at its original issuance solely in exchange for cash;

(b) Has at least eighty-five percent of its cash purchase price used by the issuer to make qualified low-income community investments in qualified active low-income community businesses located in this state by the first anniversary of the initial credit allowance date;

(c) Is designated by the issuer as a qualified equity investment; and

(d) Is certified by the Tax Commissioner as not exceeding the limitation contained in section 77-1115.

(2) The term includes any qualified equity investment that does not meet the requirements of subdivision (1)(a) of this section if such investment was a qualified equity investment in the hands of a prior holder.

Source: Laws 2012, LB1128, § 10.
Operative date January 1, 2012.

77-1111 Qualified low-income community investment, defined.

Qualified low-income community investment means any capital or equity investment in, or loan to, any qualified active low-income community business. With respect to any one qualified active low-income community business, the maximum amount of qualified low-income community investments made in such business, on a collective basis with all of its affiliates, shall be ten million dollars whether issued to one or several qualified community development entities.

Source: Laws 2012, LB1128, § 11.
Operative date January 1, 2012.

77-1112 Tax credit, defined.

Tax credit means a credit against the tax otherwise due under the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807.

Source: Laws 2012, LB1128, § 12.
Operative date January 1, 2012.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1113 Vested tax credit; utilization.

A person or entity that acquires a qualified equity investment earns a vested tax credit against the tax imposed by the Nebraska Revenue Act of 1967 or sections 44-101 to 44-165, 77-907 to 77-918, or 77-3801 to 77-3807 that may be utilized as follows:

(1) On each credit allowance date of such qualified equity investment such acquirer, or subsequent holder of the qualified equity investment, shall be entitled to utilize a portion of such tax credit during the taxable year that includes such credit allowance date;

(2) The tax credit amount shall be equal to the applicable percentage for such credit allowance date multiplied by the purchase price paid to the issuer of such qualified equity investment; and

(3) The amount of the tax credit claimed shall not exceed the amount of the taxpayer's tax liability for the tax year for which the tax credit is claimed.

Any taxpayer that claims a tax credit shall not be required to pay any additional retaliatory tax under section 44-150 as a result of claiming such tax credit.

Source: Laws 2012, LB1128, § 13.
Operative date January 1, 2012.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-1114 Tax credit; not refundable or transferable; allocation; carry forward.

No tax credit claimed under the New Markets Job Growth Investment Act shall be refundable or transferable. Tax credits earned by a partnership, limited liability company, subchapter S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of such entity for their direct use in accordance with any agreement among such partners, members, or shareholders. Any amount of tax credit that the taxpayer is prohibited from claiming in a taxable year may be carried forward to any of the taxpayer's five subsequent taxable years.

Source: Laws 2012, LB1128, § 14.
Operative date January 1, 2012.

77-1115 Tax Commissioner; limit tax credit utilization.

The Tax Commissioner shall limit the monetary amount of qualified equity investments permitted under the New Markets Job Growth Investment Act to a level necessary to limit tax credit utilization in any fiscal year at no more than fifteen million dollars of new tax credits. Such limitation on qualified equity investments shall be based on the anticipated utilization of credits without regard to the potential for taxpayers to carry forward tax credits to later tax years.

Source: Laws 2012, LB1128, § 15.
Operative date January 1, 2012.

77-1116 Qualified community development entity; application; form; contents; Tax Commissioner; grant or deny; notice of certification; lapse of certification; when.

(1) A qualified community development entity that seeks to have an equity investment or long-term debt security designated as a qualified equity investment and eligible for tax credits under the New Markets Job Growth Investment Act shall apply to the Tax Commissioner. The qualified community development entity shall submit an application on a form that the Tax Commissioner provides that includes:

(a) Evidence of the entity's certification as a qualified community development entity, including evidence of the service area of the entity that includes this state;

(b) A copy of the allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund referred to in section 77-1109;

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or cancelled by the Community Development Financial Institutions Fund referred to in section 77-1109;

(d) A description of the proposed amount, structure, and purchaser of the equity investment or long-term debt security;

(e) Identifying information for any taxpayer eligible to utilize tax credits earned as a result of the issuance of the qualified equity investment;

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment; and

(g) A nonrefundable application fee of five thousand dollars.

(2) Within thirty days after receipt of a completed application containing the information necessary for the Tax Commissioner to certify a potential qualified equity investment, including the payment of the application fee, the Tax Commissioner shall grant or deny the application in full or in part. If the Tax Commissioner denies any part of the application, the Tax Commissioner shall inform the qualified community development entity of the grounds for the denial. If the qualified community development entity provides any additional information required by the Tax Commissioner or otherwise completes its application within fifteen days after the notice of denial, the application shall be considered completed as of the original date of submission. If the qualified community development entity fails to provide the information or complete its application within the fifteen-day period, the application remains denied and must be resubmitted in full with a new submission date.

(3) If the application is deemed complete, the Tax Commissioner shall certify the proposed equity investment or long-term debt security as a qualified equity investment that is eligible for tax credits, subject to the limitations contained in section 77-1115. The Tax Commissioner shall provide written notice of the certification to the qualified community development entity. The notice shall include the names of those taxpayers who are eligible to utilize the credits and their respective credit amounts. If the names of the taxpayers who are eligible to utilize the credits change due to a transfer of a qualified equity investment or a change in an allocation pursuant to section 77-1114, the qualified community development entity shall notify the Tax Commissioner of such change.

(4) The Tax Commissioner shall certify qualified equity investments in the order applications are received. Applications received on the same day shall be deemed to have been received simultaneously. For applications received on the same day and deemed complete, the Tax Commissioner shall certify, consistent with remaining tax credit capacity, qualified equity investments in proportionate percentages based upon the ratio of the amount of qualified equity investment requested in an application to the total amount of qualified equity investments requested in all applications received on the same day.

(5) Once the Tax Commissioner has certified qualified equity investments that, on a cumulative basis, are eligible for the maximum limitation contained in section 77-1115, the Tax Commissioner may not certify any more qualified equity investments for that fiscal year. If a pending request cannot be fully certified, the Tax Commissioner shall certify the portion that may be certified unless the qualified community development entity elects to withdraw its request rather than receive partial credit.

(6) Within thirty days after receiving notice of certification, the qualified community development entity shall issue the qualified equity investment and receive cash in the amount of the certified amount. The qualified community development entity shall provide the Tax Commissioner with evidence of the receipt of the cash investment within ten business days after receipt. If the qualified community development entity does not receive the cash investment and issue the qualified equity investment within thirty days after receipt of the certification notice, the certification shall lapse and the entity may not issue the qualified equity investment without reapplying to the Tax Commissioner for certification. A certification that lapses reverts back to the Tax Commissioner and may be reissued only in accordance with the application process outlined in this section.

Source: Laws 2012, LB1128, § 16.
Operative date January 1, 2012.

77-1117 Recapture of tax credit.

The Tax Commissioner shall recapture, from the taxpayer that claimed the credit on a return, the tax credit allowed under the New Markets Job Growth Investment Act if:

(1) Any amount of the federal tax credit available with respect to a qualified equity investment that is eligible for a tax credit under this section is recaptured under section 45D of the Internal Revenue Code of 1986, as amended. In such case the state's recapture shall be proportionate to the federal recapture with respect to such qualified equity investment;

(2) The issuer redeems or makes principal repayment with respect to a qualified equity investment prior to the seventh credit allowance date. In such case recapture shall be proportionate to the amount of the redemption or repayment with respect to such qualified equity investment; or

(3) The issuer fails to invest and satisfy the requirements of subdivision (1)(b) of section 77-1110 and maintain such level of investment in qualified low-income community investments in Nebraska until the last credit allowance date for the qualified equity investment. For purposes of this section, an investment shall be considered held by an issuer even if the investment has been sold or repaid if the issuer reinvests an amount equal to the capital returned to or recovered by the issuer from the original investment, exclusive of any profits

realized, in another qualified low-income community investment within twelve months of the receipt of such capital. An issuer shall not be required to reinvest capital returned from qualified low-income community investments after the sixth credit allowance date, the proceeds of which were used to make the qualified low-income community investment, and the qualified low-income community investment shall be considered held by the issuer through the seventh credit allowance date.

Source: Laws 2012, LB1128, § 17.
Operative date January 1, 2012.

77-1118 Recapture of tax credit; notice of noncompliance; cure period.

The enforcement of section 77-1117 shall be subject to a six-month cure period. No recapture under section 77-1117 shall occur until the qualified community development entity has been given notice of noncompliance and afforded six months from the date of such notice to cure the noncompliance.

Source: Laws 2012, LB1128, § 18.
Operative date January 1, 2012.

77-1119 Tax Commissioner; issue letter rulings; request; refusal to issue for good cause; letter ruling; effect.

(1) The Tax Commissioner shall issue letter rulings regarding the tax credit program authorized under the New Markets Job Growth Investment Act subject to the terms and conditions set forth in rules and regulations.

(2) The Tax Commissioner shall respond to a request for a letter ruling within sixty days after receipt of such request. The applicant may provide a draft letter ruling for the Tax Commissioner's consideration. The applicant may withdraw the request for a letter ruling, in writing, prior to the issuance of the letter ruling. The Tax Commissioner may refuse to issue a letter ruling for good cause, but shall list the specific reasons for refusing to issue the letter ruling. Good cause includes, but is not limited to:

(a) The applicant requests the Tax Commissioner to determine whether a statute is constitutional or a rule or regulation is lawful;

(b) The request involves a hypothetical situation or alternative plans;

(c) The facts or issues presented in the request are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue a letter ruling; or

(d) The issue is currently being considered in a rulemaking procedure, contested case, or other agency or judicial proceeding that may definitely resolve the issue.

(3) A letter ruling shall bind the Tax Commissioner until such time as the taxpayer or its shareholders, members, or partners, as applicable, claim all of such tax credits on a tax return which is the topic of the letter ruling, subject to the terms and conditions set forth in rules and regulations. The letter ruling shall apply only to the applicant.

(4) In rendering letter rulings and making other determinations under this section, to the extent applicable, the Tax Commissioner shall look for guidance to section 45D of the Internal Revenue Code of 1986, as amended, and the

regulations issued thereunder. The Tax Commissioner may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2012, LB1128, § 19.
Operative date January 1, 2012.

ARTICLE 13
ASSESSMENT OF PROPERTY

Section

77-1301 Real property; assessment date; notice of preliminary valuation.

(1) All real property in this state subject to taxation shall be assessed as of January 1 at 12:01 a.m., which assessment shall be used as a basis of taxation until the next assessment.

(2) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall provide notice of preliminary valuations to real property owners on or before January 15 of each year. Such notice shall be (a) mailed to the taxpayer or (b) published on a web site maintained by the county assessor or by the county.

(3) The county assessor shall complete the assessment of real property on or before March 19 of each year, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall complete the assessment of real property on or before March 25 of each year.

Source: Laws 1903, c. 73, § 105, p. 422; R.S.1913, § 6420; Laws 1921, c. 125, § 1, p. 535; C.S.1922, § 5955; Laws 1925, c. 167, § 1, p.

439; C.S.1929, § 77-1601; Laws 1933, c. 130, § 1, p. 507; C.S.Supp.,1941, § 77-1601; R.S.1943, § 77-1301; Laws 1945, c. 188, § 1, p. 581; Laws 1947, c. 251, § 31, p. 823; Laws 1947, c. 255, § 1, p. 835; Laws 1953, c. 270, § 1, p. 891; Laws 1953, c. 269, § 1, p. 889; Laws 1955, c. 288, § 19, p. 913; Laws 1959, c. 355, § 20, p. 1263; Laws 1959, c. 370, § 1, p. 1301; Laws 1963, c. 450, § 1, p. 1474; Laws 1980, LB 742, § 1; Laws 1984, LB 833, § 1; Laws 1987, LB 508, § 36; Laws 1992, LB 1063, § 114; Laws 1992, Second Spec. Sess., LB 1, § 87; Laws 1997, LB 270, § 63; Laws 1999, LB 194, § 15; Laws 2004, LB 973, § 18; Laws 2011, LB384, § 6.

77-1303 Assessment roll.

(1) On or before March 19 of each year, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor or county clerk shall make up an assessment roll of the taxable real property in the county on or before March 25.

(2) The county assessor or county clerk shall enter in the proper column, opposite each respective parcel, the name of the owner thereof so far as he or she is able to ascertain the same. The assessment roll shall contain columns in which may be shown the number of acres or lots and the value thereof, the improvements and the value thereof, the total value of the acres or lots and improvements, and the improvements on leased lands and the value and owner thereof and such other columns as may be required.

Source: Laws 1903, c. 73, § 106, p. 422; Laws 1905, c. 111, § 1, p. 510; R.S.1913, § 6421; Laws 1919, c. 137, § 1, p. 314; C.S.1922, § 5956; C.S.1929, § 77-1602; Laws 1943, c. 175, § 1, p. 609; R.S.1943, § 77-1303; Laws 1945, c. 189, § 1, p. 583; Laws 1947, c. 250, § 22, p. 795; Laws 1947, c. 251, § 32, p. 824; Laws 1951, c. 264, § 1, p. 892; Laws 1953, c. 270, § 2, p. 893; Laws 1955, c. 288, § 20, p. 915; Laws 1959, c. 355, § 21, p. 1265; Laws 1979, LB 187, § 204; Laws 1981, LB 179, § 10; Laws 1987, LB 508, § 42; Laws 1988, LB 842, § 1; Laws 1992, LB 1063, § 118; Laws 1992, Second Spec. Sess., LB 1, § 91; Laws 1997, LB 270, § 65; Laws 1999, LB 194, § 16; Laws 2004, LB 973, § 19; Laws 2005, LB 263, § 7; Laws 2011, LB384, § 7.

77-1311 County assessor; duties.

The county assessor shall have general supervision over and direction of the assessment of all property in his or her county. In addition to the other duties provided by law, the county assessor shall:

(1) Annually revise the real property assessment for the correction of errors;

(2) When a parcel has been assessed and thereafter part or parts are transferred to a different ownership, set off and apportion to each its just and equitable portion of the assessment;

(3) Obey all rules and regulations made under Chapter 77 and the instructions and orders sent out by the Tax Commissioner and the Tax Equalization and Review Commission;

(4) Examine the records in the office of the register of deeds and county clerk for the purpose of ascertaining whether the property described in producing mineral leases, contracts, and bills of sale, have been fully and correctly listed and add to the assessment roll any property which has been omitted;

(5) Prepare the assessment roll as defined in section 77-129 and described in section 77-1303; and

(6) Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, provide, between January 15 and March 1 of each year, the opportunity to real property owners to meet in person with the county assessor or the county assessor's designated representative. If the real property owner does not notify the county assessor or the county assessor's designated representative by February 1 of the real property owner's intent to meet in person, the real property owner waives the opportunity to meet in person with the county assessor or the county assessor's designated representative. During such meetings, the county assessor or the county assessor's designated representative shall provide a basis for the property valuation contained in the notice of preliminary valuation sent pursuant to section 77-1301 and accept any information the property owner provides relevant to the property value.

Source: Laws 1903, c. 73, § 113, p. 425; Laws 1905, c. 111, § 3, p. 512; Laws 1909, c. 111, § 1, p. 442; Laws 1911, c. 104, § 12, p. 377; R.S.1913, § 6428; Laws 1921, c. 137, § 1, p. 602; C.S.1922, § 5963; C.S.1929, § 77-1609; Laws 1935, c. 133, § 4, p. 481; Laws 1935, Spec. Sess., c. 14, § 5, p. 91; Laws 1939, c. 28, § 17, p. 155; C.S.Supp.,1941, § 77-1609; R.S.1943, § 77-1311; Laws 1947, c. 250, § 24, p. 796; Laws 1951, c. 257, § 2, p. 882; Laws 1959, c. 370, § 2, p. 1303; Laws 1972, LB 1069, § 3; Laws 1979, LB 187, § 205; Laws 1986, LB 1177, § 33; Laws 1990, LB 821, § 49; Laws 1992, LB 719A, § 165; Laws 1994, LB 1275, § 10; Laws 1995, LB 490, § 121; Laws 1997, LB 270, § 67; Laws 1997, LB 397, § 13; Laws 2001, LB 170, § 5; Laws 2003, LB 292, § 11; Laws 2005, LB 263, § 8; Laws 2007, LB334, § 63; Laws 2011, LB384, § 8.

77-1311.03 County assessor; systematic inspection and review; adjustment required.

On or before March 19 of each year, each county assessor shall conduct a systematic inspection and review by class or subclass of a portion of the taxable real property parcels in the county for the purpose of achieving uniform and proportionate valuations and assuring that the real property record data accurately reflects the property, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the inspection and review shall be conducted on or before March 25. The county assessor shall adjust the value of all other taxable real property parcels by class or subclass in the county so that the value of all real property is uniform and proportionate. The county assessor shall determine the portion to be inspected and reviewed

each year to assure that all parcels of real property in the county have been inspected and reviewed no less frequently than every six years.

Source: Laws 2007, LB334, § 100; Laws 2011, LB384, § 9.

77-1315 Adjustment to real property assessment roll; county assessor; duties; publication.

(1) The county assessor shall, after March 19 and on or before June 1, implement adjustments to the real property assessment roll for actions of the Tax Equalization and Review Commission, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the adjustments shall be implemented after March 25 and on or before June 1.

(2) On or before June 1, in addition to the notice of preliminary valuation sent pursuant to section 77-1301, the county assessor shall notify the owner of record as of May 20 of every item of real property which has been assessed at a value different than in the previous year. Such notice shall be given by first-class mail addressed to such owner's last-known address. It shall identify the item of real property and state the old and new valuation, the date of convening of the county board of equalization, and the dates for filing a protest.

(3) Immediately upon completion of the assessment roll, the county assessor shall cause to be published in a newspaper of general circulation in the county a certification that the assessment roll is complete and notices of valuation changes have been mailed and provide the final date for filing valuation protests with the county board of equalization.

(4) The county assessor shall annually, on or before June 6, post in his or her office and, as designated by the county board, mail to a newspaper of general circulation and to licensed broadcast media in the county the assessment ratios as found in his or her county as determined by the Tax Equalization and Review Commission and any other statistical measures, including, but not limited to, the assessment-to-sales ratio, the coefficient of dispersion, and the price-related differential.

Source: Laws 1903, c. 73, § 116, p. 427; Laws 1909, c. 111, § 1, p. 444; R.S.1913, § 6431; C.S.1922, § 5966; Laws 1927, c. 179, § 1, p. 519; C.S.1929, § 77-1612; R.S.1943, § 77-1315; Laws 1947, c. 250, § 26, p. 798; Laws 1947, c. 251, § 34, p. 825; Laws 1953, c. 271, § 1, p. 896; Laws 1953, c. 270, § 4, p. 894; Laws 1953, c. 272, § 1, p. 897; Laws 1959, c. 355, § 22, p. 1266; Laws 1959, c. 370, § 4, p. 1305; Laws 1971, LB 209, § 1; Laws 1979, LB 187, § 206; Laws 1984, LB 660, § 1; Laws 1992, LB 1063, § 120; Laws 1992, Second Spec. Sess., LB 1, § 93; Laws 1994, LB 902, § 16; Laws 1995, LB 452, § 18; Laws 1997, LB 270, § 68; Laws 1999, LB 194, § 17; Laws 2001, LB 156, § 1; Laws 2001, LB 170, § 6; Laws 2002, LB 994, § 12; Laws 2004, LB 973, § 20; Laws 2005, LB 261, § 2; Laws 2011, LB384, § 10; Laws 2012, LB822, § 1.
Effective date July 19, 2012.

Cross References

For date of convening the county board of equalization, see section 77-1502.

77-1315.01 Overvaluation or undervaluation; county assessor; report.

After March 19 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the county assessor shall report to the county board of equalization any overvaluation or undervaluation of any real property, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the report shall be made after March 25 and on or before July 25 or on or before August 10 in counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502. The county board of equalization shall consider the report in accordance with section 77-1504.

The current year's assessed valuation of any real property shall not be changed by the county assessor after March 19 except by action of the Tax Equalization and Review Commission or the county board of equalization, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the current year's assessed valuation of any real property shall not be changed after March 25 except by action of the commission or the county board of equalization.

Source: Laws 1997, LB 270, § 69; Laws 1999, LB 194, § 18; Laws 2004, LB 973, § 21; Laws 2005, LB 261, § 3; Laws 2005, LB 283, § 1; Laws 2011, LB384, § 11.

77-1317 Real property; assessment; omitted lands; correction; exceptions.

It shall be the duty of the county assessor to report to the county board of equalization all real property in his or her county that, for any reason, was omitted from the assessment roll for the current year, after the date specified in section 77-123, or any former year. The assessment shall be made by the county board of equalization in accordance with sections 77-1504 and 77-1507. After county board of equalization action pursuant to section 77-1504 or 77-1507, the county assessor shall correct the assessment and tax rolls as provided in section 77-1613.02. No real property shall be assessed for any prior year under this section when such real property has changed ownership otherwise than by will, inheritance, or gift.

Source: Laws 1903, c. 73, § 118, p. 428; R.S.1913, § 6433; C.S.1922, § 5968; C.S.1929, § 77-1614; R.S.1943, § 77-1317; Laws 1947, c. 250, § 28, p. 798; Laws 1949, c. 232, § 1, p. 643; Laws 1992, LB 1063, § 121; Laws 1992, Second Spec. Sess., LB 1, § 94; Laws 1997, LB 270, § 71; Laws 1999, LB 194, § 19; Laws 2004, LB 973, § 22; Laws 2011, LB384, § 12.

77-1318 Real property taxes; back interest and penalties; when; appeal.

All taxes charged under section 77-1317 shall be exempt from any back interest or penalty and shall be collected in the same manner as other taxes levied upon real estate, except for taxes charged on improvements to real property made after September 1, 1980. Interest at the rate provided in section 77-207 and the following penalties and interest on penalties for late reporting or failure to report such improvements pursuant to section 77-1318.01 shall be collected in the same manner as other taxes levied upon real property. The penalty for late reporting or failure to report improvements made to real

property after September 1, 1980, shall be as follows: (1) A penalty of twelve percent of the tax due on the improvements for each taxing period for improvements voluntarily filed or reported after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed; and (2) a penalty of twenty percent of the tax due on improvements for each taxing period for improvements not voluntarily reported for taxation purposes after March 19 has passed, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, after March 25 has passed. Interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, shall be assessed upon such penalty from the date of delinquency of the tax until paid. No penalty excluding interest shall be charged in excess of one thousand dollars per year. For purposes of this section, improvement shall mean any new construction of or change to an item of real property as defined in section 77-103.

Any additional taxes, penalties, or interest on penalties imposed pursuant to this section may be appealed in the same manner as appeals are made under section 77-1233.06.

Source: Laws 1903, c. 73, § 119, p. 428; R.S.1913, § 6434; C.S.1922, § 5969; C.S.1929, § 77-1615; R.S.1943, § 77-1318; Laws 1980, LB 689, § 2; Laws 1984, LB 835, § 7; Laws 1987, LB 508, § 43; Laws 1990, LB 821, § 51; Laws 1997, LB 270, § 72; Laws 1999, LB 194, § 20; Laws 2004, LB 973, § 23; Laws 2011, LB384, § 13.

77-1327 Legislative intent; Property Tax Administrator; sales file; studies; powers and duties.

(1) It is the intent of the Legislature that accurate and comprehensive information be developed by the Property Tax Administrator and made accessible to the taxing officials and property owners in order to ensure the uniformity and proportionality of the assessments of real property valuations in the state in accordance with law and to provide the statistical and narrative reports pursuant to section 77-5027.

(2) All transactions of real property for which the statement required in section 76-214 is filed shall be available for development of a sales file by the Property Tax Administrator. All transactions with stated consideration of more than one hundred dollars or upon which more than two dollars and twenty-five cents in documentary stamp taxes are paid shall be considered sales. All sales shall be deemed to be arm's length transactions unless determined to be otherwise under professionally accepted mass appraisal techniques. The Department of Revenue shall not overturn a determination made by a county assessor regarding the qualification of a sale unless the department reviews the sale and determines through the review that the determination made by the county assessor is incorrect.

(3) The Property Tax Administrator annually shall make and issue comprehensive assessment ratio studies of the average level of assessment, the degree of assessment uniformity, and the overall compliance with assessment requirements for each major class of real property subject to the property tax in each

county. The comprehensive assessment ratio studies shall be developed in compliance with professionally accepted mass appraisal techniques and shall employ such statistical analysis as deemed appropriate by the Property Tax Administrator, including measures of central tendency and dispersion. The comprehensive assessment ratio studies shall be based upon the sales file as developed in subsection (2) of this section and shall be used by the Property Tax Administrator for the analysis of the level of value and quality of assessment for purposes of section 77-5027 and by the Property Tax Administrator in establishing the adjusted valuations required by section 79-1016. Such studies may also be used by assessing officials in establishing assessed valuations.

(4) For purposes of determining the level of value of agricultural and horticultural land subject to special valuation under sections 77-1343 to 77-1347.01, the Property Tax Administrator shall annually make and issue a comprehensive study developed in compliance with professionally accepted mass appraisal techniques to establish the level of value if in his or her opinion the level of value cannot be developed through the use of the comprehensive assessment ratio studies developed in subsection (3) of this section.

(5) County assessors and other taxing officials shall electronically report data on the assessed valuation and other features of the property assessment process for such periods and in such form and content as the Property Tax Administrator shall deem appropriate. The Property Tax Administrator shall so construct and maintain the system used to collect and analyze the data to enable him or her to make intracounty comparisons of assessed valuation, including school districts and other political subdivisions, as well as intercounty comparisons of assessed valuation, including school districts and other political subdivisions. The Property Tax Administrator shall include analysis of real property sales pursuant to land contracts and similar transfers at the time of execution of the contract or similar transfer.

Source: Laws 1969, c. 622, § 3, p. 2513; Laws 1979, LB 187, § 207; Laws 1980, LB 834, § 61; Laws 1992, LB 719A, § 166; Laws 1994, LB 1275, § 11; Laws 1995, LB 452, § 19; Laws 1995, LB 490, § 124; Laws 1999, LB 36, § 29; Laws 1999, LB 194, § 21; Laws 2001, LB 170, § 7; Laws 2002, LB 994, § 14; Laws 2005, LB 40, § 8; Laws 2007, LB334, § 65; Laws 2009, LB166, § 8; Laws 2011, LB210, § 5.

77-1330 Property Tax Administrator and Tax Commissioner; guides for assessors; prepare; issue; failure to implement guide; corrective measures; procedures; cost; payment; State Treasurer; duties; removal of county assessor or deputy from office; appeal.

(1) The Property Tax Administrator and Tax Commissioner shall prepare, issue, and annually revise guides for county assessors in the form of property tax laws, rules, regulations, manuals, and directives. The Property Tax Administrator and Tax Commissioner may issue such directives without the necessity of compliance with the terms of the Administrative Procedure Act relating to the promulgation of rules and regulations. The assessment and appraisal function performed by counties shall comply with the standards, and county assessors shall continually use the materials in the performance of their duties. The standards shall not require the implementation of a specific computer software

or hardware system if the existing software or system produces data and reports in compliance with the standards.

(2) The Property Tax Administrator, or his or her agent or representative, may examine or cause to have examined any books, papers, records, or memoranda of any county relating to the assessment of property to determine compliance with the laws, rules, regulations, manuals, and directives described in subsection (1) of this section. Such production of records shall not include the photocopying of records between January 1 and April 1. Failure to provide such records to the Property Tax Administrator may constitute grounds for the suspension of the assessor's certificate of any county assessor who willfully fails to make requested records available to the Property Tax Administrator.

(3) After an examination the Property Tax Administrator shall provide a written report of the results to the county assessor and county board. If the examination indicates a failure to meet the standards contained in the laws, rules, regulations, manuals, and directives, the Property Tax Administrator shall, in the report, set forth the facts and cause of such failures as well as corrective measures the county or county assessor may implement to correct those failures.

(4) After the issuance of the report of the results of the examination, the Property Tax Administrator may seek to order a county or county assessor to take corrective measures to remedy any failure to comply with the materials described in subsection (1) of this section. Such corrective orders may only be issued after written notice and a hearing before the Tax Commissioner conducted at least ten days after the issuance of the written notice of hearing. The performance of such corrective measures shall be implemented by the county to which the order is issued. If the county fails to implement such corrective measures, the Property Tax Administrator may seek to suspend the assessment function of the county under the terms of subsection (5) of this section and shall implement the corrective measures pursuant to subsection (6) of this section. The performance of such corrective measures shall be a charge on the county, and upon completion, the Property Tax Administrator shall notify the county board of the cost and make demand for such cost. If payment is not received within one hundred twenty days after the start of the next fiscal year, the Tax Commissioner shall report such fact to the State Treasurer. The State Treasurer shall immediately make payment to the Department of Revenue for the costs incurred by the department for such corrective measures. The payment shall be made out of any money to which such county may be entitled under the Compressed Fuel Tax Act, Chapter 77, articles 27 and 35, and sections 66-482 to 66-4,149.

(5) If, within one year from the service of the order, the measures in the corrective order have not been taken, the Tax Commissioner (a) may, at any time during the continuance of such failure, issue an order requiring the county assessor and county board to show cause why the authority of the county with respect to assessments or any matter related thereto should not be suspended, (b) shall set a time and place at which the Tax Commissioner or his or her representative shall hear the county assessor and county board on the question of compliance by the county assessor or county with the laws, rules, regulations, manuals, directives, or corrective orders described in this section, and (c) after such hearing shall determine whether and to what extent the assessment function of the county shall be so suspended. Such hearing shall be held at least ten days after the issuance of such notice in the county.

(6) During the continuance of a suspension pursuant to subsection (5) of this section, the Property Tax Administrator shall succeed to the authority and duties from which the county has been suspended and shall exercise and perform the same. Such exercise and performance shall be a charge on the suspended county. The suspension shall continue until the Tax Commissioner finds that the conditions responsible for the failure to meet the minimum standards contained in the laws, rules, regulations, manuals, and directives have been corrected.

(7) The Property Tax Administrator, subject to rules and regulations to be published and furnished to every county assessor and county board, shall have the power to petition the Tax Commissioner to invalidate the certificate of any assessor or deputy assessor who willfully fails or refuses to diligently perform his or her duties in accordance with the laws, rules, regulations, manuals, and orders issued by the Tax Commissioner governing the assessment of property and the duties of each assessor and deputy assessor. No certificate shall be revoked or suspended except after notice and a hearing before the Tax Commissioner or his or her designee. Such hearing shall be held at least ten days after the issuance of such notice in the county. Prior to revocation, a one-year probationary period, subject to oversight by the Tax Commissioner, shall be imposed. At the end of the one-year probationary period, a second hearing shall be held. If assessment practices have improved, the probationary period shall end and no revocation shall be made. If assessment practices have not improved, the assessor certificate shall be revoked. If during the probationary period, the assessor continues to willfully fail or refuse to diligently perform his or her duties, the Tax Commissioner may immediately hold the second hearing. If the county assessor certificate of a person serving as assessor or deputy assessor is revoked, such person shall be removed from office by the Tax Commissioner, the office shall be declared vacant, and such person shall not be eligible to hold that office for a period of five years after the date of removal. The Tax Commissioner shall mail a copy of his or her written order to the affected party within seven days after the date of the order.

(8) All hearings described in this section shall be governed by the Administrative Procedure Act. Any county aggrieved by a determination of the Tax Commissioner after a hearing pursuant to subsections (4) and (5) of this section or alleging that its suspension is no longer justified or any assessor or deputy assessor whose county assessor certificate has been revoked may appeal within thirty days after the date of the written order of the Tax Commissioner to the Tax Equalization and Review Commission in accordance with section 77-5013.

Source: Laws 1969, c. 622, § 6, p. 2514; Laws 1979, LB 159, § 7; Laws 1981, LB 479, § 1; Laws 1984, LB 833, § 3; Laws 1985, LB 271, § 14; Laws 1995, LB 490, § 126; Laws 1999, LB 36, § 30; Laws 1999, LB 194, § 22; Laws 2004, LB 973, § 24; Laws 2007, LB334, § 66; Laws 2011, LB289, § 38.

Cross References

Administrative Procedure Act, see section 84-920.
Compressed Fuel Tax Act, see section 66-697.

77-1340 County assessment function by Property Tax Administrator; procedure; cost; effect; billing of county; county board reassume assessment function; appointment of county assessor; transfer of property; employees.

(1) The county board of a county may, by resolution, request the Property Tax Administrator to assume the duties, responsibilities, and authority of the county assessor and to perform the same in and for the county. Such a resolution must be adopted on or before October 31, 2006, and every other year thereafter.

(2) If the Property Tax Administrator finds that direct state performance of the duties, responsibilities, and authority of the county assessor will be either (a) necessary or desirable for the economic and efficient performance thereof or (b) necessary or desirable for improving the quality of assessment in the state, he or she may recommend assumption of such duties, responsibilities, and authority. The Tax Commissioner shall decide whether to recommend assumption and deliver such recommendation to the Governor and the Legislature by December 15, 2006, and every other year thereafter.

(3) The Tax Commissioner may recommend assuming the duties, responsibilities, and authority of the county assessor or reject assuming such duties, responsibilities, and authority. If the Tax Commissioner rejects the request, the assessment function shall not be transferred and the county may make another request.

(4) Upon a recommendation by the Tax Commissioner that the assumption of the assessment function should be undertaken according to the criteria in subsection (2) of this section, the Tax Commissioner shall request from the Legislature a sufficient appropriation in the next regular session of the Legislature following the recommendation to assume the assessment function. If the appropriation is not made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will not be undertaken. If a sufficient appropriation is made, the Tax Commissioner shall notify the county on or before July 1 that the assessment function will be undertaken beginning the next following July 1.

(5) If the Tax Commissioner recommends assumption of the assessment function and the Legislature makes an appropriation which the Tax Commissioner determines is sufficient to undertake the assumption, then commencing on the second July 1 after the adoption of the resolution by the county board, (a) the Property Tax Administrator shall undertake and perform the assessment function and all other duties and functions of the county assessor's office, including appraisal and reappraisal, (b) the office and functions of the county assessor shall be suspended, and (c) the performance of the assessment function by the Property Tax Administrator shall be deemed performance by the county assessor. Upon the assumption of the assessment function by the Property Tax Administrator, the term of office of the incumbent county assessor shall terminate and the county need no longer elect a county assessor pursuant to section 32-519. At that time, the county assessor and the employees of the county assessor's office shall become state employees with the status of newly hired employees except as provided in section 77-1340.02. No transferred county assessor or employee shall incur a loss of income or the right to participate in state-sponsored benefits as a result of becoming a state employee with the status of a newly hired employee pursuant to this section.

(6) Beginning July 1, 2010, the Property Tax Administrator shall bill each county for which the Property Tax Administrator has assumed the assessment function under this section for the services rendered on a quarterly basis. Beginning July 1, 2010, through June 30, 2011, the Property Tax Administrator shall bill twenty-five percent of the cost of the services rendered; beginning July

1, 2011, through June 30, 2012, the Property Tax Administrator shall bill fifty percent of the cost of the services rendered; and beginning July 1, 2012, through June 30, 2013, the Property Tax Administrator shall bill seventy-five percent of the cost of the services rendered. Reimbursements to the Department of Revenue shall be credited to the Department of Revenue Property Assessment Division Cash Fund.

(7) The county board of a county may, by resolution, reassume the assessment function prior to November 1, 2009, for fiscal year 2010-11, prior to September 1, 2010, for fiscal year 2011-12, and prior to September 1, 2011, for fiscal year 2012-13. The county board shall appoint an individual with a valid assessor's certificate to the position of county assessor. The appointment shall be effective July 1 of the year following the adoption of the resolution. On July 1 of such year, the appointed county assessor shall assume the title and perform the assessment functions and any other duties mandated of the office of county assessor. The appointed assessor shall continue to perform the county assessor's duties until an assessor is elected. At the close of business on June 30 of the year following the adoption of the resolution, the Property Tax Administrator shall cease his or her performance of the county assessment function. The Property Tax Administrator shall at that time transfer all books, files, and similar records with regard to the county assessment function of the county and all furniture, computers, and other equipment and property used by the state to perform the county assessment function, other than motor vehicles, to the county assessor. All contracts of the Department of Revenue pertaining to the operation of the county assessment function shall be assumed by the county until the expiration of the contract. On July 1 of the year following the adoption of the resolution, the employees of the Department of Revenue involved in the performance of the county assessment function in that county shall become county employees by operation of law.

Source: Laws 1969, c. 622, § 16, p. 2519; Laws 1995, LB 490, § 133; Laws 1996, LB 1085, § 53; Laws 1997, LB 269, § 37; Laws 2002, LB 994, § 15; Laws 2005, LB 291, § 1; Laws 2007, LB334, § 71; Laws 2009, LB121, § 6; Laws 2012, LB1101, § 1.
Operative date April 11, 2012.

77-1340 Repealed. Laws 2012, LB1101, § 4.

Operative date July 1, 2013.

77-1342 Department of Revenue Property Assessment Division Cash Fund; created; use; investment.

There is hereby created a fund to be known as the Department of Revenue Property Assessment Division Cash Fund to which shall be credited all money received by the Department of Revenue for services performed for county and multicounty assessment districts, for charges for publications, manuals, and lists, as an assessor's examination fee authorized by section 77-421, and under the provisions of sections 60-3,202, 77-684, 77-1250, and 77-1340. The fund shall be used to carry out any duties and responsibilities of the department, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The county or multicounty assessment district shall be billed by the department for services rendered. Reimbursements to the

department shall be credited to the Department of Revenue Property Assessment Division Cash Fund, and expenditures therefrom shall be made only when such funds are available. The department shall only bill for the actual amount expended in performing the service.

The fund shall not, at the close of each year, be lapsed to the General Fund. Any money in the Department of Revenue Property Assessment Division 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. 622, § 18, p. 2519; Laws 1971, LB 53, § 8; Laws 1971, LB 158, § 1; Laws 1973, LB 132, § 4; Laws 1985, LB 273, § 38; Laws 1989, Spec. Sess., LB 7, § 8; Laws 1992, LB 1063, § 123; Laws 1992, Second Spec. Sess., LB 1, § 96; Laws 1994, LB 1066, § 82; Laws 1995, LB 490, § 134; Laws 1997, LB 270, § 75; Laws 1997, LB 271, § 50; Laws 1999, LB 36, § 32; Laws 2001, LB 170, § 8; Laws 2002, LB 1310, § 9; Laws 2003, LB 563, § 42; Laws 2005, LB 274, § 272; Laws 2007, LB334, § 72; Laws 2009, LB121, § 7; Laws 2009, First Spec. Sess., LB3, § 55.

Cross References

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

77-1347 Agricultural or horticultural lands; special valuation; disqualification.

Upon approval of an application, the county assessor shall value the land as provided in section 77-1344 until the land becomes disqualified for such valuation by:

(1) Written notification by the applicant or his or her successor in interest to the county assessor to remove such special valuation;

(2) Except as provided in subsection (2) of section 77-1344, inclusion of the land within the corporate boundaries of any sanitary and improvement district, city, or village; or

(3) The land no longer qualifying as agricultural or horticultural land.

Source: Laws 1974, LB 359, § 5; Laws 1983, LB 26, § 4; Laws 1985, LB 271, § 19; Laws 1989, LB 361, § 12; Laws 2000, LB 968, § 53; Laws 2001, LB 170, § 11; Laws 2002, LB 994, § 18; Laws 2005, LB 263, § 12; Laws 2006, LB 808, § 31; Laws 2010, LB806, § 1.

77-1355 Repealed. Laws 2011, LB 210, § 17.

77-1359 Agricultural and horticultural land; legislative findings; terms, defined.

The Legislature finds and declares that agricultural land and horticultural land shall be a separate and distinct class of real property for purposes of assessment. The assessed value of agricultural land and horticultural land shall not be uniform and proportionate with all other real property, but the assessed value shall be uniform and proportionate within the class of agricultural land and horticultural land.

For purposes of this section and section 77-1363:

(1) Agricultural land and horticultural land means a parcel of land, excluding land associated with a building or enclosed structure located on the parcel, which is primarily used for agricultural or horticultural purposes, including wasteland lying in or adjacent to and in common ownership or management with other agricultural land and horticultural land;

(2) Agricultural or horticultural purposes means used for the commercial production of any plant or animal product in a raw or unprocessed state that is derived from the science and art of agriculture, aquaculture, or horticulture. Agricultural or horticultural purposes includes the following uses of land:

(a) Land retained or protected for future agricultural or horticultural purposes under a conservation easement as provided in the Conservation and Preservation Easements Act except when the parcel or a portion thereof is being used for purposes other than agricultural or horticultural purposes; and

(b) Land enrolled in a federal or state program in which payments are received for removing such land from agricultural or horticultural production;

(3) Farm home site means land contiguous to a farm site which includes an inhabitable residence and improvements used for residential purposes and which is located outside of urban areas or outside a platted and zoned subdivision; and

(4) Farm site means the portion of land contiguous to land actively devoted to agriculture which includes improvements that are agricultural or horticultural in nature, including any uninhabitable or unimproved farm home site.

Source: Laws 1985, LB 271, § 4; Laws 1986, LB 817, § 11; Laws 1988, LB 1207, § 3; Laws 1989, LB 361, § 14; Laws 1991, LB 320, § 7; Laws 1996, LB 934, § 3; Laws 1997, LB 270, § 77; Laws 2000, LB 419, § 1; Laws 2006, LB 808, § 35; Laws 2008, LB777, § 1; Laws 2012, LB750, § 1.
Effective date July 19, 2012.

Cross References

Conservation and Preservation Easements Act, see section 76-2,118.

77-1363 Agricultural and horticultural land; classes and subclasses.

Agricultural land and horticultural land shall be divided into classes and subclasses of real property under section 77-103.01, including, but not limited to, irrigated cropland, dryland cropland, grassland, wasteland, nurseries, feedlots, and orchards, so that the categories reflect uses appropriate for the valuation of such land according to law. Classes shall be inventoried by subclasses of real property based on soil classification standards developed by the Natural Resources Conservation Service of the United States Department of Agriculture as converted into land capability groups by the Property Tax Administrator. County assessors shall utilize soil surveys from the Natural Resources Conservation Service of the United States Department of Agriculture as directed by the Property Tax Administrator. Nothing in this section shall be construed to limit the classes and subclasses of real property that may be used by county assessors or the Tax Equalization and Review Commission to achieve more uniform and proportionate valuations.

Source: Laws 1985, LB 271, § 8; Laws 1988, LB 1207, § 5; Laws 1989, LB 361, § 17; Laws 1991, LB 320, § 9; Laws 1994, LB 902, § 19; Laws 1995, LB 490, § 139; Laws 1997, LB 270, § 81; Laws 1999,

LB 403, § 7; Laws 2001, LB 170, § 15; Laws 2004, LB 973, § 30; Laws 2006, LB 808, § 36; Laws 2006, LB 1115, § 31; Laws 2010, LB877, § 3.

77-1371 Comparable sales; use; guidelines.

Comparable sales are recent sales of properties that are similar to the property being assessed in significant physical, functional, and location characteristics and in their contribution to value. When using comparable sales in determining actual value of an individual property under the sales comparison approach provided in section 77-112, the following guidelines shall be considered in determining what constitutes a comparable sale:

(1) Whether the sale was financed by the seller and included any special financing considerations or the value of improvements;

(2) Whether zoning affected the sale price of the property;

(3) For sales of agricultural land or horticultural land as defined in section 77-1359, whether a premium was paid to acquire property. A premium may be paid when proximity or tax consequences cause the buyer to pay more than actual value for agricultural land or horticultural land;

(4) Whether sales or transfers made in connection with foreclosure, bankruptcy, or condemnations, in lieu of foreclosure, or in consideration of other legal actions should be excluded from comparable sales analysis as not reflecting current market value;

(5) Whether sales between family members within the third degree of consanguinity include considerations that fail to reflect current market value;

(6) Whether sales to or from federal or state agencies or local political subdivisions reflect current market value;

(7) Whether sales of undivided interests in real property or parcels less than forty acres or sales conveying only a portion of the unit assessed reflect current market value;

(8) Whether sales or transfers of property in exchange for other real estate, stocks, bonds, or other personal property reflect current market value;

(9) Whether deeds recorded for transfers of convenience, transfers of title to cemetery lots, mineral rights, and rights of easement reflect current market value;

(10) Whether sales or transfers of property involving railroads or other public utility corporations reflect current market value;

(11) Whether sales of property substantially improved subsequent to assessment and prior to sale should be adjusted to reflect current market value or eliminated from such analysis;

(12) For agricultural land or horticultural land as defined in section 77-1359 which is or has been receiving the special valuation pursuant to sections 77-1343 to 77-1347.01, whether the sale price reflects a value which the land has for purposes or uses other than as agricultural land or horticultural land and therefor does not reflect current market value of other agricultural land or horticultural land; and

(13) Whether sales or transfers of property are in a similar market area and have similar characteristics to the property being assessed.

The Property Tax Administrator may issue guidelines for assessing officials for use in determining what constitutes a comparable sale. Guidelines shall take into account the factors listed in this section and other relevant factors as prescribed by the Property Tax Administrator.

Source: Laws 1989, LB 361, § 4; Laws 1995, LB 490, § 142; Laws 2000, LB 968, § 56; Laws 2001, LB 170, § 16; Laws 2003, LB 295, § 3; Laws 2009, LB166, § 13; Laws 2012, LB750, § 2.
Effective date July 19, 2012.

77-1374 Improvements on leased public lands; assessment; change of ownership; filing required; collection of tax.

Improvements on leased public lands shall be assessed, together with the value of the lease, to the owner of the improvements as real property. On or before March 1, following any construction thereof or any change in the improvements made on or before January 1, the owner of the improvements shall file with the county assessor an assessment application on a form prescribed by the Tax Commissioner. An assessment application shall also be filed with the county assessor at the time a change of ownership occurs, and such assessment application shall be signed by the owner of the improvements. The taxes imposed on the improvements shall be collected in the same manner as in all other cases of collection of taxes on real property.

Source: Laws 1903, c. 73, § 35, p. 396; R.S.1913, § 6320; C.S.1922, § 5921; C.S.1929, § 77-1408; R.S.1943, § 77-1209; Laws 1963, c. 447, § 1, p. 1471; Laws 1974, LB 969, § 1; Laws 1987, LB 508, § 30; R.S.1943, (1990), § 77-1209; Laws 1992, LB 1063, § 111; Laws 1992, Second Spec. Sess., LB 1, § 84; Laws 1997, LB 270, § 82; Laws 2007, LB334, § 76; Laws 2012, LB1106, § 1.
Effective date July 19, 2012.

77-1375 Improvements on leased lands; how assessed; apportionment.

(1) If improvements on leased land are to be assessed separately to the owner of the improvements, the actual value of the real property shall be determined without regard to the fact that the owner of the improvements is not the owner of the land upon which such improvements have been placed.

(2) If the owner of the improvements claims that the value of his or her interest in the real property is reduced by reason of uncertainty in the term of his or her tenancy or because of the prospective termination or expiration of the term, he or she shall serve notice of such claim in writing by mail on the owner of the land before January 1 and shall at the same time serve similar notice on the county assessor, together with his or her affidavit that he or she has served notice on the owner of the land.

(3) If the county assessor finds, on the basis of the evidence submitted, that the claim is valid, he or she shall proceed to apportion the total value of the real property between the owner of the improvements and the owner of the land as their respective interests appear.

(4) The county assessor shall give notice to the parties of his or her findings by mail on or before June 1.

(5) The proportions so established shall continue from year to year unless changed by the county assessor after notice on or before June 1 or a claim is

filed by either the owner of the improvements or the owner of the land in accordance with the procedure provided in this section.

Source: Laws 1959, c. 365, § 4, p. 1286; Laws 1979, LB 187, § 199; Laws 1987, LB 508, § 31; R.S.1943, (1990), § 77-1209.02; Laws 1992, LB 1063, § 112; Laws 1992, Second Spec. Sess., LB 1, § 85; Laws 1997, LB 270, § 83; Laws 2012, LB727, § 32.
Operative date April 12, 2012.

ARTICLE 15

EQUALIZATION BY COUNTY BOARD

Section
77-1501. County board of equalization; who constitutes; meetings; county officials; duties.
77-1502. Board; protests; report; notification.
77-1504. Equalization of property; board; powers and duties; protest; procedure; notice of decision.
77-1504.01. Adjustment to class or subclass of real property; procedure.
77-1507. Board; duties; addition of omitted property; clerical errors; protest; procedure.
77-1514. Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

77-1501 County board of equalization; who constitutes; meetings; county officials; duties.

The county board shall constitute the county board of equalization. The county board of equalization shall fairly and impartially equalize the values of all items of real property in the county so that all real property is assessed uniformly and proportionately.

The county assessor or his or her designee shall attend all meetings of the county board of equalization when such meetings pertain to the assessment or exemption of real and personal property. The county treasurer shall attend all meetings of the county board of equalization involving the exemption of motor vehicles from the motor vehicle tax. All records of the county assessor's office shall be available for the inspection and consideration of the county board of equalization. The county clerk, deputy, or designee pursuant to section 23-1302 shall attend all meetings of the county board of equalization and shall make a record of the proceedings of the county board of equalization.

Source: Laws 1903, c. 73, § 120, p. 428; R.S.1913, § 6436; C.S.1922, § 5971; C.S.1929, § 77-1701; R.S.1943, § 77-1501; Laws 1953, c. 273, § 1, p. 898; Laws 1997, LB 270, § 85; Laws 1999, LB 194, § 23; Laws 2005, LB 762, § 2; Laws 2009, LB166, § 14; Laws 2012, LB801, § 97.
Effective date July 19, 2012.

77-1502 Board; protests; report; notification.

(1) The county board of equalization shall meet for the purpose of reviewing and deciding written protests filed pursuant to this section beginning on or after June 1 and ending on or before July 25 of each year. Protests regarding real property shall be signed and filed after the county assessor's completion of the real property assessment roll required by section 77-1315 and on or before June 30. For protests of real property, a protest shall be filed for each parcel.

Protests regarding taxable tangible personal property returns filed pursuant to section 77-1229 from January 1 through May 1 shall be signed and filed on or before June 30. The county board in a county with a population of more than one hundred thousand inhabitants based upon the most recent federal decennial census may adopt a resolution to extend the deadline for hearing protests from July 25 to August 10. The resolution must be adopted before July 25 and it will affect the time for hearing protests for that year only. By adopting such resolution, such county waives any right to petition the Tax Equalization and Review Commission for adjustment of a class or subclass of real property under section 77-1504.01 for that year.

(2) Each protest shall be signed and filed with the county clerk of the county where the property is assessed. The protest shall contain or have attached a statement of the reason or reasons why the requested change should be made and a description of the property to which the protest applies. If the property is real property, a description adequate to identify each parcel shall be provided. If the property is tangible personal property, a physical description of the property under protest shall be provided. If the protest does not contain or have attached the statement of the reason or reasons for the protest or the applicable description of the property, the protest shall be dismissed by the county board of equalization.

(3) Beginning January 1, 2014, in counties with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, for a protest regarding real property, each protester shall be afforded the opportunity to meet in person with the county board of equalization or a referee appointed under section 77-1502.01 to provide information relevant to the protested property value.

(4) No hearing of the county board of equalization on a protest filed under this section shall be held before a single commissioner or supervisor.

(5) The county clerk or county assessor shall prepare a separate report on each protest. The report shall include (a) a description adequate to identify the real property or a physical description of the tangible personal property to which the protest applies, (b) any recommendation of the county assessor for action on the protest, (c) if a referee is used, the recommendation of the referee, (d) the date the county board of equalization heard the protest, (e) the decision made by the county board of equalization, (f) the date of the decision, and (g) the date notice of the decision was mailed to the protester. The report shall contain, or have attached to it, a statement, signed by the chairperson of the county board of equalization, describing the basis upon which the board's decision was made. The report shall have attached to it a copy of that portion of the property record file which substantiates calculation of the protested value unless the county assessor certifies to the county board of equalization that a copy is maintained in either electronic or paper form in his or her office. One copy of the report, if prepared by the county clerk, shall be given to the county assessor on or before August 2. The county assessor shall have no authority to make a change in the assessment rolls until there is in his or her possession a report which has been completed in the manner specified in this section. If the county assessor deems a report submitted by the county clerk incomplete, the county assessor shall return the same to the county clerk for proper preparation.

(6) On or before August 2, or on or before August 18 in a county that has adopted a resolution to extend the deadline for hearing protests, the county clerk shall mail to the protester written notice of the board's decision. The notice shall contain a statement advising the protester that a report of the board's decision is available at the county clerk's or county assessor's office, whichever is appropriate.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1502; Laws 1947, c. 251, § 36, p. 826; Laws 1949, c. 233, § 1, p. 644; Laws 1953, c. 274, § 1, p. 899; Laws 1959, c. 355, § 25, p. 1267; Laws 1959, c. 371, § 1, p. 1307; Laws 1961, c. 377, § 6, p. 1158; Laws 1961, c. 384, § 1, p. 1177; Laws 1972, LB 1342, § 1; Laws 1975, LB 312, § 1; Laws 1984, LB 660, § 2; Laws 1986, LB 174, § 1; Laws 1986, LB 817, § 13; Laws 1987, LB 508, § 44; Laws 1992, LB 1063, § 124; Laws 1992, Second Spec. Sess., LB 1, § 97; Laws 1994, LB 902, § 21; Laws 1995, LB 452, § 23; Laws 1995, LB 490, § 147; Laws 1997, LB 270, § 86; Laws 2003, LB 292, § 12; Laws 2004, LB 973, § 33; Laws 2005, LB 283, § 2; Laws 2005, LB 299, § 1; Laws 2006, LB 808, § 37; Laws 2008, LB965, § 15; Laws 2009, LB166, § 15; Laws 2010, LB877, § 4; Laws 2011, LB384, § 14.

77-1504 Equalization of property; board; powers and duties; protest; procedure; notice of decision.

The county board of equalization may meet on or after June 1 and on or before July 25, or on or before August 10 if the board has adopted a resolution to extend the deadline for hearing protests under section 77-1502, to consider and correct the current year's assessment of any real property which has been undervalued or overvalued. The board shall give notice of the assessed value to the record owner or agent at his or her last-known address.

The county board of equalization in taking action pursuant to this section may only consider the report of the county assessor pursuant to section 77-1315.01.

Action of the county board of equalization pursuant to this section shall be for the current assessment year only.

The action of the county board of equalization may be protested to the board within thirty days after the mailing of the notice required by this section. If no protest is filed, the action of the board shall be final. If a protest is filed, the county board of equalization shall hear the protest in the manner prescribed in section 77-1502, except that all protests shall be heard and decided on or before September 15 or on or before September 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502. Within seven days after the county board of equalization's final decision, the county clerk shall mail to the protester written notice of the decision. The notice shall contain a statement advising the protester that a report of the decision is available at the county clerk's or county assessor's office, whichever is appropriate.

The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commis-

sion on or before October 15 or on or before October 30 if the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S. 1943, § 77-1504; Laws 1947, c. 251, § 37, p. 826; Laws 1979, LB 187, § 210; Laws 1984, LB 835, § 11; Laws 1987, LB 508, § 46; Laws 1988, LB 1207, § 8; Laws 1989, LB 361, § 21; Laws 1991, LB 320, § 11; Laws 1992, LB 1063, § 126; Laws 1992, Second Spec. Sess., LB 1, § 99; Laws 1994, LB 902, § 22; Laws 1995, LB 452, § 25; Laws 1995, LB 490, § 149; Laws 1997, LB 270, § 88; Laws 1998, LB 1104, § 10; Laws 1999, LB 194, § 25; Laws 2005, LB 263, § 13; Laws 2005, LB 283, § 3; Laws 2006, LB 808, § 38; Laws 2007, LB167, § 2; Laws 2011, LB384, § 15.

77-1504.01 Adjustment to class or subclass of real property; procedure.

(1) Unless the county has adopted a resolution to extend the deadline for hearing protests under section 77-1502, after completion of its actions and based upon the hearings conducted pursuant to sections 77-1502 and 77-1504, a county board of equalization may petition the Tax Equalization and Review Commission to consider an adjustment to a class or subclass of real property within the county. Petitions must be filed with the commission on or before July 26.

(2) The commission shall hear and take action on a petition filed by a county board of equalization on or before August 10. Hearings held pursuant to this section may be held by means of videoconference or telephone conference. The burden of proof is on the petitioning county to show that failure to make an adjustment would result in values that are not equitable and in accordance with the law. At the hearing the commission may receive testimony from any interested person.

(3) After a hearing the commission shall, within the powers granted in section 77-5023, enter its order based on evidence presented to it at such hearing and the hearings held pursuant to section 77-5022 for that year. The order shall specify the percentage increase or decrease and the class or subclass of real property affected or any corrections or adjustments to be made to the class or subclass of real property affected. When issuing an order to adjust a class or subclass of real property, the commission may exclude individual properties from that order whose value has already been adjusted by a county board of equalization in the same manner as the commission directs in its order. On or before August 10 of each year, the commission shall send its order by certified mail to the county assessor and by regular mail to the county clerk and chairperson of the county board.

(4) The county assessor shall make the specified changes to each item of property in the county as directed by the order of the commission. In implementing such order, the county assessor shall adjust the values of the class or subclass that is the subject of the order. For properties that have already received an adjustment from the county board of equalization, an additional adjustment may be made so that total adjustments made are equal to the commission's ordered adjustment and no additional adjustment shall be made

applying the commission's order, but such an exclusion from the commission's order shall not preclude adjustments to those properties for corrections or omissions. The county assessor of the county adjusted by an order of the commission shall recertify the abstract of assessment to the Property Tax Administrator on or before August 20.

Source: Laws 1995, LB 452, § 26; Laws 1997, LB 397, § 22; Laws 1998, LB 306, § 22; Laws 1999, LB 140, § 1; Laws 1999, LB 194, § 26; Laws 2000, LB 968, § 58; Laws 2003, LB 291, § 2; Laws 2004, LB 973, § 34; Laws 2005, LB 283, § 4; Laws 2008, LB965, § 16; Laws 2011, LB384, § 16.

77-1507 Board; duties; addition of omitted property; clerical errors; protest; procedure.

(1) The county board of equalization may meet at any time for the purpose of assessing any omitted real property that was not reported to the county assessor pursuant to section 77-1318.01 and for correction of clerical errors as defined in section 77-128 that result in a change of assessed value. The county board of equalization shall give notice of the assessed value of the real property to the record owner or agent at his or her last-known address. For real property which has been omitted in the current year, the county board of equalization shall not send notice pursuant to this section on or before June 1.

Protests of the assessed value proposed for omitted real property pursuant to this section or a correction for clerical errors shall be filed with the county board of equalization within thirty days after the mailing of the notice. All provisions of section 77-1502 except dates for filing a protest, the period for hearing protests, and the date for mailing notice of the county board of equalization's decision are applicable to any protest filed pursuant to this section. The county board of equalization shall issue its decision on the protest within thirty days after the filing of the protest.

(2) The county clerk shall, within seven days after the board's final decision, send:

(a) For protested action, a notification to the protester of the board's final action advising the protester that a report of the board's final decision is available at the county clerk's or county assessor's office, whichever is appropriate; and

(b) For protested and nonprotested action, a report to the Property Tax Administrator which shall state a description adequate to identify the property, the reason such property was not assessed pursuant to section 77-1301, and a statement of the board's justification for its action. A copy of the report shall be available for public inspection in the office of the county clerk.

(3) The action of the county board of equalization upon a protest filed pursuant to this section may be appealed to the Tax Equalization and Review Commission within thirty days after the board's final decision.

(4) Improvements to real property which were properly reported to the county assessor pursuant to section 77-1318.01 for the current year and were not added to the assessment roll by the county assessor on or before March 19 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according

to the most recent federal decennial census, such improvements which were not added to the assessment roll on or before March 25 shall only be added to the assessment roll by the county board of equalization from June 1 through July 25. In counties that have adopted a resolution to extend the deadline for hearing protests under section 77-1502, the deadline of July 25 shall be extended to August 10.

Source: Laws 1903, c. 73, § 121, p. 428; Laws 1905, c. 112, § 1, p. 515; Laws 1909, c. 112, § 1, p. 444; Laws 1911, c. 104, § 14, p. 379; R.S.1913, § 6437; C.S.1922, § 5972; C.S.1929, § 77-1702; R.S.1943, § 77-1507; Laws 1987, LB 508, § 48; Laws 1995, LB 490, § 150; Laws 1997, LB 270, § 89; Laws 1999, LB 194, § 27; Laws 2005, LB 263, § 14; Laws 2005, LB 283, § 5; Laws 2006, LB 808, § 39; Laws 2010, LB877, § 5; Laws 2011, LB384, § 17.

77-1514 Abstract of property assessment rolls; prepared by county assessor; file with Property Tax Administrator.

The county assessor shall prepare an abstract of the property assessment rolls of locally assessed real property of his or her county on forms prescribed and furnished by the Tax Commissioner. The county assessor shall file the abstract with the Property Tax Administrator on or before March 19, except beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the real property abstract shall be filed on or before March 25. The abstract shall show the taxable value of real property in the county as determined by the county assessor and any other information as required by the Property Tax Administrator. The Property Tax Administrator, upon written request from the county assessor, may for good cause shown extend the final filing due date for the abstract and the statutory deadlines provided in section 77-5027. The Property Tax Administrator may extend the statutory deadline in section 77-5028 for a county if the deadline is extended for that county. Beginning January 1, 2014, in any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the county assessor shall request an extension of the final filing due date by March 22.

Source: Laws 1903, c. 73, § 125, p. 431; R.S.1913, § 6442; C.S.1922, § 5977; C.S.1929, § 77-1707; R.S.1943, § 77-1514; Laws 1945, c. 190, § 1, p. 590; Laws 1947, c. 251, § 39, p. 827; Laws 1959, c. 371, § 4, p. 1309; Laws 1987, LB 508, § 49; Laws 1992, LB 1063, § 129; Laws 1992, Second Spec. Sess., LB 1, § 102; Laws 1994, LB 902, § 24; Laws 1995, LB 452, § 28; Laws 1995, LB 490, § 155; Laws 1997, LB 270, § 91; Laws 1999, LB 194, § 28; Laws 2000, LB 968, § 59; Laws 2004, LB 973, § 37; Laws 2005, LB 15, § 6; Laws 2005, LB 261, § 7; Laws 2007, LB334, § 79; Laws 2011, LB162, § 1; Laws 2011, LB384, § 18.

ARTICLE 16

LEVY AND TAX LIST

Section
77-1615. Tax list; completion; controlling account.

77-1615 Tax list; completion; controlling account.

The tax list shall be completed by the county assessor. The tax lists shall be completed by carrying out in a column by itself the consolidated tax as provided in section 77-1614, with the labor tax, and any irregular tax, each in separate columns and, after adding up each column of taxes, the county assessor shall, in an abstract at the end of each precinct, township, city, and village list, or other subdivisions of a county, apportion the consolidated tax among the respective funds to which it belongs, according to the tax levied for each of such funds, showing a summary of each distinct tax. The county assessor, before transmission of the tax lists to the county treasurer, shall set up on his or her records a controlling account, which shall reflect the total tax assessed, against which the county assessor shall record the monthly tax collections, as shown by the county treasurer's records.

Source: Laws 1903, c. 73, § 140, p. 438; R.S.1913, § 6460; Laws 1921, c. 158, § 1, p. 649; C.S.1922, § 5983; C.S.1929, § 77-1805; Laws 1933, c. 136, § 2, p. 517; C.S.Supp.,1941, § 77-1805; Laws 1943, c. 175, § 3(2), p. 611; R.S.1943, § 77-1615; Laws 1945, c. 189, § 3, p. 585; Laws 1947, c. 250, § 37, p. 803; Laws 1949, c. 237, § 1, p. 648; Laws 1979, LB 187, § 217; Laws 1997, LB 270, § 95; Laws 2012, LB897, § 1.
Effective date July 19, 2012.

ARTICLE 17

COLLECTION OF TAXES

Section
77-1704. Collection of taxes; entry of payment; receipt.
77-1704.01. Collection of taxes; notice; receipt; statement; contents.
77-1706. Collection of taxes; receipts; how numbered.
77-1707. Collection of taxes; receipts; accountability of county treasurer.
77-1716. Collection of taxes; notice to taxpayer.
77-1736.06. Property tax refund; procedure.
77-1780. Tax refund; Tax Commissioner; powers; duties; interest.
77-1783.01. Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.
77-1784. Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

77-1704 Collection of taxes; entry of payment; receipt.

Whenever any person pays some or all of the taxes charged on any property, the treasurer shall enter such payment in his or her books and may give a receipt therefor specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the tax was paid, according to its description in the treasurer's books, in whole or in part of such description as the case may be.

If requested by the payor, the treasurer shall provide a receipt indicating payment. Such entry and receipts shall bear the county name and the name of the treasurer or his or her deputy receiving the payment. Whenever it appears that any receipt for the payment of taxes is lost or destroyed, the entry so made may be read in evidence in lieu thereof. The treasurer shall enter the name of the owner or of the person paying the tax opposite each tract or lot of land when he or she collects the tax thereon and the post office address of the person paying the tax. A statement shall be entered by the treasurer on such

receipt showing the amount of unpaid taxes and the date of unredeemed tax sales, if any, for the previous year or years upon such land or town lot. If the treasurer fails or neglects to note on such receipt the unpaid taxes or the date of unredeemed tax sales as provided in this section, he or she shall be liable on his or her bond to the person injured thereby in the amount of the tax so omitted.

Source: Laws 1903, c. 73, § 147, p. 440; R.S.1913, § 6476; C.S.1922, § 5999; C.S.1929, § 77-1904; Laws 1937, c. 167, § 32, p. 660; Laws 1939, c. 98, § 32, p. 447; Laws 1941, c. 157, § 32, p. 631; C.S.Supp.,1941, § 77-1904; R.S.1943, § 77-1704; Laws 1992, LB 1063, § 136; Laws 1992, Second Spec. Sess., LB 1, § 109; Laws 1993, LB 346, § 18; Laws 2000, LB 968, § 61; Laws 2012, LB851, § 1.
Effective date July 19, 2012.

77-1704.01 Collection of taxes; notice; receipt; statement; contents.

(1) The county treasurer shall include with each tax notice to every taxpayer and with each receipt provided to a taxpayer the following information:

(a) The total amount of aid from state sources appropriated to the county and each city, village, and school district in the county;

(b) The net amount of property taxes to be levied by the county and each city, village, school district, and learning community in the county; and

(c) For real property, the amount of taxes reflected on the statement that are levied by the county, city, village, school district, learning community, and other subdivisions for the tax year and for the immediately past year on the same parcel.

(2) The necessary form for furnishing the information required by subdivisions (1)(a) and (b) of this section shall be prescribed by the Department of Revenue. The necessary information required by subdivision (1)(a) of this section shall be furnished to the county treasurer by the Department of Revenue prior to October 1 of each year. The form prescribed by the Department of Revenue shall contain the following statement:

THE AMOUNT OF STATE FUNDS SHOWN ABOVE WOULD HAVE BEEN ADDITIONAL PROPERTY TAXES IF NOT ALLOCATED TO THE COUNTY, CITY, VILLAGE, AND SCHOOL DISTRICT BY THE LEGISLATURE.

Source: Laws 1972, LB 674, § 1; Laws 1995, LB 490, § 163; Laws 1997, LB 270, § 98; Laws 1999, LB 881, § 8; Laws 2006, LB 1024, § 9; Laws 2012, LB851, § 2.
Effective date July 19, 2012.

77-1706 Collection of taxes; receipts; how numbered.

All receipts issued by the county treasurer for taxes paid to him or her shall be numbered consecutively.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(1), p. 607; R.S.1943, § 77-1706; Laws 1945, c. 189, § 6, p. 589; Laws 1993, LB 346, § 19; Laws 1997, LB 269, § 53; Laws 1997, LB 270, § 99; Laws 2003, LB 292, § 13; Laws 2012, LB851, § 3.
Effective date July 19, 2012.

77-1707 Collection of taxes; receipts; accountability of county treasurer.

The county treasurer shall be held strictly accountable for all receipts, including receipts found missing at regular settlement, and also for all detached receipts. All irregularities in the issuance of receipts that render them worthless must be shown on the face of the receipt.

Source: Laws 1903, c. 73, § 149, p. 442; R.S.1913, § 6478; C.S.1922, § 6001; C.S.1929, § 77-1906; Laws 1943, c. 174, § 1(2), p. 608; R.S.1943, § 77-1707; Laws 2003, LB 292, § 14; Laws 2012, LB851, § 4.
Effective date July 19, 2012.

77-1716 Collection of taxes; notice to taxpayer.

The county treasurer shall, at any time prior to January 1 of each year, send a notice to each person on the personal tax roll and each person owing real estate taxes on mobile homes, cabin trailers, manufactured homes, or similar property assessed and taxed as improvements to leased land, advising such taxpayer of the amount of such taxes owed for that year.

Source: Laws 1903, c. 73, § 154, p. 443; R.S.1913, § 6483; C.S.1922, § 6010; C.S.1929, § 77-1915; Laws 1933, c. 136, § 3, p. 518; Laws 1937, c. 167, § 22, p. 654; Laws 1939, c. 98, § 22, p. 441; Laws 1941, c. 157, § 22, p. 625; C.S.Supp.,1941, § 77-1915; Laws 1943, c. 181, § 1, p. 627; R.S.1943, § 77-1716; Laws 1995, LB 452, § 31; Laws 1995, LB 490, § 165; Laws 1998, LB 306, § 30; Laws 2000, LB 968, § 64; Laws 2010, LB873, § 1.

77-1736.06 Property tax refund; procedure.

The following procedure shall apply when making a property tax refund:

(1) Within thirty days of the entry of a final nonappealable order, an unprotested determination of a county assessor, an unappealed decision of a county board of equalization, or other final action requiring a refund of real or personal property taxes paid or, for property valued by the state, within thirty days of a recertification of value by the Property Tax Administrator pursuant to section 77-1775 or 77-1775.01, the county assessor shall determine the amount of refund due the person entitled to the refund, certify that amount to the county treasurer, and send a copy of such certification to the person entitled to the refund. Within thirty days from the date the county assessor certifies the amount of the refund, the county treasurer shall notify each political subdivision, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01, of its respective share of the refund, except that for any political subdivision whose share of the refund is two hundred dollars or less, the county board may waive this notice requirement. Notification shall be by first-class mail, postage prepaid, to the last-known address of record of the political subdivision. The county treasurer shall pay the refund from funds in his or her possession belonging to any political subdivision, including any school district receiving a distribution pursuant to section 79-1073 or 79-1073.01, which received any part of the tax or penalty being refunded. If sufficient funds are not available or the political subdivision, within thirty days of the mailing of the notice by the county treasurer if applicable, certifies to the county treasurer that a hardship would result and create a serious interference with its governmental functions if the refund of the tax or penalty is paid, the

county treasurer shall register the refund or portion thereof which remains unpaid as a claim against such political subdivision and shall issue the person entitled to the refund a receipt for the registration of the claim. The certification by a political subdivision declaring a hardship shall be binding upon the county treasurer;

(2) The refund of a tax or penalty or the receipt for the registration of a claim made or issued pursuant to this section shall be satisfied in full as soon as practicable and in no event later than five years from the date the final order or other action approving a refund is entered. The governing body of the political subdivision shall make provisions in its budget for the amount of any refund or claim to be satisfied pursuant to this section. If a receipt for the registration of a claim is given:

(a) Such receipt shall be applied to satisfy any tax levied or assessed by that political subdivision next falling due from the person holding the receipt after the sixth next succeeding levy is made on behalf of the political subdivision following the final order or other action approving the refund; and

(b) To the extent the amount of such receipt exceeds the amount of such tax liability, the unsatisfied balance of the receipt shall be paid and satisfied within the five-year period prescribed in this subdivision from a combination of a credit against taxes anticipated to be due to the political subdivision during such period and cash payment from any funds expected to accrue to the political subdivision pursuant to a written plan to be filed by the political subdivision with the county treasurer no later than thirty days after the claim against the political subdivision is first reduced by operation of a credit against taxes due to such political subdivision.

If a political subdivision fails to fully satisfy the refund or claim prior to the sixth next succeeding levy following the entry of a final nonappealable order or other action approving a refund, interest shall accrue on the unpaid balance commencing on the sixth next succeeding levy following such entry or action at the rate set forth in section 45-103;

(3) The county treasurer shall mail the refund or the receipt by first-class mail, postage prepaid, to the last-known address of the person entitled thereto. Multiple refunds to the same person may be combined into one refund or credit. If a refund is not claimed by June 1 of the year following the year of mailing, the refund shall be canceled and the resultant amount credited to the various funds originally charged;

(4) When the refund involves property valued by the state, the Tax Commissioner shall be authorized to negotiate a settlement of the amount of the refund or claim due pursuant to this section on behalf of the political subdivision from which such refund or claim is due. Any political subdivision which does not agree with the settlement terms as negotiated may reject such terms, and the refund or claim due from the political subdivision then shall be satisfied as set forth in this section as if no such negotiation had occurred;

(5) In the event that the Legislature appropriates state funds to be disbursed for the purposes of satisfying all or any portion of any refund or claim, the Tax Commissioner shall order the county treasurer to disburse such refund amounts directly to the persons entitled to the refund in partial or total satisfaction of such persons' claims. The county treasurer shall disburse such amounts within forty-five days after receipt thereof; and

(6) If all or any portion of the refund is reduced by way of settlement or forgiveness by the person entitled to the refund, the proportionate amount of the refund that was paid by an appropriation of state funds shall be reimbursed by the county treasurer to the State Treasurer within forty-five days after receipt of the settlement agreement or receipt of the forgiven refund. The amount so reimbursed shall be credited to the General Fund.

Source: Laws 1991, LB 829, § 15; Laws 1992, LB 1063, § 138; Laws 1992, Second Spec. Sess., LB 1, § 111; Laws 1993, LB 555, § 1; Laws 1995, LB 490, § 167; Laws 2007, LB334, § 82; Laws 2008, LB965, § 18; Laws 2010, LB1070, § 3.

77-1780 Tax refund; Tax Commissioner; powers; duties; interest.

(1) Pursuant to this section, the Tax Commissioner may approve the claim for refund, in whole or in part.

(2) The Tax Commissioner shall grant a hearing prior to taking any action on a claim for a refund if requested in writing by the taxpayer when the claim is filed or prior to any action being taken on the claim.

(3) The Tax Commissioner shall notify the taxpayer in writing of the denial of his or her claim for a refund. The notification shall be made by mail.

(4) Upon approval, the Tax Commissioner shall cause:

(a) A refund to be paid from the fund to which the tax was originally deposited;

(b) A credit to be established against the subsequent tax liability of the taxpayer if the amount of the credit does not exceed twelve times the average monthly tax liability of the taxpayer; or

(c) A credit to be applied to any other existing liability for any other tax collected by the Tax Commissioner.

(5) The payment of the claim for a refund, the allowance of a credit, or the application of the refund to an existing balance, in whole or in part, shall be considered a final decision of the Tax Commissioner for the purposes of the Administrative Procedure Act.

(6) Interest shall be paid from the date of overpayment or the date the tax was required to be paid, whichever is later, until the date the overpayment is refunded, credited, or applied.

(7) Interest shall be paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted.

Source: Laws 1987, LB 523, § 39; Laws 1996, LB 1041, § 4; Laws 2012, LB727, § 33.
Operative date April 12, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

77-1783.01 Corporate taxes; corporate officer or employee; personal liability; collection procedure; limitation.

(1) Any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation shall be personally liable for the payment of such taxes in the event of willful failure on his or her

part to have a 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 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 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 77-27,135.

(5) If the Tax Commissioner determines that further delay in the collection of such taxes from the officer or employee will jeopardize future collection proceedings, nothing in this section shall prevent the immediate collection of such taxes.

(6) No notice or demand for payment may be issued against any officer or employee with the duty to collect, account for, or pay over any taxes imposed upon a corporation or with the authority to decide whether the corporation will pay taxes imposed upon a corporation more than three years after the final determination of the corporation's liability or more than one year after the closure or dismissal of a bankruptcy case in which the corporation appeared as the debtor or debtor in possession if the three-year period to issue a notice or demand for payment had not expired prior to the filing of the petition in bankruptcy, whichever date is later.

(7) 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 revenue laws of this state 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 1996, LB 1041, § 5; Laws 2008, LB914, § 6; Laws 2009, LB165, § 2; Laws 2011, LB210, § 6.

Cross References

Uniform State Tax Lien Registration and Enforcement Act, see section 77-3901.

77-1784 Electronic filings; electronic fund transfers; required; when; penalty; disclosure to taxpayer.

(1) The Tax Commissioner may accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use electronic fund transfers to collect any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include requirements for electronic signatures, the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts which may be transferred. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established.

(4) The Tax Commissioner may require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the Tax Commissioner for any taxpayer who made payments exceeding five thousand dollars for a tax program in any prior year for that tax program. The requirement to make electronic fund transfers may be phased in as deemed necessary by the Tax Commissioner. Notice of the requirement to make electronic fund transfers shall be provided at least three months prior to the date the first electronic payment is required to be made.

(5) Except for individual income tax payments required under section 77-2715 and estimated payments for individuals under section 77-2769, any person who fails to make a required payment by electronic fund transfer shall be subject to a penalty of one hundred dollars for each required payment that was not made by electronic fund transfer. The penalty provided by this section shall be in addition to all other penalties and applies even if payment by some other method is timely made. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(6) The use of electronic filing of documents and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. Until criteria for electronic signatures are adopted under subsection (3) of this section, the document produced during the electronic filing of a taxpayer's information with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

(7) For tax returns due on or after January 1, 2010, the Tax Commissioner may require any person that aids, procures, advises, or assists in the preparation of and files any tax return on behalf of any taxpayer for profit to file an electronic return if the person filed twenty-five or more tax returns in the prior calendar year. The requirement to require electronic filing may be phased in as deemed necessary by the Tax Commissioner.

Any person that files a tax return on behalf of a taxpayer must disclose in writing to the taxpayer that the return will be filed in an electronic format and in accordance with rules and regulations prescribed by the Tax Commissioner.

(8) Any person who fails to file an electronic return as required under subsection (7) of this section shall be subject to a penalty of one hundred dollars for each return that was not properly filed in addition to other penalties provided by law. The Tax Commissioner may waive the penalty provided in this section upon a showing of good cause.

(9) The Legislature hereby finds and determines that the development of a comprehensive electronic filing and payment system for all state tax programs and fees administered by the Department of Revenue is of critical importance to the State of Nebraska. It is the intent of the Legislature that the department implement a mandatory electronic filing system for all state tax programs and fees administered by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967. It is the intent of the Legislature that the department require the use of electronic fund transfers for any taxes, fees, or amounts required to be paid to or collected by the department as deemed practicable and necessary for the proper administration of the Nebraska Revenue Act of 1967.

Source: Laws 1987, LB 523, § 42; Laws 1995, LB 134, § 1; Laws 2000, LB 1251, § 1; Laws 2005, LB 216, § 2; Laws 2009, LB165, § 3; Laws 2010, LB879, § 7.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

ARTICLE 18

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY SALE OF REAL PROPERTY

Section
77-1821. Real property taxes; tax receipt; entries.
77-1824. Real property taxes; redemption from sale; when and how made.
77-1824.01. Real property taxes; owner-occupied real property, defined.
77-1825. Real property taxes; redemption from sale; entry on books; fee; notice to and payment of redemption money to certificate holder.
77-1831. Real property taxes; issuance of treasurer's tax deed; notice given by purchaser; contents.
77-1832. Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made.
77-1833. Real property taxes; issuance of treasurer's tax deed; proof of service; fees.
77-1834. Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.
77-1835. Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty.
77-1837. Real property taxes; issuance of treasurer's tax deed; when.
77-1837.01. Real property taxes; tax deed proceedings; changes in law not retroactive.

77-1821 Real property taxes; tax receipt; entries.

The treasurer shall make out a tax receipt for the taxes on the real estate mentioned in the certificate, the same as in other cases, and shall write thereon sold for taxes at public sale or sold for taxes at private sale, as the case may be.

Source: Laws 1903, c. 73, § 209, p. 464; R.S.1913, § 6537; C.S.1922, § 6065; C.S.1929, § 77-2017; R.S.1943, § 77-1821; Laws 2012, LB851, § 5.
Effective date July 19, 2012.

77-1824 Real property taxes; redemption from sale; when and how made.

The owner or occupant of any real property sold for taxes or any person having a lien thereupon or interest therein may redeem the same. For owner-occupied real property, the right of redemption expires forty-five days after the

date of application for the tax deed, and for all other real property, the right of redemption expires when the purchaser files an application for tax deed with the county treasurer. A redemption shall not be accepted by the county treasurer, or considered valid, unless received prior to the close of business forty-five days after the date of application for the tax deed for owner-occupied real property or prior to the close of business on the day the application for the tax deed is received by the county treasurer for other real property. Redemption shall be accomplished by paying the county treasurer for the use of such purchaser or his or her heirs or assigns the sum mentioned in his or her certificate, with interest thereon at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date of purchase to date of redemption, together with all other taxes subsequently paid, whether for any year or years previous or subsequent to the sale, and interest thereon at the same rate from date of such payment to date of redemption. In addition, if owner-occupied real property is redeemed after the day the purchaser files an application for a tax deed, the owner shall pay a redemption fee equal to twenty percent of all other amounts due.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws 1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1824; Laws 1969, c. 646, § 3, p. 2564; Laws 1979, LB 84, § 3; Laws 1981, LB 167, § 45; Laws 1992, LB 1063, § 152; Laws 1992, Second Spec. Sess., LB 1, § 125; Laws 2012, LB370, § 1.
Effective date July 19, 2012.

77-1824.01 Real property taxes; owner-occupied real property, defined.

For purposes of sections 77-1801 to 77-1863, owner-occupied real property means real property that is actually occupied by the record owner of the real property, the surviving spouse of the record owner, or a minor child of the record owner.

Source: Laws 2012, LB370, § 2.
Effective date July 19, 2012.

77-1825 Real property taxes; redemption from sale; entry on books; fee; notice to and payment of redemption money to certificate holder.

The county treasurer shall enter a memorandum of redemption of real property in the sales book and shall give a receipt therefor to the person redeeming the same, for which the county treasurer may charge a fee of two dollars. The county treasurer shall send written notice of redemption, by registered or certified mail, to the holder of the county treasurer's certificate of tax sale if the post office address of the holder of the certificate is filed in the office of the county treasurer. The redemption money, including any redemption fee under section 77-1824, shall be paid to or upon the order of the holder on return of the certificate.

Source: Laws 1903, c. 73, § 212, p. 466; Laws 1905, c. 114, § 1, p. 518; R.S.1913, § 6540; C.S.1922, § 6068; Laws 1923, c. 105, § 1, p. 261; Laws 1925, c. 168, § 1, p. 441; C.S.1929, § 77-2020; Laws

1933, c. 136, § 8, p. 520; Laws 1937, c. 167, § 28, p. 658; Laws 1939, c. 98, § 28, p. 445; Laws 1941, c. 157, § 28, p. 629; C.S.Supp.,1941, § 77-2020; R.S.1943, § 77-1825; Laws 1967, c. 503, § 2, p. 1700; Laws 1989, LB 324, § 3; Laws 2012, LB370, § 3.
Effective date July 19, 2012.

77-1831 Real property taxes; issuance of treasurer's tax deed; notice given by purchaser; contents.

(1) No purchaser at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, at least three months before applying for the tax deed, serves or causes to be served a notice that, after the expiration of at least three months from the date of service of such notice, the tax deed will be applied for.

The notice shall include:

(a) The following statement in sixteen-point type: UNLESS YOU ACT YOU WILL LOSE THIS PROPERTY;

(b) The date when the purchaser purchased the real property sold by the county for taxes;

(c) The description of the real property;

(d) In whose name the real property was assessed;

(e) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and any subsequent taxes paid and interest accrued as of the date the notice is signed by the purchaser; and

(f) The following statements:

(i) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;

(ii) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer. In addition, if the real property is owner-occupied real property and the redemption occurs after the day the purchaser files an application for a tax deed, a redemption fee equal to twenty percent of all other amounts due must be paid; and

(iii) The right of redemption expires at the close of business forty-five days after the date of application for the tax deed for owner-occupied real property or at the close of business on the day the purchaser files an application for a tax deed with the county treasurer for all other real property.

(2) In addition to the notice required under subsection (1) of this section, no purchaser of owner-occupied real property at any sale for taxes or his or her assignees shall be entitled to a tax deed from the county treasurer for the real property so purchased unless such purchaser or assignee, upon application for the deed, serves or causes to be served a notice that, after the expiration of forty-five days after the date of application for the tax deed, the tax deed will be executed and delivered by the county treasurer unless the owner redeems the real property.

The notice shall include:

(a) The date when the purchaser purchased the real property sold by the county for taxes;

(b) The description of the real property;

(c) In whose name the real property was assessed;

(d) The amount of taxes represented by the tax sale certificate, the year the taxes were levied or assessed, and any subsequent taxes paid and interest accrued as of the date the notice is signed by the purchaser plus the amount of the redemption fee; and

(e) The following statements:

(i) That the issuance of a tax deed is subject to the right of redemption under sections 77-1824 to 77-1830;

(ii) The right of redemption requires payment to the county treasurer, for the use of such purchaser, or his or her heirs or assigns, the amount of taxes represented by the tax sale certificate for the year the taxes were levied or assessed and any subsequent taxes paid and interest accrued as of the date payment is made to the county treasurer. In addition, if the real property is owner-occupied real estate and the redemption occurs after the day the purchaser files an application for a tax deed, a redemption fee equal to twenty percent of all other amounts due must be paid; and

(iii) The right of redemption expires forty-five days after the date of application for the tax deed for owner-occupied real property.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1831; Laws 1992, LB 1063, § 157; Laws 1992, Second Spec. Sess., LB 1, § 130; Laws 2012, LB370, § 4.
Effective date July 19, 2012.

77-1832 Real property taxes; issuance of treasurer's tax deed; service of notice; upon whom made.

(1) Service of the notice provided by subsection (1) of section 77-1831 shall be made by:

(a) Personal or residence service as described in section 25-505.01 upon every person in actual possession or occupancy of the real property and upon the person in whose name the title to the real property appears of record who can be found in this state; or

(b) Certified mail, return receipt requested, upon the person in whose name the title to the real property appears of record who cannot be found in this state or who cannot be served by personal or residence service to the address where the property tax statement was mailed and upon every encumbrancer of record in the office of the register of deeds of the county. Whenever the record of a lien shows the post office address of the lienholder, notice shall be sent by certified mail, return receipt requested, to the holder of such lien at the address appearing of record.

(2) Service of the notice pursuant to subsection (2) of section 77-1831 shall be made by certified mail upon the owner of owner-occupied real property.

(3) Personal or residence service shall be made by the county sheriff of the county where service is made or by a person authorized by section 25-507. The sheriff or other person serving the notice shall be entitled to the statutory fee prescribed in section 33-117.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1832; Laws 1987, LB 93, § 20; Laws 1992, LB 1063, § 158; Laws 1992, Second Spec. Sess., LB 1, § 131; Laws 2003, LB 319, § 1; Laws 2012, LB370, § 5.
Effective date July 19, 2012.

77-1833 Real property taxes; issuance of treasurer's tax deed; proof of service; fees.

The service of notices provided by section 77-1832 shall be proved by affidavit, and the notice and affidavit shall be filed and preserved in the office of the county treasurer. The purchaser or assignee shall also affirm in the affidavit that a title search was conducted to determine those persons entitled to notice pursuant to such section. The certified mail return receipt shall be filed with and accompany the return of service. The affidavit shall be filed with the application for the tax deed pursuant to section 77-1837. For each service of such notice, a fee of one dollar shall be allowed. The amount of such fees shall be noted by the county treasurer in the sales book opposite the real property described in the notice and shall be collected by the county treasurer in case of redemption for the benefit of the holder of the certificate.

Source: Laws 1903, c. 73, § 214, p. 467; Laws 1905, c. 115, § 1, p. 520; R.S.1913, § 6542; Laws 1921, c. 143, § 1, p. 610; C.S.1922, § 6070; C.S.1929, § 77-2022; R.S.1943, § 77-1833; Laws 1969, c. 645, § 9, p. 2561; Laws 1992, LB 1063, § 159; Laws 1992, Second Spec. Sess., LB 1, § 132; Laws 2003, LB 319, § 2; Laws 2012, LB370, § 6.
Effective date July 19, 2012.

77-1834 Real property taxes; issuance of treasurer's tax deed; notice to owner or encumbrancer by publication.

If the person in whose name the title to the real property appears of record in the office of the register of deeds in the county or if the encumbrancer in whose name an encumbrance on the real property appears of record in the office of the register of deeds in the county cannot, upon diligent inquiry, be found, the purchaser or his or her assignee shall publish the notice in some newspaper published in the county and having a general circulation in the county or, if no newspaper is printed in the county, then in a newspaper published in this state nearest to the county in which the real property is situated.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1834; Laws 1992, LB 1063, § 160; Laws 1992, Second Spec. Sess., LB 1, § 133; Laws 2003, LB 319, § 3; Laws 2008, LB893, § 1; Laws 2012, LB370, § 7.
Effective date July 19, 2012.

77-1835 Real property taxes; issuance of treasurer's tax deed; manner and proof of publication; false affidavit; penalty.

The notice provided by section 77-1834 shall be inserted three consecutive weeks, the last time not less than three months before applying for the tax deed. Proof of publication shall be made by filing in the county treasurer's office the affidavit of the publisher, manager, or other employee of such newspaper, that to his or her personal knowledge, the notice was published for the time and in the manner provided in this section, setting out a copy of the notice and the date upon which the same was published. The purchaser or assignee shall also file an affidavit in the office that a title search was conducted to determine those persons entitled to notice pursuant to such section. The affidavits shall be filed with the application for the tax deed pursuant to section 77-1837. The affidavits shall be preserved as a part of the files of the office. Any publisher, manager, or employee of a newspaper knowingly or negligently making a false affidavit regarding any such matters shall be guilty of perjury and shall be punished accordingly. Section 25-520.01 does not apply to publication of notice pursuant to section 77-1834.

Source: Laws 1903, c. 73, § 215, p. 467; R.S.1913, § 6543; C.S.1922, § 6071; C.S.1929, § 77-2023; R.S.1943, § 77-1835; Laws 2012, LB370, § 8.
Effective date July 19, 2012.

Cross References

Perjury, see section 28-915.

77-1837 Real property taxes; issuance of treasurer's tax deed; when.

(1) At any time within six months after the expiration of three years after the date of sale of any real estate for taxes or special assessments, if such real estate has not been redeemed, the county treasurer, on application, on production of the certificate of purchase, and upon compliance with the provisions of sections 77-1801 to 77-1863, shall execute and deliver a deed of conveyance for the real estate described in such certificate as provided in this section. The failure of the county treasurer to issue the deed of conveyance if requested within the timeframe provided in this section shall not impair the validity of such deed if there has otherwise been compliance with the provisions of sections 77-1801 to 77-1863.

(2) If the tax deed is for owner-occupied real property, the county treasurer shall not execute and deliver the tax deed for forty-five days after the time specified in subsection (1) of this section until the right of redemption expires. If the real property is not owner-occupied real property or if forty-five days have passed since the time specified in subsection (1) of this section for owner-occupied real property and the right of redemption has expired, the county treasurer shall execute and deliver the tax deed previously executed to the purchaser or his or her heirs or assigns.

Source: Laws 1903, c. 73, § 217, p. 468; R.S.1913, § 6545; C.S.1922, § 6073; C.S.1929, § 77-2025; R.S.1943, § 77-1837; Laws 1975, LB 78, § 1; Laws 1987, LB 215, § 2; Laws 2001, LB 118, § 1; Laws 2012, LB370, § 9.
Effective date July 19, 2012.

77-1837.01 Real property taxes; tax deed proceedings; changes in law not retroactive.

The laws in effect on the date of the issuance of a tax sale certificate govern all matters related to tax deeds proceedings, including noticing and application, and foreclosure proceedings. Changes in law shall not apply retroactively with regard to the tax sale certificates previously issued.

Source: Laws 2012, LB370, § 10.
Effective date July 19, 2012.

ARTICLE 19

COLLECTION OF DELINQUENT REAL ESTATE TAXES THROUGH COURT PROCEEDINGS

Section

77-1901 Tax liens; delinquency; order of county board directing foreclosure.

Counties shall have a lien upon real estate within their boundaries for all taxes due thereon to the state, any governmental subdivision of the state, any municipal corporation, and any drainage or irrigation district. After any parcel of real estate has been offered for sale and not sold for want of bidders, the county board shall make and enter an order directing the county attorney to foreclose the lien for all taxes then delinquent, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of real estate mortgages, except as otherwise specifically provided by sections 77-1903 to 77-1917.

Source: Laws 1943, c. 176, § 1, p. 614; R.S.1943, § 77-1901; Laws 1965, c. 496, § 1, p. 1584; Laws 1979, LB 84, § 4; Laws 1996, LB 1321, § 3; Laws 2011, LB423, § 1.

77-1902 Tax sale certificate; tax deed; right of holder to foreclosure; action in district court; limitation period.

When land has been sold for delinquent taxes and a tax sale certificate or tax deed has been issued, the holder of such tax sale certificate or tax deed may, instead of demanding a deed or, if a deed has been issued, by surrendering the same in court, proceed in the district court of the county in which the land is situated to foreclose the lien for taxes represented by the tax sale certificate or tax deed and all subsequent tax liens thereon, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, in the same manner and with like effect as in the foreclosure of a real estate mortgage, except as otherwise specifically provided by sections 77-1903

to 77-1917. Such action shall only be brought within six months after the expiration of three years from the date of sale of any real estate for taxes or special assessments.

Source: Laws 1943, c. 176, § 2, p. 615; R.S.1943, § 77-1902; Laws 1975, LB 78, § 2; Laws 1987, LB 215, § 3; Laws 1996, LB 1321, § 4; Laws 2011, LB423, § 2.

77-1909 Foreclosure proceedings; decree; contents; attorney's fee.

In its decree, the court shall ascertain and determine the amount of taxes, special assessments, and other liens, interest, and costs chargeable to each particular item of real property, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer, and award to the plaintiff an attorney's fee, unless waived by the plaintiff, in an amount equal to ten percent of the amount due which shall be taxed as part of the costs in the action and apportioned equitably as other costs.

Source: Laws 1943, c. 176, § 9, p. 616; R.S.1943, § 77-1909; Laws 1992, LB 1063, § 171; Laws 1992, Second Spec. Sess., LB 1, § 144; Laws 2011, LB423, § 3.

77-1912 Foreclosure proceedings; sheriff's sale; political subdivision as purchaser; postponement of sale; notice.

(1) The sheriff shall sell the real property in the same manner provided by law for a sale on execution and shall at once pay the proceeds thereof to the clerk of the district court. Any governmental subdivision of the state, municipal corporation, or drainage or irrigation district to which any part of the taxes included in the decree of foreclosure is due may purchase any real property sold at sheriff's sale. The provisions of the law for the protection of the purchasers at tax sales shall apply to purchasers at foreclosure sales provided for in this section. The sheriff or officer conducting the sale shall not be entitled to any commission on the money received and paid out on foreclosure sales provided for herein.

(2) The sheriff or officer conducting the sale may, for any cause he or she deems expedient, postpone the sale of all or any portion of the real property from time to time until it is completed, and in every such case, notice of postponement shall be given by public declaration thereof by the sheriff or officer at the time and place last appointed for the sale. The public declaration of the notice of postponement shall include the new date, time, and place of sale. No other notice of the postponed sale need be given unless the sale is postponed for longer than forty-five days beyond the day designated in the notice of sale, in which event notice shall be given in the same manner as the original notice of sale is required to be given.

Source: Laws 1943, c. 176, § 12, p. 617; R.S.1943, § 77-1912; Laws 1992, LB 1063, § 174; Laws 1992, Second Spec. Sess., LB 1, § 147; Laws 2010, LB732, § 5.

77-1914 Foreclosure proceedings; confirmation of sale; release of real property.

Upon confirmation of the sale, the clerk of the district court shall certify to the county treasurer the year or years of the taxes for which the real property

was sold. The county treasurer shall thereupon cancel the taxes for such years, and the proceedings shall operate as a release of such real property from all liens for the taxes included on the real property. The delivery of the sheriff's deed shall pass title to the purchaser free and clear of all liens and interests of all persons who were parties to the proceedings, who received service of process, and over whom the court had jurisdiction, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 14, p. 618; R.S.1943, § 77-1914; Laws 1992, LB 1063, § 175; Laws 1992, Second Spec. Sess., LB 1, § 148; Laws 2008, LB893, § 2; Laws 2011, LB423, § 4.

77-1915 Foreclosure proceedings; proceeds of sale; disposition.

From the proceeds of the sale of any real property, the costs charged thereto shall first be paid. When the plaintiff is a private person, firm, or corporation, the balance thereof, or so much thereof as is necessary, shall be paid to the plaintiff. When the plaintiff is a governmental subdivision, municipal corporation, or drainage or irrigation district, the balance thereof, or so much thereof as is necessary, shall be paid to the county treasurer for distribution to the various governmental subdivisions, municipal corporations, or drainage or irrigation districts entitled thereto in discharge of all claims, excluding any lien on real estate for special assessments levied by any sanitary and improvement district which special assessments have not been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 15, p. 618; R.S.1943, § 77-1915; Laws 1992, LB 1063, § 176; Laws 1992, Second Spec. Sess., LB 1, § 149; Laws 2011, LB423, § 5.

77-1916 Foreclosure proceedings; surplus proceeds; disposition; prorating.

If a surplus remains after satisfying all costs and taxes against any particular item of real property, the excess shall be applied in the manner provided by law for the disposition of the surplus in the foreclosure of mortgages on real property. If the proceeds are insufficient to pay the costs and all the taxes, when the plaintiff is a governmental subdivision, a municipal corporation, or a drainage or irrigation district, the amount remaining shall be prorated among the governmental subdivisions, municipal corporations, and drainage or irrigation districts in the proportion of their interest in the decree of foreclosure. The proceeds of the sale of one item of real property shall not be applied to the discharge of a lien for taxes against another item of real property except when so directed by the decree for foreclosure under the circumstances set forth in section 77-1910. The lien on real estate for special assessments levied by any sanitary and improvement district shall not be entitled to any surplus unless such special assessments have been previously offered for sale by the county treasurer.

Source: Laws 1943, c. 176, § 16, p. 618; R.S.1943, § 77-1916; Laws 1992, LB 1063, § 177; Laws 1992, Second Spec. Sess., LB 1, § 150; Laws 2011, LB423, § 6.

ARTICLE 23
DEPOSIT AND INVESTMENT OF PUBLIC FUNDS

(a) GENERAL PROVISIONS

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

(a) GENERAL PROVISIONS

77-2318 County funds; depositories; limitation on deposits; exception.

The county treasurer shall not have on deposit in any bank, capital stock financial institution, or qualifying mutual financial institution at any time more money than the amount insured or guaranteed by the Federal Deposit Insurance Corporation, plus the maximum amount of the bond given by such bank, capital stock financial institution, or qualifying mutual financial institution in cases when the bank, capital stock financial institution, or qualifying mutual financial institution gives a guaranty bond except as provided in section 77-2318.01. The amount on deposit at any time with any bank, capital stock financial institution, or qualifying mutual financial institution shall not exceed fifty percent of the capital and surplus of such bank, capital stock financial institution, or qualifying mutual financial institution except as provided in section 77-2318.01. When the amount of money which the county treasurer desires to deposit in the banks, capital stock financial institutions, and qualifying mutual financial institutions within the county exceeds fifty percent of the capital and surplus of all of the banks, capital stock financial institutions, and qualifying mutual financial institutions in such county, then the county treasurer may, with the consent of the county board, deposit an amount in excess thereof, but not exceeding the capital stock and surplus in any one bank, capital stock financial institution, or qualifying mutual financial institution unless the depository gives security as provided in section 77-2318.01. Bond shall be required of all banks, capital stock financial institutions, and qualifying mutual financial institutions for such excess deposit unless security is given in accordance with section 77-2318.01. The bonds shall be deposited with the county treasurer and approved by the county board. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1891, c. 50, § 8, p. 352; Laws 1897, c. 23, § 5, p. 191; Laws 1903, c. 110, § 2, p. 585; Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2318; Laws 1953, c. 284, § 1, p. 921; Laws 1989, LB 33, § 36; Laws 1992, LB 757, § 26; Laws 1996, LB 1274, § 30; Laws 2001, LB 362, § 38; Laws 2009, LB259, § 15; Laws 2011, LB396, § 1.

77-2320 County funds; depositories; security in lieu of bond.

In lieu of a bond as provided in sections 77-2316 to 77-2319, any bank, capital stock financial institution, or qualifying mutual financial institution making application to become a depository under sections 77-2312 to 77-2324 may give security as provided in the Public Funds Deposit Security Act to the county treasurer. Section 77-2366 shall apply to deposits in capital stock financial institutions. Section 77-2365.01 shall apply to deposits in qualifying mutual financial institutions.

Source: Laws 1909, c. 35, § 1, p. 216; R.S.1913, § 6662; C.S.1922, § 6193; Laws 1925, c. 96, § 1, p. 279; Laws 1927, c. 34, § 2, p. 156; Laws 1929, c. 36, § 1, p. 151; C.S.1929, § 77-2508; Laws 1935, c. 152, § 4, p. 563; Laws 1939, c. 103, § 3, p. 464; C.S.Supp.,1941, § 77-2508; R.S.1943, § 77-2320; Laws 1959, c. 263, § 15, p. 945; Laws 1977, LB 266, § 2; Laws 1988, LB 703, § 3; Laws 1989, LB 33, § 39; Laws 1989, LB 377, § 13; Laws 1996, LB 1274, § 32; Laws 2001, LB 362, § 41; Laws 2012, LB879, § 1.
Effective date July 19, 2012.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

77-2365.02 Funds of state or political subdivisions; investment or deposit in interest-bearing deposits; conditions.

Notwithstanding any other provision of law, to the extent that the funds of this state or any political subdivision of this state may be invested or deposited, by the appropriate custodian of such funds, in interest-bearing deposits with banks, capital stock financial institutions, or qualifying mutual financial institutions, such authorization may include the investment or deposit of funds in interest-bearing deposits in accordance with the following conditions as an alternative to the furnishing of securities or the providing of a deposit guaranty bond pursuant to the Public Funds Deposit Security Act:

(1) The bank, capital stock financial institution, or qualifying mutual financial institution in this state through which the investment or deposit of funds is initially made arranges for the deposit of a portion or all of such funds in interest-bearing deposits with other banks, capital stock financial institutions, or qualifying mutual financial institutions located in the United States;

(2) Each such interest-bearing deposit is fully insured or guaranteed by the Federal Deposit Insurance Corporation;

(3) The bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds was initially made acts as a custodian for the state or political subdivision with respect to any such interest-bearing deposit issued for the account of the state or political subdivision; and

(4) At the same time that the funds are deposited into other banks, capital stock financial institutions, or qualifying mutual financial institutions, the bank, capital stock financial institution, or qualifying mutual financial institution through which the investment or deposit of funds in interest-bearing deposits was initially made receives an amount of deposits from customers of other banks, capital stock financial institutions, or qualifying mutual financial institu-

tions located in the United States which is equal to or greater than the amount of the investment or deposit of funds in interest-bearing deposits initially made by the state or political subdivision.

Source: Laws 2004, LB 999, § 51; Laws 2009, LB259, § 23; Laws 2012, LB836, § 1.
Effective date March 8, 2012.

Cross References

Public Funds Deposit Security Act, see section 77-2386.

(b) PUBLIC FUNDS DEPOSIT SECURITY ACT

77-2387 Terms, defined.

For purposes of the Public Funds Deposit Security Act, unless the context otherwise requires:

(1) Affiliate means any entity that controls, is controlled by, or is under common control with another entity;

(2) Bank means any state-chartered or federally chartered bank which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a state-chartered or federally chartered bank which maintained a main chartered office in this state prior to becoming a branch of such state-chartered or federally chartered bank;

(3) Capital stock financial institution means a capital stock state building and loan association, a capital stock federal savings and loan association, a capital stock federal savings bank, and a capital stock state savings bank, which has a main chartered office in this state, any branch thereof in this state, or any branch in this state of a capital stock financial institution which maintained a main chartered office in this state prior to becoming a branch of such capital stock financial institution;

(4) Control means to own directly or indirectly or to control in any manner twenty-five percent of the voting shares of any bank, capital stock financial institution, or holding company or to control in any manner the election of the majority of directors of any bank, capital stock financial institution, or holding company;

(5) Custodial official means an officer or an employee of the State of Nebraska or any political subdivision who, by law, is made custodian of or has control over public money or public funds subject to the act or the security for the deposit of public money or public funds subject to the act;

(6) Deposit guaranty bond means a bond underwritten by an insurance company authorized to do business in this state which provides coverage for deposits of a governing authority which are in excess of the amounts insured or guaranteed by the Federal Deposit Insurance Corporation;

(7) Event of default means the issuance of an order by a supervisory authority or a receiver which restrains a bank, capital stock financial institution, or qualifying mutual financial institution from paying its deposit liabilities;

(8) Governing authority means the official, or the governing board, council, or other body or group of officials, authorized to designate a bank, capital stock financial institution, or qualifying mutual financial institution as a depository of public money or public funds subject to the act;

(9) Governmental unit means the State of Nebraska or any political subdivision thereof;

(10) Political subdivision means any county, city, village, township, district, authority, or other public corporation or entity, whether organized and existing under direct provisions of the Constitution of Nebraska or laws of the State of Nebraska or by virtue of a charter, corporate articles, or other legal instruments executed under authority of the constitution or laws, including any entity created pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act;

(11) Qualifying mutual financial institution shall have the same meaning as in section 77-2365.01;

(12) Repurchase agreement means an agreement to purchase securities by the governing authority by which the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will repurchase the securities on or before a specified date and for a specified amount and the counterparty bank, capital stock financial institution, or qualifying mutual financial institution will deliver the underlying securities to the governing authority by book entry, physical delivery, or third-party custodial agreement. The transfer of underlying securities to the counterparty bank's, capital stock financial institution's, or qualifying mutual financial institution's customer book entry account may be used for book entry delivery if the governing authority so chooses; and

(13) Securities means:

(a) Bonds or obligations fully and unconditionally guaranteed both as to principal and interest by the United States Government;

(b) United States Government notes, certificates of indebtedness, or treasury bills of any issue;

(c) United States Government bonds;

(d) United States Government guaranteed bonds or notes;

(e) Bonds or notes of United States Government agencies;

(f) Bonds of any state or political subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (c), (d), or (e) of this subdivision;

(g) Bonds or obligations, including mortgage-backed obligations, issued by the Federal Home Loan Mortgage Corporation, the Federal Farm Credit System, a Federal Home Loan Bank, or the Federal National Mortgage Association;

(h) Repurchase agreements the subject securities of which are any of the securities described in subdivisions (a) through (g) of this subdivision;

(i) Securities issued under the authority of the Federal Farm Loan Act;

(j) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture;

(k) Guaranty agreements of the Small Business Administration of the United States Government;

(l) Bonds or obligations of any county, city, village, metropolitan utilities district, public power and irrigation district, sewer district, fire protection district, rural water district, or school district in this state which have been issued as required by law;

(m) Bonds of the State of Nebraska or of any other state which are purchased by the Board of Educational Lands and Funds of this state for investment in the permanent school fund or which are purchased by the state investment officer of this state for investment in the permanent school fund;

(n) Bonds or obligations of another state, or a political subdivision of another state, which are rated within the two highest classifications of prime by at least one of the standard rating services;

(o) Warrants of the State of Nebraska;

(p) Warrants of any county, city, village, local hospital district, or school district in this state;

(q) Irrevocable, nontransferable, unconditional standby letters of credit issued by the Federal Home Loan Bank of Topeka; and

(r) Certificates of deposit fully insured or guaranteed by the Federal Deposit Insurance Corporation that are issued to a bank, capital stock financial institution, or qualifying mutual financial institution furnishing securities pursuant to the Public Funds Deposit Security Act.

Source: Laws 1996, LB 1274, § 2; Laws 1997, LB 275, § 2; Laws 2000, LB 932, § 39; Laws 2001, LB 362, § 82; Laws 2001, LB 420, § 35; Laws 2003, LB 131, § 37; Laws 2003, LB 175, § 14; Laws 2004, LB 999, § 50; Laws 2009, LB259, § 27; Laws 2011, LB78, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

77-2398 Deposits in excess of insured or guaranteed amount; requirements.

(1) As an alternative to the requirements to secure the deposit of public money or public funds in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation pursuant to sections 77-2389 and 77-2394, a bank, capital stock financial institution, or qualifying mutual financial institution designated as a public depositary may secure the deposits of one or more governmental units by providing a deposit guaranty bond or by depositing, pledging, or granting a security interest in a single pool of securities to secure the repayment of all public money or public funds deposited in the bank, capital stock financial institution, or qualifying mutual financial institution by such governmental units and not otherwise secured pursuant to law, if at all times the total value of the deposit guaranty bond is at least equal to the amount on deposit which is in excess of the amount so insured or guaranteed or the aggregate market value of the pool of securities so deposited, pledged, or in which a security interest is granted is at least equal to one hundred five percent of the amount on deposit which is in excess of the amount so insured or guaranteed. Each such bank, capital stock financial institution, or qualifying mutual financial institution shall carry on its accounting records at all times a general ledger or other appropriate account of the total amount of all public money or public funds to be secured by a deposit guaranty bond or by the pool of securities, as determined at the opening of business each day, and the total value of the deposit guaranty bond or the aggregate market value of the pool of securities deposited, pledged, or in which a security interest is granted to secure such public money or public funds.

(2) Only the securities listed in subdivision (13) of section 77-2387 may be provided and accepted as security for the deposit of public money or public funds and shall be eligible as collateral. The qualified trustee shall accept no security which is not listed in subdivision (13) of section 77-2387.

Source: Laws 2000, LB 932, § 43; Laws 2001, LB 362, § 92; Laws 2009, LB259, § 31; Laws 2011, LB78, § 2.

ARTICLE 26

CIGARETTE TAX

Section

77-2601 Terms, defined.

For purposes of sections 77-2601 to 77-2615:

(1) Person means and includes every individual, firm, association, joint-stock company, partnership, limited liability company, syndicate, corporation, trustee, or other legal entity, including any Indian tribe or instrumentality thereof;

(2) Wholesale dealer means a person who sells cigarettes to licensed retail dealers other than branch stores operated by or connected with such wholesale dealer for purposes of resale and is licensed under section 28-1423;

(3) Retail dealer includes every person other than a wholesale dealer engaged in the business of selling cigarettes in this state irrespective of quantity, amount, or number of sales thereof;

(4) Tax Commissioner means the Tax Commissioner of the State of Nebraska;

(5) Cigarette means any roll for smoking made wholly or in part of tobacco irrespective of size or shape and whether or not such tobacco is flavored,

adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other material excepting tobacco;

(6) Consumer means any person, firm, association, partnership, limited liability company, joint-stock company, syndicate, or corporation not having a license to sell cigarettes;

(7) Sales entity affiliate means an entity that (a) sells cigarettes that it acquires directly from a manufacturer or importer and (b) is affiliated with that manufacturer or importer. Entities are affiliated with each other if one directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the other. Unless provided otherwise, manufacturer or importer includes any sales entity affiliate of that manufacturer or importer;

(8) Stamping agent has the same meaning as in section 69-2705; and

(9) Indian country means (a) all land in this state within the limits of any Indian reservation under the jurisdiction of the United States, notwithstanding the issuance of any patent, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of this state, and (c) all Indian allotments in this state, the Indian titles to which have not been extinguished, including rights-of-way running through such allotments.

Source: Laws 1947, c. 267, § 1, p. 861; Laws 1978, LB 748, § 41; Laws 1993, LB 121, § 499; Laws 2002, LB 989, § 9; Laws 2003, LB 572, § 9; Laws 2011, LB590, § 19.

77-2602 Cigarette tax; rate; disposition of proceeds; priority.

(1) Every stamping agent engaged in distributing or selling cigarettes at wholesale in this state shall pay to the Tax Commissioner of this state a special privilege tax. This shall be in addition to all other taxes. It shall be paid prior to or at the time of the sale, gift, or delivery to the retail dealer in the several amounts as follows: On each package of cigarettes containing not more than twenty cigarettes, sixty-four cents per package; and on packages containing more than twenty cigarettes, the same tax as provided on packages containing not more than twenty cigarettes for the first twenty cigarettes in each package and a tax of one-twentieth of the tax on the first twenty cigarettes on each cigarette in excess of twenty cigarettes in each package.

(2) Beginning October 1, 2004, the State Treasurer shall place the equivalent of forty-nine cents of such tax in the General Fund. The State Treasurer shall reduce the amount placed in the General Fund under this subsection by the amount prescribed in subdivision (3)(d) of this section. For purposes of this section, the equivalent of a specified number of cents of the tax shall mean that portion of the proceeds of the tax equal to the specified number divided by the tax rate per package of cigarettes containing not more than twenty cigarettes.

(3) The State Treasurer shall distribute the remaining proceeds of such tax in the following order:

(a) First, beginning July 1, 1980, the State Treasurer shall place the equivalent of one cent of such tax in the Nebraska Outdoor Recreation Development Cash Fund. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the

amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(b) Second, beginning July 1, 1993, the State Treasurer shall place the equivalent of three cents of such tax in the Health and Human Services Cash Fund to carry out sections 81-637 to 81-640. For fiscal year distributions occurring after FY1998-99, the distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(c) Third, beginning October 1, 2002, and continuing until all the purposes of the Deferred Building Renewal Act have been fulfilled, the State Treasurer shall place the equivalent of seven cents of such tax in the Building Renewal Allocation Fund. The distribution under this subdivision shall not be less than the amount distributed under this subdivision for FY1997-98. Any money needed to increase the amount distributed under this subdivision to the FY1997-98 amount shall reduce the distribution to the General Fund;

(d) Fourth, until July 1, 2009, the State Treasurer shall place in the Municipal Infrastructure Redevelopment Fund the sum of five hundred twenty thousand dollars each fiscal year to carry out the Municipal Infrastructure Redevelopment Fund Act. The Legislature shall appropriate the sum of five hundred twenty thousand dollars each year for fiscal year 2003-04 through fiscal year 2008-09;

(e) Fifth, beginning July 1, 2001, and continuing until June 30, 2008, the State Treasurer shall place the equivalent of two cents of such tax in the Information Technology Infrastructure Fund. The distribution under this subdivision shall not be less than two million fifty thousand dollars. Any money needed to increase the amount distributed under this subdivision to two million fifty thousand dollars shall reduce the distribution to the General Fund;

(f) Sixth, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million dollars each fiscal year in the City of the Primary Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million dollars to be distributed pursuant to this subdivision;

(g) Seventh, beginning July 1, 2001, and continuing until June 30, 2016, the State Treasurer shall place one million five hundred thousand dollars each fiscal year in the City of the Metropolitan Class Development Fund. If necessary, the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the one million five hundred thousand dollars to be distributed pursuant to this subdivision; and

(h) Eighth, beginning July 1, 2008, and continuing until June 30, 2009, the State Treasurer shall place the equivalent of two million fifty thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2009, and continuing until June 30, 2016, the State Treasurer shall place the equivalent of two million five hundred seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. Beginning July 1, 2016, and every fiscal year thereafter, the State Treasurer shall place the equivalent of five million seventy thousand dollars of such tax in the Nebraska Public Safety Communication System Cash Fund. If necessary,

the State Treasurer shall reduce the distribution of tax proceeds to the General Fund pursuant to subsection (2) of this section by such amount required to fulfill the distribution pursuant to this subdivision.

(4) If, after distributing the proceeds of such tax pursuant to subsections (2) and (3) of this section, any proceeds of such tax remain, the State Treasurer shall place such remainder in the Nebraska Capital Construction Fund.

(5) The Legislature hereby finds and determines that the projects funded from the Municipal Infrastructure Redevelopment Fund and the Building Renewal Allocation Fund are of critical importance to the State of Nebraska. It is the intent of the Legislature that the allocations and appropriations made by the Legislature to such funds or, in the case of allocations for the Municipal Infrastructure Redevelopment Fund, to the particular municipality's account not be reduced until all contracts and securities relating to the construction and financing of the projects or portions of the projects funded from such funds or accounts of such funds are completed or paid or, in the case of the Municipal Infrastructure Redevelopment Fund, the earlier of such date or July 1, 2009, and that until such time any reductions in the cigarette tax rate made by the Legislature shall be simultaneously accompanied by equivalent reductions in the amount dedicated to the General Fund from cigarette tax revenue. Any provision made by the Legislature for distribution of the proceeds of the cigarette tax for projects or programs other than those to (a) the General Fund, (b) the Nebraska Outdoor Recreation Development Cash Fund, (c) the Health and Human Services Cash Fund, (d) the Municipal Infrastructure Redevelopment Fund, (e) the Building Renewal Allocation Fund, (f) the Information Technology Infrastructure Fund, (g) the City of the Primary Class Development Fund, (h) the City of the Metropolitan Class Development Fund, and (i) the Nebraska Public Safety Communication System Cash Fund shall not be made a higher priority than or an equal priority to any of the programs or projects specified in subdivisions (a) through (i) of this subsection.

Source: Laws 1947, c. 267, § 2, p. 861; Laws 1957, c. 341, § 1, p. 1179; Laws 1963, c. 457, § 1, p. 1483; Laws 1965, c. 501, § 2, p. 1595; Laws 1965, c. 500, § 1, p. 1590; Laws 1969, c. 645, § 10, p. 2562; Laws 1971, LB 87, § 1; Laws 1972, LB 1433, § 1; Laws 1973, LB 447, § 5; Laws 1974, LB 945, § 9; Laws 1975, Spec. Sess., LB 6, § 67; Laws 1976, LB 1004, § 24; Laws 1976, LB 1006, § 6; Laws 1978, LB 109, § 3; Laws 1981, LB 506, § 5; Laws 1982, LB 753, § 1; Laws 1983, LB 192, § 1; Laws 1983, LB 410, § 1; Laws 1983, LB 469, § 4; Laws 1984, LB 862, § 1; Laws 1985, LB 728, § 1; Laws 1985, LB 653A, § 1; Laws 1985, Second Spec. Sess., LB 3, § 1; Laws 1986, LB 258, § 16; Laws 1986, LB 842, § 1; Laws 1987, LB 730, § 27; Laws 1987, LB 218, § 1; Laws 1989, LB 683, § 1; Laws 1990, LB 1220, § 1; Laws 1991, LB 703, § 65; Laws 1992, Third Spec. Sess., LB 9, § 1; Laws 1992, Third Spec. Sess., LB 11, § 1; Laws 1993, LB 22, § 1; Laws 1993, LB 595, § 2; Laws 1994, LB 961, § 8; Laws 1996, LB 1044, § 795; Laws 1996, LB 1190, § 15; Laws 1998, LB 1107, § 2; Laws 1999, LB 683, § 1; Laws 2000, LB 1349, § 1; Laws 2001, LB 657, § 5; Laws 2002, LB 1085, § 1; Laws 2003, LB 440, § 2; Laws 2003, LB 759, § 3; Laws 2005, LB 426, § 15; Laws 2007, LB296, § 703; Laws 2007, LB322, § 20; Laws 2011, LB590, § 20.

Cross References

Deferred Building Renewal Act, see section 81-190.
Municipal Infrastructure Redevelopment Fund Act, see section 18-2601.
Task Force for Building Renewal, see section 81-174.

77-2602.03 Increase in tax; applicability; stamping agents; duties; credit to wholesaler.

The increase in the tax shall apply to all unused stamps, meter impressions, and packages of stamped cigarettes owned by stamping agents at 12:01 a.m. on the day the increase becomes operative. On the date any change in the tax takes effect, each stamping agent shall take an inventory of all unused stamps, meter impressions, and packages of stamped cigarettes owned by the cigarette wholesaler at 12:01 a.m. The additional tax shall be remitted with the return for the last month preceding the date any change in the tax takes effect. The Tax Commissioner shall credit to each stamping agent an amount equal to the additional tax on two weeks of such stamping agent's average purchases of stamps.

Source: Laws 1982, LB 753, § 3; Laws 1985, LB 653A, § 2; Laws 1985, Second Spec. Sess., LB 3, § 2; Laws 1987, LB 730, § 28; Laws 2002, LB 989, § 10; Laws 2011, LB590, § 21.

77-2602.05 Cigarette tax; exempt transaction; refund; application; documentation; interest; tax refund formula authorized.

(1) A person that paid taxes applicable under section 77-2602 on cigarettes sold in an exempt transaction shall be eligible for a refund of the taxes paid on those cigarettes.

(2) Exempt transactions, for purposes of this section and section 69-2703, are defined as:

(a) Cigarette sales on a federal installation in a transaction that is exempt from state taxation under federal law; and

(b) Cigarette sales on an Indian tribe's Indian country to its tribal members where state taxation is precluded by federal law.

(3) Except as provided in subsection (5) of this section, the person seeking a refund of taxes shall submit an application to the Tax Commissioner providing documentation sufficient to demonstrate (a) that the cigarettes were sold in a package bearing the correct stamp required under section 77-2603 or 77-2603.01 and that the stamp was one that required payment of tax, (b) that the person paid the applicable taxes in question, (c) that the cigarettes were sold in an exempt transaction, and (d) that the person has not previously obtained the refund on the cigarettes. The documentation shall include, in addition to information necessary to meet the requirements of subdivisions (3)(a) through (d) of this section and any other information that the Tax Commissioner may reasonably require, documents showing the identity of the seller and purchaser and the places of shipment and delivery of the cigarettes. The Tax Commissioner shall verify the accuracy and completeness of the required documentation and information before granting the requested refund.

(4) If a meritorious refund claim under subsection (3) of this section is not paid within sixty days after submission of the required documentation, the refund shall include interest on the amount of such refund at the rate specified

in section 45-104.02 as such rate existed at the date of submission of the required documentation.

(5) The Tax Commissioner and an Indian tribe may agree upon a tax refund formula to operate in lieu of application for refunds under subsection (3) of this section. The aggregate refund provided to an Indian tribe under a formula for a year shall not exceed the aggregate tax paid by entities owned and operated by that tribe or member of that tribe on cigarettes sold in exempt transactions on that tribe's Indian country during that year. Refunds of taxes under subsection (3) of this section shall not be available for cigarettes sold in exempt transactions on an Indian tribe's Indian country by an Indian tribe that agrees upon a refund formula under this subsection. Nothing in this subsection shall limit the state's authority to enter into an agreement pursuant to section 77-2602.06 pertaining to the collection and dissemination of any cigarette taxes which may otherwise be inconsistent with this subsection.

Source: Laws 2011, LB590, § 22.

77-2602.06 Governor; agreement with federally recognized Indian tribe authorized; contents; tribal taxes; additional agreement, compact, or treaty authorized.

(1) The Governor or his or her designated representative may negotiate and execute an agreement with the governing body of any federally recognized Indian tribe within the State of Nebraska concerning the collection and dissemination of any cigarette tax or other tobacco product tax under this section and sections 77-2602.05 and 77-2603.01 or escrow collected pursuant to section 69-2703, on sales of cigarettes, roll-your-own, or smokeless tobacco made or sold on a federally recognized Indian tribe's Indian country. The agreement shall specify:

(a) Its duration;

(b) Its purpose;

(c) Provisions for administering, collecting, and enforcing the agreement and for the mutual waiver of sovereign immunity objections with respect to such provisions;

(d) Remittance of taxes and escrow collected;

(e) The division of the proceeds of the tax and escrow between the parties;

(f) The method to be employed in accomplishing the partial or complete termination of the agreement;

(g) A dispute resolution procedure;

(h) Adequate reporting and auditing provisions; and

(i) Any other necessary and proper matters.

(2) The agreement shall require tribal taxes to be imposed equally on all cigarettes and other tobacco products regardless of manufacturer or brand.

(3) The agreement shall require that all packages of cigarettes bear either a stamp under section 77-2603 or a tribal stamp under section 77-2603.01.

(4) The agreement may provide for the sale of cigarettes not included in the directory under section 69-2706, but only if the agreement requires that such cigarettes bear the tribal stamp under section 77-2603.01 and only if the agreement includes provisions to account for escrow deposits on such cigarettes in amounts equal to and in a manner consistent with the deposits

required of manufacturers under section 69-2703 or otherwise requires payment of escrow by the manufacturers in accordance with section 69-2703 and pursuant to section 69-2708.01.

(5) An Indian tribe entering into an agreement under this section shall agree not to license or otherwise authorize an individual tribal member or other person or entity to sell cigarettes, roll-your-own, or smokeless tobacco in violation of the terms of the agreement.

(6) The state may, in the best interests of the state, enter into any future agreement, compact, or treaty with any Indian tribe that is consistent with sections 77-2602.05, 77-2602.06, and 77-2603.01.

Source: Laws 2011, LB590, § 23.

77-2603 Tax; stamps; tax meter impressions; requirements; stamping agent; license; application; form; service of process; corporate surety bond; Tax Commissioner; duties; directory license; application; term.

(1) The tax, as levied in section 77-2602, shall be paid and stamps or cigarette tax meter impressions shall be affixed or printed with a cigarette tax meter by the person having possession and ownership of such cigarettes after the same shall have come to rest in this state and intended to be sold or given away in this state. Nothing in sections 77-2601 to 77-2615 shall be construed to require a stamping agent to fix the retail price or to require any retail dealer to sell at any particular price. Subject to such rules and regulations as the Tax Commissioner shall prescribe, tax meter machines may be used when approved by the Tax Commissioner to affix a suitable stamp or impression on each package of cigarettes and cigarettes with a tax meter impression shall be treated as stamped cigarettes for purposes of sections 69-2701 to 69-2711 and 77-2601 to 77-2615. Before any person is issued a license to affix stamps or cigarette tax meter impressions, the person shall make application to become licensed as a stamping agent to the Tax Commissioner on a form provided by the Tax Commissioner to engage in such activity.

(2) Any manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes may apply to be licensed as a stamping agent in accordance with this section. A license shall be issued by the Tax Commissioner to an applicant upon the applicant's:

(a) Meeting all requirements of sections 69-2701 to 69-2711 and 77-2601 to 77-2615 and rules and regulations pursuant to such sections;

(b) Certifying on a form prescribed by the Tax Commissioner that it will comply with the requirements of section 69-2708; and

(c) In the case of an applicant located outside of the state, designating an agent for service of process in Nebraska, and providing notice thereof as required by section 69-2707, in connection with enforcement of sections 69-2701 to 69-2711 and 77-2601 to 77-2615, and, if approval is given by the Tax Commissioner, the manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer shall furnish a corporate surety bond, conditioned to faithfully comply with all the requirements of sections 77-2601 to 77-2615, in a sum not less than ten thousand dollars. Such bond shall be subject to forfeiture if the stamping agent fails to pay the shortfall amount under subsection (1) of section 69-2708.01 unless the stamping agent is excused from liability under subsection (3) of section 69-2708.01.

(3) Nothing in sections 77-2601 to 77-2615 shall prevent the Tax Commissioner from affixing the stamps or meter impressions in lieu of the provisions for affixing stamps and meter impressions by stamping agents as determined by such rules and regulations adopted by the Tax Commissioner.

(4) The Tax Commissioner shall list on its web site the names of all persons licensed as stamping agents under this section. Manufacturers, importers, and sales entity affiliates shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

(5) A manufacturer, importer, sales entity affiliate, wholesale dealer, or retail dealer that engages in the business of selling cigarettes and that holds a valid stamping agent license under subsection (1) of this section may apply for a directory license allowing it to purchase or possess in the state cigarettes of a manufacturer or brand family not at the time of purchase listed in the directory for sale into another state if permitted under section 69-2706. A directory license shall be issued by the Tax Commissioner to an applicant upon the applicant's (a) demonstrating that it holds a valid license under subsection (1) of this section and (b) providing a certification by an officer thereof on a form prescribed by the Tax Commissioner that any cigarettes of a manufacturer or brand family not listed in the directory will be purchased or possessed solely for sale or transfer into another state as permitted by section 69-2706. The directory license shall remain in effect for a period of one year.

(6) No directory license may be issued to a person that acted inconsistently with a certification it previously made under subsection (2) of this section.

(7) The Tax Commissioner shall list on its web site the names of all persons holding a directory license. Manufacturers, importers, sales entity affiliates, and stamping agents shall be entitled to rely upon the list in selling cigarettes as provided in section 69-2706.

Source: Laws 1947, c. 267, § 3, p. 862; Laws 1949, c. 245, § 1, p. 665; Laws 1951, c. 271, § 1, p. 905; Laws 1963, c. 458, § 1, p. 1484; Laws 2002, LB 989, § 11; Laws 2003, LB 572, § 10; Laws 2011, LB590, § 24.

77-2603.01 Tribal stamp; authorized.

The state may enter into an agreement with an Indian tribe pursuant to section 77-2602.06 which contemplates the use of a tribal stamp for sales of cigarettes on an Indian tribe's Indian country in lieu of the cigarette stamp required under section 77-2603.

Source: Laws 2011, LB590, § 25.

77-2604 Tax Commissioner; forms; reports; contents; when due; sharing of information.

(1) Every stamping agent, wholesale dealer, and retail dealer who is subject to sections 77-2601 to 77-2622 shall make and file with the Tax Commissioner, on or before the fifteenth day of each calendar month on blanks furnished by the Tax Commissioner, true, correct, and sworn reports covering, for the last preceding calendar month, the number of cigarettes purchased, from whom purchased, the specific kinds and brands thereof, the manufacturer, if known, and such other matters and in such detail as the Tax Commissioner may require.

(2)(a) Each manufacturer and importer that sells cigarettes in or into the state shall, within fifteen days following the end of each month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate.

(b) The report shall contain the following information: The total number of cigarettes sold by that manufacturer or importer in or into the state during that month and identifying by name and number of cigarettes, (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, and (iii) the purchasers of those cigarettes. A manufacturer's or importer's report shall include cigarettes sold in or into the state through its sales entity affiliate.

(c) The requirements of this subsection shall be satisfied and no further report shall be required under this section with respect to cigarettes if the manufacturer or importer timely submits to the Tax Commissioner the report or reports required to be submitted by it with respect to those cigarettes under 15 U.S.C. 376 to the Tax Commissioner and certifies to the state that the reports are complete and accurate.

(d) Upon request by the Tax Commissioner, a manufacturer or importer shall provide copies of all sales reports referenced in subdivisions (2)(a) and (b) of this section that it filed in other states.

(e) Each manufacturer and importer that sells cigarettes in or into the state shall either (i) submit its federal excise tax returns and all monthly operational reports on Alcohol and Tobacco Tax and Trade Bureau Form 5210.5 and all adjustments, changes, and amendments to such reports to the Tax Commissioner no later than sixty days after the close of the quarter in which the returns were filed or (ii) submit to the United States Treasury a request or consent under section 6103(c) of the Internal Revenue Code of 1986 as defined in section 49-801.01 authorizing the federal Alcohol and Tobacco Tax and Trade Bureau and, in the case of a foreign manufacturer or importer, the United States Customs Service to disclose the manufacturer's or importer's federal returns to the Tax Commissioner as of sixty days after the close of the quarter in which the returns were filed.

(3) The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state and other states.

Source: Laws 1947, c. 267, § 4, p. 862; Laws 2002, LB 989, § 12; Laws 2011, LB590, § 26.

77-2604.01 Cigarette sales; reports required; form; contents; sharing of information.

(1) Any person that sells cigarettes from this state into another state shall, within fifteen days following the end of each month, file a report on a form and in the manner prescribed by the Tax Commissioner and certify to the state that the report is complete and accurate.

(2) The report shall contain the following information:

(a) The total number of cigarettes sold from this state into another state by the person during that month, identifying by name and number of cigarettes (i) the manufacturers of those cigarettes, (ii) the brand families of those cigarettes, and (iii) the name and address of each recipient of those cigarettes;

(b) The number of stamps of each other state the person affixed to the packages containing those cigarettes during that month, the total number of cigarettes contained in the packages to which it affixed each respective other state's stamp and by name and number of cigarettes, and the manufacturers and brand families of the packages to which it affixed each respective other state's stamp; and

(c) If the person sold cigarettes during that month from this state into another state in packages not bearing a stamp of the other state, (i) the total number of cigarettes contained in such packages, identifying by name and number of cigarettes, the manufacturers of those cigarettes, the brand families of those cigarettes, and the name and address of each recipient of those cigarettes, and (ii) the person's basis for belief that such state permits the sale of the cigarettes to consumers in a package not bearing a stamp, and the amount of excise, use, or similar tax imposed on the cigarettes paid by the person to such state on the cigarettes. Manufacturers and importers need include the information described in subdivision (2)(c)(i) of this section only as to cigarettes not sold to a person authorized by the law of the other state to affix the stamp required by the other state.

(3) In the case of a manufacturer or importer, the report shall include cigarettes sold from this state into another state through its sales entity affiliate. A sales entity affiliate shall file a separate report under this section only to the extent that it sold cigarettes from this state into another state not separately reported under this section by its affiliated manufacturer or importer.

(4) The Tax Commissioner may share the information reported under this section with the taxing or law enforcement authorities of this state or other states.

Source: Laws 2011, LB590, § 27.

77-2605 Cigarette purchase or sale records; inspection.

The books, records, papers, receipts, invoices, and supply of cigarettes of any person, including wholesale and retail dealers, stamping agents, and persons transporting cigarettes, subject to the provisions of sections 77-2601 to 77-2615 which pertain to the purchase or sale of cigarettes shall be subject to inspection at any time during ordinary business hours by the Tax Commissioner or his or her representatives.

Source: Laws 1947, c. 267, § 5, p. 862; Laws 2011, LB590, § 28.

77-2607 Stamping agent; stock; exempt from tax; conditions.

Each stamping agent may set aside such portion of the stamping agent's stock of cigarettes as is not intended to be sold or given away in this state and it will not be necessary to affix the stamps or tax meter impressions thereon required under section 77-2606, except that if such stock is not disposed of and out of the possession of the stamping agent within thirty days of the date of receipt thereof, the cigarettes, packages, or pieces shall immediately be stamped as required by sections 77-2601 to 77-2615. Each stamping agent shall immediately mark in ink on each unopened box, carton, or other container of such cigarettes, received and the date of receipt and shall affix the stamping agent's signature thereto. Within forty-eight hours after such box, carton, or other container is opened, the stamping agent shall immediately affix such

stamps or tax impressions to each package and cancel the stamps affixed thereto.

Source: Laws 1947, c. 267, § 7, p. 863; Laws 2011, LB590, § 29.

77-2608 Tax Commissioner; duties; audit; discount; funds; disposition.

The Tax Commissioner shall prepare and have suitable stamps for use on each kind of piece or package of cigarettes, except when cigarette tax meter impressions are affixed. Requisition for the preparation of such stamps shall be made through the materiel division of the Department of Administrative Services as other state supplies are requisitioned, and the Tax Commissioner and his or her bondsperson shall be liable for the value of all such stamps delivered to him or her. The Auditor of Public Accounts shall audit as often as the auditor deems advisable the records of the Tax Commissioner with respect to the money received from the sale of stamps and as revenue from tax meter impressions for the purpose of determining the accuracy and correctness of the same. The Tax Commissioner shall sell or distribute the stamps only to licensed stamping agents, as provided in section 77-2603 or 77-2603.01, and the stamping agent shall keep an accurate record of all stamps coming into and leaving the stamping agent's possession. Such stamps shall be sold and accounted for at the face value thereof, except that the Tax Commissioner may, by rule and regulation certified to the State Treasurer, authorize the sale thereof to stamping agents in this state or outside of this state at a discount of one and eighty-five hundredths percent of such face value of the tax as a commission for affixing and canceling such stamps. Any stamping agent using a tax meter machine shall be entitled to the same discount as allowed a stamping agent for affixing and canceling the stamps. The money received by the Tax Commissioner from the sale of the stamps and as revenue from such tax meter impressions shall be deposited by him or her daily with the State Treasurer who shall credit such money as provided in section 77-2602. Upon proof by the Tax Commissioner that he or she can affix such stamps or meter impressions, warehouse and distribute such cigarettes, and collect such revenue at a cost less than any discount allowed to stamping agents pursuant to this section, he or she may then proceed to affix the stamps himself or herself after giving the stamping agents sixty days' notice and purchasing all equipment used by them for the purpose of affixing such stamps or meter impressions at a fair market value.

Source: Laws 1947, c. 267, § 8, p. 863; Laws 1949, c. 245, § 2, p. 666; Laws 1949, c. 246, § 1, p. 668; Laws 1963, c. 458, § 2, p. 1485; Laws 1965, c. 501, § 3, p. 1596; Laws 1965, c. 500, § 2, p. 1591; Laws 1971, LB 87, § 2; Laws 1985, LB 653A, § 3; Laws 1985, Second Spec. Sess., LB 3, § 3; Laws 1987, LB 730, § 29; Laws 2000, LB 654, § 4; Laws 2002, Second Spec. Sess., LB 46, § 1; Laws 2003, LB 572, § 11; Laws 2011, LB337, § 6; Laws 2011, LB590, § 30.

77-2610 Stamps; redemption by Tax Commissioner; errors; adjust.

Upon the written request of the original purchaser thereof and upon the return of any unused stamps, the Tax Commissioner shall redeem such stamps. The Tax Commissioner shall prepare a voucher showing the amount of such returned unused stamps and shall cause to be drawn a warrant upon the State Treasurer for such amount in favor of the person returning such unused

stamps. The refunds shall be paid from the various funds named in section 77-2602 in the same proportions as the proceeds of the tax are allocated. By the terms of sections 77-2601 to 77-2615, the Tax Commissioner and the State Treasurer are specifically authorized to adjust all errors in payments for unused stamps.

Source: Laws 1947, c. 267, § 10, p. 864; Laws 1959, c. 353, § 7, p. 1246; Laws 1965, c. 501, § 4, p. 1597; Laws 1965, c. 459, § 20, p. 1462; Laws 1969, c. 645, § 11, p. 2562; Laws 1971, LB 87, § 3; Laws 2011, LB590, § 31.

77-2612 Tax Commissioner; personnel; rules and regulations; stamping agent; license; fee.

The Tax Commissioner may employ, with the advice and consent of the Governor, a sufficient number of inspectors, clerks, assistants, and agents to enforce sections 77-2601 to 77-2622, including the collection of all stamp taxes and all revenue from cigarette tax meters. In such enforcement, the Tax Commissioner may call to his or her aid the Attorney General, any county attorney, any sheriff, any deputy sheriff, or any other peace officer. The compensation of all persons employed shall be fixed by the Governor and shall be paid from the revenue derived under such sections. The expenses of administering such sections, including necessary assistants, clerical help, cost of enforcement, cost of stamps, and incidental expenses, when approved by the Tax Commissioner, shall be paid by warrants, issued against the General Fund, but such warrants shall not exceed four percent of the funds collected under such sections, such expenses in each instance to be approved by the Tax Commissioner.

The Tax Commissioner may adopt and promulgate rules and regulations which are consistent with sections 77-2601 to 77-2622 and their proper enforcement.

Each stamping agent shall annually apply to the Tax Commissioner, upon forms to be furnished by the Tax Commissioner, for a license to use the tax meter machines, as set forth in section 77-2603, or to purchase such stamps as provided in section 77-2608, or both. The license shall expire on December 31 each year. Each wholesale dealer applying for a stamping agent license shall furnish with such application evidence satisfactory to the Tax Commissioner showing that the wholesale dealer has obtained a license as a wholesale dealer in accordance with section 28-1423. The applicant shall accompany the application with a fee of five hundred dollars to be placed in the General Fund if the license is granted and otherwise to be returned to the applicant. If the applicant is an individual, the application shall include the applicant's social security number. If the application is approved and the bond referred to in section 77-2603 is given and approved, if such bond is required under section 77-2603, the Tax Commissioner shall issue such license which shall be conspicuously posted in the place of business of such stamping agent.

Source: Laws 1947, c. 267, § 12, p. 864; Laws 1959, c. 353, § 8, p. 1246; Laws 1965, c. 501, § 5, p. 1597; Laws 1965, c. 500, § 3, p. 1591; Laws 1965, c. 364, § 19, p. 1193; Laws 1978, LB 748, § 43; Laws 1982, LB 928, § 63; Laws 1997, LB 752, § 211; Laws 2002, LB 989, § 14; Laws 2011, LB590, § 32.

77-2613 State Treasurer; disbursements for administration.

The State Treasurer shall place all sums of money received under sections 77-2601 to 77-2615 as provided in section 77-2602, and from time to time, upon voucher approved by the Tax Commissioner, disburse such sum or sums as may be necessary to administer and carry out the provisions of sections 77-2601 to 77-2615 relating to the collection of the tax, subject to the limitations provided in such sections.

Source: Laws 1947, c. 267, § 13, p. 865; Laws 1949, c. 245, § 3, p. 666; Laws 1959, c. 353, § 9, p. 1247; Laws 1965, c. 501, § 6, p. 1599; Laws 1965, c. 500, § 4, p. 1593; Laws 2011, LB590, § 33.

77-2614 License; permit; stamp; alter; forge; counterfeit; violations; penalty.

Any person who, with intent to defraud the state, shall make, alter, forge, or counterfeit any license, permit, stamp, or cigarette tax meter impression provided for in sections 77-2601 to 77-2615, or who shall have in his or her possession any forged, counterfeited, spurious, or altered license, permit, stamp, or cigarette tax meter impression, with intent to use the same, knowing or having reasonable grounds to believe the same to be such, or shall have in his or her possession one or more cigarette stamps or cigarette tax meter impressions which he or she knows have been removed from the pieces or packages of cigarettes to which they were affixed, or who affixes to any piece or package of cigarettes a stamp or cigarette tax meter impression which he or she knows has been removed from any other piece or package of cigarettes shall be deemed guilty of a Class IV felony.

Source: Laws 1947, c. 267, § 14, p. 865; Laws 1977, LB 39, § 236; Laws 2011, LB590, § 34.

77-2615 Prohibited acts; violations; penalty; prima facie evidence.

Any person who violates sections 77-2601 to 77-2615, or any rule or regulation adopted and promulgated in accordance therewith, for which a specific penalty is not otherwise provided or who shall, except as permitted by sections 77-2601 to 77-2615, sell, deliver, or accept, with intent to evade the provisions of such sections, any cigarettes upon which the tax provided by section 77-2602 has not been paid or who affixes a stamp permitted under section 77-2603 or 77-2603.01 to a package of cigarettes of a tobacco product manufacturer or brand family not included in the directory pursuant to section 69-2706 or who sells, offers, or possesses for sale in this state cigarettes of a tobacco product manufacturer or brand family not included in the directory shall be deemed guilty of a Class IV felony. If any person is found to have in his or her possession more than ten unstamped packages of cigarettes, except as permitted under section 77-2607, it shall be prima facie evidence of attempt to evade sections 77-2601 to 77-2615.

Source: Laws 1947, c. 267, § 15, p. 866; Laws 1949, c. 245, § 4, p. 667; Laws 1977, LB 39, § 237; Laws 2011, LB590, § 35.

77-2615.01 Licensees; disciplinary action; procedure; appeal; joint and several liability; when.

(1) In addition to sections 77-2615 and 77-2622, for any violation of sections 77-2601 to 77-2622 or the rules and regulations adopted and promulgated under such sections, the Tax Commissioner may:

(a) After notice and hearing, suspend or revoke the licenses of any person licensed under sections 28-1420 to 28-1429 or 77-2601 to 77-2622. Notice of hearing shall be given as provided in the Administrative Procedure Act; and

(b) Impose an administrative penalty not to exceed one thousand dollars for any violation.

(2) No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of suspension or revocation on the premises occupied by him or her. No disciplinary proceeding or action shall be barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under sections 28-1420 to 28-1429 or 77-2601 to 77-2622.

(3) Any person aggrieved by any decision, order, or finding of the Tax Commissioner may appeal the decision, order, or finding, and the appeal shall be in accordance with the Administrative Procedure Act.

(4) If a person's license has been suspended or revoked and the person's name has been removed for at least ten days from the list of licensed entities published by the Tax Commissioner under subsection (4) of section 77-2603, any person that sells cigarettes to or purchases cigarettes from such person shall be jointly and severally liable for any taxes applicable to such cigarettes under section 77-2602 and for any escrow due on such cigarettes under section 69-2703.

Source: Laws 2002, LB 989, § 15; Laws 2011, LB590, § 36.

Cross References

Administrative Procedure Act, see section 84-920.

77-2620 Contraband cigarettes; confiscation; destruction.

All cigarettes subject to the tax as imposed by section 77-2602, to which stamps have not been affixed or tax impressions made, as required by sections 77-2601 to 77-2615, except as permitted by the provisions of section 77-2607, when found in any place in this state are declared to be contraband goods and may be seized by the Tax Commissioner, by the Tax Commissioner's agents or employees, or by any peace officer of this state, when directed by the Tax Commissioner to do so, without a warrant. The Tax Commissioner may, upon satisfactory proof, direct the return of any confiscated cigarettes when he or she has reason to believe that the owner thereof has not willfully or intentionally evaded any tax imposed under section 77-2602. The Tax Commissioner may, in the absence of proof of good faith, confiscate any unstamped cigarettes or cigarettes without tax impressions found in the possession of any person, except as permitted by section 77-2607. Any cigarettes forfeited to the state under this section shall be destroyed or used for law enforcement purposes and then destroyed. The Tax Commissioner, his or her agents and employees, and any peace officer of this state, when directed so to do, shall not in any way be responsible in any court for the seizure or the confiscation of any unstamped packages of cigarettes or cigarettes without tax impressions.

Source: Laws 1951, c. 272, § 1, p. 906; Laws 1965, c. 501, § 8, p. 1599; Laws 1965, c. 500, § 5, p. 1593; Laws 2002, LB 989, § 17; Laws 2003, LB 572, § 12; Laws 2011, LB590, § 37.

77-2622 Common carrier; unstamped cigarettes; bond; permit; violation; penalty.

Failure to comply with section 77-2621 shall be cause for revocation of the permit issued under section 77-2621 and forfeiture of the bond posted pursuant to section 77-2621.

Source: Laws 1951, c. 255, § 2, p. 877; Laws 2011, LB590, § 38.

ARTICLE 27

SALES AND INCOME TAX

(a) ACT, RATES, AND DEFINITIONS

(b) SALES AND USE TAX

(c) INCOME TAX

(a) ACT, RATES, AND DEFINITIONS

77-2701 Act, how cited.

Sections 77-2701 to 77-27,135.01 and 77-27,228 to 77-27,236 shall be known and may be cited as the Nebraska Revenue Act of 1967.

Source: Laws 1967, c. 487, § 1, p. 1533; Laws 1984, LB 1124, § 2; Laws 1985, LB 715, § 1; Laws 1985, LB 273, § 40; Laws 1987, LB 773, § 1; Laws 1987, LB 772, § 1; Laws 1987, LB 775, § 14; Laws 1987, LB 523, § 12; Laws 1989, LB 714, § 1; Laws 1989, LB 762, § 9; Laws 1991, LB 444, § 1; Laws 1991, LB 773, § 6; Laws 1991, LB 829, § 19; Laws 1992, LB 871, § 3; Laws 1992, LB 1063, § 180; Laws 1992, Second Spec. Sess., LB 1, § 153; Laws 1992, Fourth Spec. Sess., LB 1, § 22; Laws 1993, LB 138, § 69; Laws 1993, LB 240, § 1; Laws 1993, LB 345, § 14; Laws 1993, LB 587, § 20; Laws 1993, LB 815, § 22; Laws 1994, LB 901, § 1; Laws 1994, LB 938, § 1; Laws 1995, LB 430, § 2; Laws 1996, LB 106, § 2; Laws 1997, LB 182A, § 1; Laws 1998, LB 924, § 27; Laws 2001, LB 172, § 10; Laws 2001, LB 433, § 2; Laws 2002, LB 57, § 2; Laws 2002, LB 947, § 3; Laws 2003, LB 72, § 1; Laws 2003, LB 168, § 1; Laws 2003, LB 282, § 6; Laws 2003, LB 759, § 4; Laws 2004, LB 1017, § 2; Laws 2005, LB 28, § 1; Laws 2005, LB 312, § 6; Laws 2006, LB 872, § 1; Laws 2006, LB 968, § 3; Laws 2006, LB 1189, § 1; Laws 2007, LB223, § 3; Laws 2007, LB343, § 1; Laws 2007, LB367, § 9; Laws 2008, LB916, § 5; Laws 2009, LB9, § 2; Laws 2012, LB727, § 34; Laws 2012, LB830, § 1; Laws 2012, LB970, § 1; Laws 2012, LB1080, § 2.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB727, section 34, with LB830, section 1, LB970, section 1, and LB1080, section 2, to reflect all amendments.

Note: Changes made by LB727 and LB830 became operative July 1, 2012. Changes made by LB970 became effective July 19, 2012. Changes made by LB1080, section 2, became operative January 1, 2013.

77-2701.01 Income tax; rate.

Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1990, and before January 1, 1991, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and forty-three-hundredths percent. Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 1991, and before January 1, 2013, under the Internal Revenue Code of 1986, as amended, the rate of the income tax levied pursuant to section 77-2715 shall be three and seventy-hundredths percent. Pursuant to section 77-2715.01, for all taxable years beginning or deemed to begin on or after January 1, 2013, under the Internal Revenue Code of 1986, as

amended, the rates of the income tax levied pursuant to section 77-2715 shall be as provided in section 77-2715.03.

Source: Laws 1984, LB 892, § 1; Laws 1985, Second Spec. Sess., LB 35, § 1; Laws 1986, LB 539, § 1; Laws 1987, LB 773, § 2; Laws 1990, LB 1059, § 32; Laws 2012, LB970, § 2.
Effective date July 19, 2012.

77-2701.04 Definitions, where found.

For purposes of sections 77-2701.04 to 77-2713, unless the context otherwise requires, the definitions found in sections 77-2701.05 to 77-2701.55 shall be used.

Source: Laws 1992, LB 871, § 4; Laws 1992, Fourth Spec. Sess., LB 1, § 23; Laws 1993, LB 345, § 15; Laws 1998, LB 924, § 28; R.S.Supp.,2002, § 77-2702.03; Laws 2003, LB 282, § 8; Laws 2003, LB 759, § 6; Laws 2004, LB 1017, § 3; Laws 2005, LB 312, § 7; Laws 2006, LB 968, § 4; Laws 2006, LB 1189, § 2; Laws 2007, LB223, § 4; Laws 2007, LB367, § 10; Laws 2008, LB916, § 6; Laws 2009, LB9, § 3; Laws 2012, LB727, § 35; Laws 2012, LB830, § 2; Laws 2012, LB1080, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB727, section 35, with LB830, section 2, and LB1080, section 3, to reflect all amendments.

Note: Changes made by LB727 and LB830 became operative July 1, 2012. Changes made by LB1080 became operative January 1, 2013.

77-2701.16 Gross receipts, defined.

(1) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

(2) Gross receipts of every person engaged as a public utility specified in this subsection, as a community antenna television service operator, or as a satellite service operator or any person involved in connecting and installing services defined in subdivision (2)(a), (b), or (d) of this section means:

(a)(i) In the furnishing of telephone communication service, other than mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added, nonvoice data service; and

(ii) In the furnishing of mobile telecommunications service as described in section 77-2703.04, the gross income received from furnishing mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska;

(b) In the furnishing of telegraph service, the gross income received from the furnishing of intrastate telegraph services;

(c) In the furnishing of gas, electricity, sewer, and water service, the gross income received from the furnishing of such services upon billings or statements rendered to consumers for such utility services;

(d) In the furnishing of community antenna television service or satellite service, the gross income received from the furnishing of such community antenna television service as regulated under sections 18-2201 to 18-2205 or 23-383 to 23-388 or satellite service; and

(e) The gross income received from the provision, installation, construction, servicing, or removal of property used in conjunction with the furnishing, installing, or connecting of any public utility services specified in subdivision (2)(a) or (b) of this section or community antenna television service or satellite service specified in subdivision (2)(d) of this section, except when acting as a subcontractor for a public utility, this subdivision does not apply to the gross income received by a contractor electing to be treated as a consumer of building materials under subdivision (2) or (3) of section 77-2701.10 for any such services performed on the customer's side of the utility demarcation point.

(3) Gross receipts of every person engaged in selling, leasing, or otherwise providing intellectual or entertainment property means:

(a) In the furnishing of computer software, the gross income received, including the charges for coding, punching, or otherwise producing any computer software and the charges for the tapes, disks, punched cards, or other properties furnished by the seller; and

(b) In the furnishing of videotapes, movie film, satellite programming, satellite programming service, and satellite television signal descrambling or decoding devices, the gross income received from the license, franchise, or other method establishing the charge.

(4) Gross receipts for providing a service means:

(a) The gross income received for building cleaning and maintenance, pest control, and security;

(b) The gross income received for motor vehicle washing, waxing, towing, and painting;

(c) The gross income received for computer software training;

(d) The gross income received for installing and applying tangible personal property if the sale of the property is subject to tax. If any or all of the charge for installation is free to the customer and is paid by a third-party service provider to the installer, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid and remitted by the third-party service provider;

(e) The gross income received for services of recreational vehicle parks;

(f) The gross income received for labor for repair or maintenance services performed with regard to tangible personal property the sale of which would be subject to sales and use taxes, excluding motor vehicles, except as otherwise provided in section 77-2704.26 or 77-2704.50;

(g) The gross income received for animal specialty services except (i) veterinary services, (ii) specialty services performed on livestock as defined in section 54-183, and (iii) animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment; and

(h) The gross income received for detective services.

(5) Gross receipts includes the sale of admissions. When an admission to an activity or a membership constituting an admission is combined with the solicitation of a contribution, the portion or the amount charged representing the fair market price of the admission shall be considered a retail sale subject to the tax imposed by section 77-2703. The organization conducting the activity shall determine the amount properly attributable to the purchase of the privilege, benefit, or other consideration in advance, and such amount shall be

clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

(6) Gross receipts includes the sale of live plants incorporated into real estate except when such incorporation is incidental to the transfer of an improvement upon real estate or the real estate.

(7) Gross receipts includes the sale of any building materials annexed to real estate by a person electing to be taxed as a retailer pursuant to subdivision (1) of section 77-2701.10.

(8) Gross receipts includes the sale of and recharge of prepaid calling service and prepaid wireless calling service.

(9) Gross receipts includes the retail sale of digital audio works, digital audiovisual works, digital codes, and digital books delivered electronically if the products are taxable when delivered on tangible storage media. A sale includes the transfer of a permanent right of use, the transfer of a right of use that terminates on some condition, and the transfer of a right of use conditioned upon the receipt of continued payments.

(10) Gross receipts does not include:

(a) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat; or

(b) The price of property or services returned or rejected by customers when the full sales price is refunded either in cash or credit.

Source: Laws 1992, LB 871, § 8; Laws 1993, LB 345, § 18; Laws 1994, LB 123, § 21; Laws 1994, LB 901, § 2; Laws 1994, LB 977, § 1; Laws 1994, LB 1087, § 1; Laws 1996, LB 106, § 3; Laws 1999, LB 214, § 1; Laws 2002, LB 947, § 4; Laws 2002, LB 1085, § 3; R.S.Supp.,2002, § 77-2702.07; Laws 2003, LB 282, § 20; Laws 2003, LB 759, § 8; Laws 2004, LB 1017, § 7; Laws 2005, LB 216, § 4; Laws 2005, LB 753, § 1; Laws 2007, LB367, § 13; Laws 2008, LB916, § 7; Laws 2009, LB165, § 5; Laws 2009, LB 587, § 1; Laws 2012, LB727, § 38.
Operative date July 1, 2012.

77-2701.38 Streamlined sales and use tax agreement, defined.

Streamlined sales and use tax agreement means the streamlined sales and use tax agreement approved by the implementing states on November 12, 2002, including amendments ratified by the Legislature pursuant to section 77-2712.03.

Source: Laws 2003, LB 282, § 42; Laws 2010, LB879, § 8.

77-2701.54 Data center, defined.

Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity

supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing.

Source: Laws 2012, LB1080, § 4.
Operative date January 1, 2013.

77-2701.55 Admission, defined.

(1) Admission means the right or privilege to have access to a place or location where amusement, entertainment, or recreation is provided to an audience, spectators, or the participants in the activity. Admission includes a membership that allows access to or use of a place or location, but which membership does not include the right to hold office, vote, or change the policies of the organization.

(2) For purposes of this section:

(a) Access to a place or location means the right to be in the place or location for purposes of amusement, entertainment, or recreation at a time when the general public is not allowed at that place or location absent the granting of the admission;

(b) Entertainment means the amusement or diversion provided to an audience or spectators by performers; and

(c) Recreation means a sport or activity engaged in by participants for purposes of refreshment, relaxation, or diversion of the participants. Recreation does not include practice or instruction.

(3) Admission does not include the lease or rental of a location, facility, or part of a location or facility if the lessor cedes the right to determine who is granted access to the location or facility to the lessee for the period of the lease or rental.

Source: Laws 2012, LB727, § 36.
Operative date July 1, 2012.

(b) SALES AND USE TAX

77-2703 Sales and use tax; rate; collection; understatement; violation; penalty; interest.

(1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state; the gross receipts of every person engaged as a public utility, as a community antenna television service operator, or as a satellite service operator, any person involved in the connecting and installing of the services defined in subdivision (2)(a), (b), (d), or (e) of section 77-2701.16, or every person engaged as a retailer of intellectual or entertainment properties referred to in subsection (3) of section 77-2701.16; the gross receipts from the sale of admissions in this state; the gross receipts from the sale of warranties, guarantees, service agreements, or maintenance agreements when the items covered are subject to tax under this section; beginning January 1, 2008, the gross receipts from the sale of bundled transactions when one or more of the products included in the bundle are taxable; the gross receipts from the provision of services defined in subsection (4) of section 77-2701.16; and the gross receipts from the sale of products delivered electronically as described in subsection (9) of section 77-2701.16. Except as provided in section 77-2701.03,

when there is a sale, the tax shall be imposed at the rate in effect at the time the gross receipts are realized under the accounting basis used by the retailer to maintain his or her books and records.

(a) The tax imposed by this section shall be collected by the retailer from the consumer. It shall constitute a part of the purchase price and until collected shall be a debt from the consumer to the retailer and shall be recoverable at law in the same manner as other debts. The tax required to be collected by the retailer from the consumer constitutes a debt owed by the retailer to this state.

(b) It is unlawful for any retailer to advertise, hold out, or state to the public or to any customer, directly or indirectly, that the tax or part thereof will be assumed or absorbed by the retailer, that it will not be added to the selling, renting, or leasing price of the property sold, rented, or leased, or that, if added, it or any part thereof will be refunded. The provisions of this subdivision shall not apply to a public utility.

(c) The tax required to be collected by the retailer from the purchaser, unless otherwise provided by statute or by rule and regulation of the Tax Commissioner, shall be displayed separately from the list price, the price advertised in the premises, the marked price, or other price on the sales check or other proof of sales, rentals, or leases.

(d) For the purpose of more efficiently securing the payment, collection, and accounting for the sales tax and for the convenience of the retailer in collecting the sales tax, it shall be the duty of the Tax Commissioner to provide a schedule or schedules of the amounts to be collected from the consumer or user to effectuate the computation and collection of the tax imposed by the Nebraska Revenue Act of 1967. Such schedule or schedules shall provide that the tax shall be collected from the consumer or user uniformly on sales according to brackets based on sales prices of the item or items. Retailers may compute the tax due on any transaction on an item or an invoice basis. The rounding rule provided in section 77-3,117 applies.

(e) The use of tokens or stamps for the purpose of collecting or enforcing the collection of the taxes imposed in the Nebraska Revenue Act of 1967 or for any other purpose in connection with such taxes is prohibited.

(f) For the purpose of the proper administration of the provisions of the Nebraska Revenue Act of 1967 and to prevent evasion of the retail sales tax, it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of property is not a sale at retail is upon the person who makes the sale unless he or she takes from the purchaser (i) a resale certificate to the effect that the property is purchased for the purpose of reselling, leasing, or renting it, (ii) an exemption certificate pursuant to subsection (7) of section 77-2705, or (iii) a direct payment permit pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale certificate, exemption certificate, or direct payment permit shall be conclusive proof for the seller that the sale was made for resale or was exempt or that the tax will be paid directly to the state.

(g) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the Motor Vehicle Registration Act, the tax shall be collected by the lessor on the rental or lease price, except as otherwise provided within this section.

(h) In the rental or lease of automobiles, trucks, trailers, semitrailers, and truck-tractors as defined in the act, for periods of one year or more, the lessor

may elect not to collect and remit the sales tax on the gross receipts and instead pay a sales tax on the cost of such vehicle. If such election is made, it shall be made pursuant to the following conditions:

(i) Notice of the desire to make such election shall be filed with the Tax Commissioner and shall not become effective until the Tax Commissioner is satisfied that the taxpayer has complied with all conditions of this subsection and all rules and regulations of the Tax Commissioner;

(ii) Such election when made shall continue in force and effect for a period of not less than two years and thereafter until such time as the lessor elects to terminate the election;

(iii) When such election is made, it shall apply to all vehicles of the lessor rented or leased for periods of one year or more except vehicles to be leased to common or contract carriers who provide to the lessor a valid common or contract carrier exemption certificate. If the lessor rents or leases other vehicles for periods of less than one year, such lessor shall maintain his or her books and records and his or her accounting procedure as the Tax Commissioner prescribes; and

(iv) The Tax Commissioner by rule and regulation shall prescribe the contents and form of the notice of election, a procedure for the determination of the tax base of vehicles which are under an existing lease at the time such election becomes effective, the method and manner for terminating such election, and such other rules and regulations as may be necessary for the proper administration of this subdivision.

(i) The tax imposed by this section on the sales of motor vehicles, semitrailers, and trailers as defined in sections 60-339, 60-348, and 60-354 shall be the liability of the purchaser and, with the exception of motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198, the tax shall be collected by the county treasurer as provided in the Motor Vehicle Registration Act at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. The tax imposed by this section on motor vehicles, semitrailers, and trailers registered pursuant to section 60-3,198 shall be collected by the Department of Motor Vehicles at the time the purchaser makes application for the registration of the motor vehicle, semitrailer, or trailer for operation upon the highways of this state. At the time of the sale of any motor vehicle, semitrailer, or trailer, the seller shall (i) state on the sales invoice the dollar amount of the tax imposed under this section and (ii) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains

such motor vehicle, semitrailer, or trailer in this state and does not register it for operation on the highways of this state within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer or the Department of Motor Vehicles. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer or Department of Motor Vehicles shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer or Department of Motor Vehicles shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The Department of Motor Vehicles shall deduct, withhold, and deposit in the Motor Carrier Division Cash Fund the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer or Department of Motor Vehicles violates any rule or regulation pertaining to the collection of the use tax.

(j)(i) The tax imposed by this section on the sale of a motorboat as defined in section 37-1204 shall be the liability of the purchaser. The tax shall be collected by the county treasurer at the time the purchaser makes application for the registration of the motorboat. At the time of the sale of a motorboat, the seller shall (A) state on the sales invoice the dollar amount of the tax imposed under this section and (B) furnish to the purchaser a certified statement of the transaction, in such form as the Tax Commissioner prescribes, setting forth as a minimum the total sales price, the allowance for any trade-in, and the difference between the two. The sales tax due shall be computed on the difference between the total sales price and the allowance for any trade-in as disclosed by such certified statement. Any seller who willfully understates the amount upon which the sales tax is due shall be subject to a penalty of one thousand dollars. A copy of such certified statement shall also be furnished to the Tax Commissioner. Any seller who fails or refuses to furnish such certified statement shall be guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars. If the seller fails to state on the sales invoice the dollar amount of the tax due, the purchaser shall have the right and authority to rescind any agreement for purchase and to declare the purchase null and void. If the purchaser retains such motorboat in this state and does not register it within thirty days of the purchase thereof, the tax imposed by this section shall immediately thereafter be paid by the purchaser to the county treasurer. If the tax is not paid on or before the thirtieth day after its purchase, the county treasurer shall also collect from the purchaser interest from the thirtieth day through the date of payment and sales tax penalties as provided in the Nebraska Revenue Act of 1967. The county treasurer shall report and remit the tax so collected to the Tax Commissioner by the fifteenth day of the following month. The county treasurer shall deduct and withhold for the use of the county general fund, from all amounts required to be collected under this subsection, the collection fee permitted to be deducted by any retailer collecting the sales tax. The collection fee shall be forfeited if the county treasurer violates any rule or regulation pertaining to the collection of the use tax.

(ii) In the rental or lease of motorboats, the tax shall be collected by the lessor on the rental or lease price.

(k) The Tax Commissioner shall adopt and promulgate necessary rules and regulations for determining the amount subject to the taxes imposed by this section so as to insure that the full amount of any applicable tax is paid in cases in which a sale is made of which a part is subject to the taxes imposed by this section and a part of which is not so subject and a separate accounting is not practical or economical.

(2) A use tax is hereby imposed on the storage, use, or other consumption in this state of property purchased, leased, or rented from any retailer and on any transaction the gross receipts of which are subject to tax under subsection (1) of this section on or after June 1, 1967, for storage, use, or other consumption in this state at the rate set as provided in subsection (1) of this section on the sales price of the property or, in the case of leases or rentals, of the lease or rental prices.

(a) Every person storing, using, or otherwise consuming in this state property purchased from a retailer or leased or rented from another person for such purpose shall be liable for the use tax at the rate in effect when his or her liability for the use tax becomes certain under the accounting basis used to maintain his or her books and records. His or her liability shall not be extinguished until the use tax has been paid to this state, except that a receipt from a retailer engaged in business in this state or from a retailer who is authorized by the Tax Commissioner, under such rules and regulations as he or she may prescribe, to collect the sales tax and who is, for the purposes of the Nebraska Revenue Act of 1967 relating to the sales tax, regarded as a retailer engaged in business in this state, which receipt is given to the purchaser pursuant to subdivision (b) of this subsection, shall be sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

(b) Every retailer engaged in business in this state and selling, leasing, or renting property for storage, use, or other consumption in this state shall, at the time of making any sale, collect any tax which may be due from the purchaser and shall give to the purchaser, upon request, a receipt therefor in the manner and form prescribed by the Tax Commissioner.

(c) The Tax Commissioner, in order to facilitate the proper administration of the use tax, may designate such person or persons as he or she may deem necessary to be use tax collectors and delegate to such persons such authority as is necessary to collect any use tax which is due and payable to the State of Nebraska. The Tax Commissioner may require of all persons so designated a surety bond in favor of the State of Nebraska to insure against any misappropriation of state funds so collected. The Tax Commissioner may require any tax official, city, county, or state, to collect the use tax on behalf of the state. All persons designated to or required to collect the use tax shall account for such collections in the manner prescribed by the Tax Commissioner. Nothing in this subdivision shall be so construed as to prevent the Tax Commissioner or his or her employees from collecting any use taxes due and payable to the State of Nebraska.

(d) All persons designated to collect the use tax and all persons required to collect the use tax shall forward the total of such collections to the Tax Commissioner at such time and in such manner as the Tax Commissioner may prescribe. For all use taxes collected prior to October 1, 2002, such collectors

of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month and one-half of one percent of all amounts in excess of three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. For use taxes collected on and after October 1, 2002, such collectors of the use tax shall deduct and withhold from the amount of taxes collected two and one-half percent of the first three thousand dollars remitted each month as reimbursement for the cost of collecting the tax. Any such deduction shall be forfeited to the State of Nebraska if such collector violates any rule, regulation, or directive of the Tax Commissioner.

(e) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, it shall be presumed that property sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state until the contrary is established. The burden of proving the contrary is upon the person who purchases, leases, or rents the property.

(f) For the purpose of the proper administration of the Nebraska Revenue Act of 1967 and to prevent evasion of the use tax, for the sale of property to an advertising agency which purchases the property as an agent for a disclosed or undisclosed principal, the advertising agency is and remains liable for the sales and use tax on the purchase the same as if the principal had made the purchase directly.

Source: Laws 1967, c. 487, § 3, p. 1543; Laws 1967, c. 490, § 2, p. 1652; Laws 1969, c. 684, § 1, p. 2646; Laws 1969, c. 683, § 2, p. 2621; Laws 1974, LB 820, § 2; Laws 1981, LB 179, § 14; Laws 1983, LB 17, § 2; Laws 1983, LB 169, § 1; Laws 1983, LB 571, § 1; Laws 1985, LB 715, § 3; Laws 1985, LB 273, § 42; Laws 1986, LB 1027, § 204; Laws 1987, LB 224, § 28; Laws 1987, LB 523, § 14; Laws 1991, LB 239, § 1; Laws 1991, LB 47, § 7; Laws 1991, LB 829, § 21; Laws 1992, LB 871, § 25; Laws 1992, LB 1063, § 182; Laws 1992, Second Spec. Sess., LB 1, § 155; Laws 1992, Fourth Spec. Sess., LB 1, § 26; Laws 1993, LB 112, § 45; Laws 1993, LB 345, § 33; Laws 1993, LB 767, § 1; Laws 1994, LB 123, § 24; Laws 1994, LB 994, § 1; Laws 1994, LB 1207, § 15; Laws 1995, LB 17, § 1; Laws 1996, LB 1041, § 6; Laws 1996, LB 1218, § 65; Laws 1997, LB 62, § 1; Laws 1997, LB 182A, § 3; Laws 2002, LB 1085, § 11; Laws 2002, Second Spec. Sess., LB 32, § 1; Laws 2003, LB 282, § 48; Laws 2003, LB 381, § 3; Laws 2003, LB 563, § 43; Laws 2003, LB 759, § 12; Laws 2004, LB 1017, § 10; Laws 2005, LB 274, § 274; Laws 2007, LB223, § 7; Laws 2007, LB367, § 15; Laws 2008, LB916, § 15; Laws 2011, LB211, § 3; Laws 2012, LB801, § 98.
Effective date July 19, 2012.

Cross References

Motor Vehicle Registration Act, see section 60-301.

77-2703.03 Direct mail sourcing.

(1) This section applies when sourcing sales of direct mail. For purposes of this section:

(a) Advertising and promotional direct mail means direct mail that has the primary purpose of attracting public attention to a product, person, business, or organization or attempting to sell, popularize, or secure financial support for a product, person, business, or organization; and

(b)(i) Other direct mail means any direct mail that is not advertising and promotional direct mail, regardless of whether advertising and promotional direct mail is included in the same mailing.

(ii) Other direct mail includes, but is not limited to:

(A) Transactional direct mail that contains personal information specific to the addressee, including, but not limited to, invoices, bills, statements of account, and payroll advices;

(B) Any legally required mailings, including, but not limited to, privacy notices, tax reports, and stockholder reports; and

(C) Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents, including, but not limited to, newsletters and informational pieces.

(iii) Other direct mail does not include the development of billing information or any data processing service that is more than incidental.

(2) The sale of advertising and promotional direct mail shall be sourced as follows:

(a) If the purchaser of advertising and promotional direct mail provides the retailer with a direct payment permit, certificate of exemption authorized by the streamlined sales and use tax agreement, or written statement claiming exemption that has been approved, authorized, or accepted by the Tax Commissioner, the purchaser shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients and shall report and pay any applicable tax due. In the absence of bad faith, the retailer is relieved of all obligations to collect, pay, or remit any tax on any transaction involving advertising and promotional direct mail to which the direct payment permit, certificate of exemption, or written statement applies;

(b) If the purchaser of advertising and promotional direct mail provides the retailer with information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the retailer shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients and shall collect and remit the applicable tax. In the absence of bad faith, the retailer is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail; or

(c) If neither subdivision (a) of this subsection nor subdivision (b) of this subsection applies, then the sale of advertising and promotional direct mail shall be sourced according to subsection (6) of section 77-2703.01. The tax paid shall not constitute a properly paid tax for purposes of allowing credit against state and local option sales and use tax due.

(3) The sale of other direct mail shall be sourced as follows:

(a) If the purchaser of other direct mail provides the retailer with a direct payment permit, certificate of exemption authorized by the streamlined sales and use tax agreement, or written statement claiming exemption that has been approved, authorized, or accepted by the Tax Commissioner, the purchaser shall source the sale to the jurisdictions to which the other direct mail is to be

delivered to recipients and shall report and pay any applicable tax due. In the absence of bad faith, the retailer is relieved of all obligations to collect, pay, or remit any tax on any transaction involving other direct mail to which the direct payment permit, certificate of exemption, or written statement applies; or

(b) If subdivision (a) of this subsection does not apply, then the sale of other direct mail shall be sourced according to subsection (4) of section 77-2703.01. The tax paid shall not constitute a properly paid tax for purposes of allowing credit against state and local option sales and use tax due.

(4) This section applies to transactions characterized under state law as sales of services only if the service is an integral part of the production and distribution of direct mail.

(5) If a transaction is a bundled transaction that includes advertising and promotional direct mail, this section applies only if the primary purpose of the transaction is the sale of advertising and promotional direct mail.

(6) This section does not apply to any transaction that includes the development of billing information or the provision of any data processing service that is more than incidental, regardless of whether advertising and promotional direct mail is included in the same mailing.

Source: Laws 2003, LB 282, § 51; Laws 2011, LB211, § 4.

77-2704.10 Prepared food and food and food ingredients; fees and admissions; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of:

(1) Prepared food and food and food ingredients served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school or at any institution of higher education, public or private, during the regular school day or at an approved function of any such school or institution. This exemption does not apply to sales by an institution of higher education at any facility or function which is open to the general public;

(2) Prepared food and food and food ingredients sold by a church at a function of such church;

(3) Prepared food and food and food ingredients served to patients and inmates of hospitals and other institutions licensed by the state for the care of human beings;

(4) Prepared food and food and food ingredients sold at a political event by ballot question committees, candidate committees, independent committees, and political party committees as defined in the Nebraska Political Accountability and Disclosure Act or fees and admissions charged for such political event;

(5) Prepared food and food and food ingredients sold to the elderly, handicapped, or recipients of Supplemental Security Income by an organization that actually accepts electronic benefits transfer under regulations issued by the United States Department of Agriculture although it is not necessary for the purchaser to use electronic benefits transfer to pay for the prepared food and food and food ingredients;

(6) Fees and admissions charged by a public or private elementary or secondary school and fees and admissions charged by a school district, student

organization, or parent-teacher association, pursuant to an agreement with the proper school authorities, in a public or private elementary or secondary school during the regular school day or at an approved function of any such school;

(7) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization conducts statewide sport events with multiple sports for both adults and youth; and

(8) Fees and admissions charged for participants in any activity provided by a nonprofit organization that is exempt from income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which organization is affiliated with a national organization, primarily dedicated to youth development and healthy living, and offers sports instruction and sports leagues or sports events in multiple sports.

Source: Laws 1992, LB 871, § 34; Laws 1993, LB 345, § 40; Laws 2003, LB 282, § 54; Laws 2011, LB211, § 5; Laws 2012, LB727, § 39. Operative date October 1, 2012.

Cross References

Nebraska Political Accountability and Disclosure Act, see section 49-1401.

77-2704.12 Nonprofit religious, service, educational, or medical organization; exemption; purchasing agents.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by (a) any nonprofit organization created exclusively for religious purposes, (b) any nonprofit organization providing services exclusively to the blind, (c) any nonprofit private educational institution established under sections 79-1601 to 79-1607, (d) any regionally or nationally accredited, nonprofit, privately controlled college or university with its primary campus physically located in Nebraska, (e) any nonprofit (i) hospital, (ii) health clinic when one or more hospitals or the parent corporations of the hospitals own or control the health clinic for the purpose of reducing the cost of health services or when the health clinic receives federal funds through the United States Public Health Service for the purpose of serving populations that are medically underserved, (iii) skilled nursing facility, (iv) intermediate care facility, (v) assisted-living facility, (vi) intermediate care facility for the mentally retarded, (vii) nursing facility, (viii) home health agency, (ix) hospice or hospice service, (x) respite care service, or (xi) mental health center licensed under the Health Care Facility Licensure Act, (f) any nonprofit licensed child-caring agency, (g) any nonprofit licensed child placement agency, or (h) any nonprofit organization certified by the Department of Health and Human Services to provide community-based services for persons with developmental disabilities.

(2) Any organization listed in subsection (1) of this section shall apply for an exemption on forms provided by the Tax Commissioner. The application shall be approved and a numbered certificate of exemption received by the applicant organization in order to be exempt from the sales and use tax.

(3) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the owner of the organization or institution. The appointment of purchasing agents shall be in writing and occur prior to having

any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for a licensed not-for-profit institution.

(4) Any organization listed in subsection (1) of this section which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

(5) Any person purchasing, storing, using, or otherwise consuming building materials in the performance of any construction, improvement, or repair by or for any institution enumerated in subsection (1) of this section which is licensed upon completion although not licensed at the time of construction or improvement, which building materials are annexed to real estate and which subsequently belong to the owner of the institution, shall pay any applicable sales or use tax thereon. Upon becoming licensed and receiving a numbered certificate of exemption, the institution organized not for profit shall be entitled to a refund of the amount of taxes so paid in the performance of such construction, improvement, or repair and shall submit whatever evidence is required by the Tax Commissioner sufficient to establish the total sales and use tax paid upon the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 36; Laws 1993, LB 345, § 42; Laws 1994, LB 977, § 3; Laws 1996, LB 900, § 1063; Laws 2000, LB 819, § 151; Laws 2002, LB 989, § 18; Laws 2004, LB 841, § 1; Laws 2004, LB 1017, § 13; Laws 2005, LB 216, § 6; Laws 2006, LB 1189, § 5; Laws 2008, LB575, § 1; Laws 2011, LB637, § 24; Laws 2012, LB40, § 1; Laws 2012, LB1097, § 1.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB40, section 1, with LB1097, section 1, to reflect all amendments.

Note: Changes made by LB40 became operative July 1, 2012. Changes made by LB1097 became operative October 1, 2012.

Cross References

Health Care Facility Licensure Act, see section 71-401.

77-2704.15 Purchases by state, schools, or governmental units; exemption; purchasing agents.

(1)(a) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of purchases by the state, including public educational institutions recognized or established under the provisions of Chapter 85, or by any county, township, city, village, rural or suburban fire protection district, city airport authority, county airport authority, joint airport authority, drainage district organized under sections 31-401 to 31-450, natural resources district, elected county fair board, housing agency as defined in section 71-1575 except for purchases for any commercial operation that does not exclusively benefit the residents of an affordable housing project, cemetery created under section 12-101, or joint entity or agency formed by any combination of two or more counties, townships, cities, villages, or other exempt governmental units pursuant to the

Interlocal Cooperation Act, the Integrated Solid Waste Management Act, or the Joint Public Agency Act, except for purchases for use in the business of furnishing gas, water, electricity, or heat, or by any irrigation or reclamation district, the irrigation division of any public power and irrigation district, or public schools or learning communities established under Chapter 79.

(b) For purposes of this subsection, purchases by the state or by a governmental unit listed in subdivision (a) of this subsection include purchases by a nonprofit corporation under a lease-purchase agreement, financing lease, or other instrument which provides for transfer of title to the property to the state or governmental unit upon payment of all amounts due thereunder. If a nonprofit corporation will be making purchases under a lease-purchase agreement, financing lease, or other instrument as part of a project with a total estimated cost that exceeds the threshold amount, then such purchases shall qualify for an exemption under this section only if the question of proceeding with such project has been submitted at a primary, general, or special election held within the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument and has been approved by the voters of such governmental unit. For purposes of this subdivision, (i) project means the acquisition of real property or the construction of a public building and (ii) threshold amount means the greater of fifty thousand dollars or six-tenths of one percent of the total actual value of real and personal property of the governmental unit that will be a party to the lease-purchase agreement, financing lease, or other instrument as of the end of the governmental unit's prior fiscal year.

(2) The appointment of purchasing agents shall be recognized for the purpose of altering the status of the construction contractor as the ultimate consumer of building materials which are physically annexed to the structure and which subsequently belong to the state or the governmental unit. The appointment of purchasing agents shall be in writing and occur prior to having any building materials annexed to real estate in the construction, improvement, or repair. The contractor who has been appointed as a purchasing agent may apply for a refund of or use as a credit against a future use tax liability the tax paid on inventory items annexed to real estate in the construction, improvement, or repair of a project for the state or a governmental unit.

(3) Any governmental unit listed in subsection (1) of this section, except the state, which enters into a contract of construction, improvement, or repair upon property annexed to real estate without first issuing a purchasing agent authorization to a contractor or repairperson prior to the building materials being annexed to real estate in the project may apply to the Tax Commissioner for a refund of any sales and use tax paid by the contractor or repairperson on the building materials physically annexed to real estate in the construction, improvement, or repair.

Source: Laws 1992, LB 871, § 39; Laws 1993, LB 345, § 44; Laws 1994, LB 977, § 5; Laws 1994, LB 1207, § 16; Laws 1999, LB 87, § 86; Laws 1999, LB 232, § 1; Laws 2000, LB 557, § 1; Laws 2002, LB 123, § 1; Laws 2004, LB 1017, § 14; Laws 2006, LB 1189, § 6; Laws 2009, LB392, § 8; Laws 2011, LB252, § 2; Laws 2012, LB902, § 2.
Operative date April 1, 2012.

Cross References

Integrated Solid Waste Management Act, see section 13-2001.
Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

77-2704.36 Agricultural machinery and equipment; exemption.

Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of depreciable agricultural machinery and equipment purchased, leased, or rented on or after January 1, 1993, for use in commercial agriculture. For purposes of this section, agricultural machinery and equipment excludes any current tractor model as defined in section 2-2701.01 not permitted for sale in Nebraska pursuant to sections 2-2701 to 2-2711.

Source: Laws 1992, Fourth Spec. Sess., LB 1, § 24; Laws 2004, LB 1017, § 17; Laws 2012, LB907, § 6.
Effective date July 19, 2012.

77-2704.50 Railroad rolling stock; common or contract carrier; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state from the purchase in this state or the purchase outside this state, with title passing in this state, of materials and replacement parts and any associated labor used as or used directly in the repair and maintenance or manufacture of railroad rolling stock, whether owned by a railroad or by any person, whether a common or contract carrier or otherwise, motor vehicles, watercraft, or aircraft engaged as common or contract carriers or the purchase in such manner of motor vehicles, watercraft, or aircraft to be used as common or contract carriers. All purchasers seeking to take advantage of the exemption shall apply to the Tax Commissioner for a common or contract carrier exemption. All common or contract carrier exemption certificates shall expire on October 31, 2013, and on October 31 every five years thereafter. All persons seeking to continue to take advantage of the common or contract carrier exemption shall apply for a new certificate at the expiration of the prior certificate. The Tax Commissioner shall notify such exemption certificate holders at least sixty days prior to the expiration date of such certificate that the certificate will expire and be null and void as of such date.

Source: Laws 2003, LB 282, § 65; Laws 2011, LB210, § 7.

77-2704.57 Personal property used in C-BED project or community-based energy development project; exemption; Tax Commissioner; powers and duties; Department of Revenue; recover tax not paid.

(1) Sales and use tax shall not be imposed on the gross receipts from the sale, lease, or rental of personal property for use in a C-BED project or community-based energy development project. This exemption shall be conditioned upon filing requirements for the exemption as imposed by the Tax Commissioner. The requirements imposed by the Tax Commissioner shall be related to ensuring that the property purchased qualifies for the exemption. The Tax Commissioner may require the filing of the documents showing compliance with section 70-1907, the organization of the project, the distribution of the payments, the power purchase agreements, the project pro forma, articles of incorporation, operating agreements, and any amendments or changes to these documents during the life of the power purchase agreement.

(2) The Tax Commissioner shall notify an 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. Purchase of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the exemption, but the Department of Revenue may not recover the amount of the sales and use tax that was not paid by the project prior to the purchase.

(3) For purposes of this section:

(a) C-BED project or community-based energy development project means a new wind energy project that:

(i) Has an ownership structure as follows:

(A) 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

(B) 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

(ii) Has a resolution of support adopted:

(A) By the county board of each county in which the C-BED project is to be located; or

(B) By the tribal council for a C-BED project located within the boundaries of an Indian reservation;

(b) 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;

(c) New wind energy project means any tangible personal property incorporated into the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, which is used to convert wind energy to electrical energy or for the transmission of electricity to the purchaser; and

(d) Qualified owner means:

(i) A Nebraska resident;

(ii) A limited liability company that is organized under the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act and that is entirely made up of members who are Nebraska residents;

(iii) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

(iv) 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:

(A) Fifteen percent either directly or indirectly by a single electric supplier; and

(B) A combined total of twenty-five percent ownership either directly or indirectly by multiple electric suppliers; or

(v) A tribal council.

(4) Gross power purchase agreement payments are 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. For the purpose of determining eligibility of the project, an estimate of the payments and their recipients shall be used.

(5) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a turbine is located, wind agreement payments, and real and personal property tax receipts from the C-BED project.

(6) The Department of Revenue may examine the actual payments and the distribution of the payments to determine if the projected distributions were met. If the payment distributions to qualified owners do not meet the requirements of this section, the department may recover the amount of the sales or use tax that was not paid by the project at any time up until the end of three years after the end of the power purchase agreement.

(7) At any time prior to the end of the power purchase agreements, the project may voluntarily surrender the exemption granted by the Tax Commissioner and pay the amount of sales and use tax that would otherwise have been due.

(8) The amount of the tax due under either subsection (6) or (7) of this section shall be increased by interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date the tax would have been due if no exemption was granted until the date paid.

Source: Laws 2007, LB367, § 11; Laws 2008, LB916, § 21; Laws 2009, LB561, § 5; Laws 2010, LB888, § 103; Laws 2012, LB828, § 18. Effective date March 8, 2012.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Nonprofit Corporation Act, see section 21-1901.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2704.61 Biochips; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of biochips used for the purposes of conducting genotyping or the analysis of gene expression, protein expression, genomic sequencing, or protein profiling of plants, animals, or nonhuman laboratory research model organisms.

(2) For purposes of this section, a biochip is a solid substrate upon or into which is incorporated specific genetic or protein information or chemicals that are queried through one or more chemical interactions allowing (a) an isolation of one or more single nucleotide polymorphisms which constitute an animal or plant genotype, (b) an expression profile which measures activity of genes or the presence of proteins, or (c) a detailed genomic sequence or protein profile.

The specific genetic or protein information or chemicals incorporated upon or into the biochip are consumed in the process of conducting the analysis.

Source: Laws 2012, LB830, § 3.
Operative date July 1, 2012.

77-2704.62 Data center; exemption.

Sales and use taxes shall not be imposed on the gross receipts from the sale, lease, or rental of and the storage, use, or other consumption in this state of tangible personal property and services acquired by a person operating a data center located in this state that are assembled, engineered, processed, fabricated, manufactured into, attached to, or incorporated into other tangible personal property for the purpose of subsequent use at a physical location outside this state. Such exemption extends to keeping, retaining, or exercising any right or power over such tangible personal property in this state for the purpose of subsequently transporting it outside this state for use thereafter outside this state.

Source: Laws 2012, LB1080, § 5.
Operative date January 1, 2013.

77-2704.63 Youth sports event, youth sports league, or youth competitive educational activity; exemption.

(1) Sales and use taxes shall not be imposed on the gross receipts from the sale, use, or other consumption of amounts charged to participate in a youth sports event, youth sports league, or youth competitive educational activity by political subdivisions or organizations that are exempt from income tax under section 501(c)(3) of the Internal Revenue Code.

(2) For purposes of this section:

(a) Competitive educational activity means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a competitive educational activity;

(b) Sports event means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a sport;

(c) Sports league means an organized series of sports competitions taking place over several weeks or months between teams or individuals that are members of the league; and

(d) Youth sports event, youth sports league, or youth competitive educational activity means an event, league, or activity that is restricted to participants who are less than nineteen years of age.

Source: Laws 2012, LB727, § 37.
Operative date July 1, 2012.

77-2705.01 Direct payment permit; issuance; application; fee.

(1) The Tax Commissioner may issue direct payment permits to any person who annually purchases at least three million dollars of taxable property excluding purchases for which a resale certificate could be used.

(2) The applicant for a direct payment permit shall apply on a form prescribed by the Tax Commissioner. The applicant shall pay a nonrefundable fee

of ten dollars for processing the application. The application shall include the agreement of the applicant to accrue and pay to the Tax Commissioner on or before the twentieth day of the month following the date of purchase, lease, or rental all sales and use taxes on the taxable property purchased, leased, or rented by the applicant unless the items are exempt from taxation and the tax paid will be treated as a sales tax. The Tax Commissioner may require a description of the accounting methods by which an applicant will differentiate between taxable and exempt transactions.

(3) The Tax Commissioner may issue a direct payment permit to any applicant who meets the requirements of subsections (1) and (2) of this section. The direct payment permit shall become effective on the first day of the month following approval of an application. The decision of the Tax Commissioner under this section is not appealable. An applicant who is denied a direct payment permit may submit an amended application or reapply.

(4) A direct payment permit is not transferable.

(5) The holder of a direct payment permit is not entitled to any collection fee otherwise payable to those who collect and remit sales and use taxes.

Source: Laws 1997, LB 182A, § 4; Laws 2011, LB210, § 8.

77-2705.03 Direct payment permit; revocation; relinquishment.

(1) The holder of a direct payment permit holds the permit as a revocable privilege. The Tax Commissioner may revoke a direct payment permit. The Tax Commissioner shall mail notice of revocation to the permitholder. The decision of the Tax Commissioner to revoke a direct payment permit is not appealable.

(2) A permitholder may voluntarily relinquish a direct payment permit.

(3) Upon revocation or relinquishment of a direct payment permit, the permitholder shall notify all retailers given copies of the permit that it has been revoked or relinquished. Failure to give the notice shall be treated as a failure to pay sales and use taxes.

Source: Laws 1997, LB 182A, § 6; Laws 2012, LB727, § 40.
Operative date April 12, 2012.

77-2705.04 Record of sales tax permits; electronic access; fees.

The record of sales tax permits maintained by the Department of Revenue may be made available electronically through the portal established under section 84-1204. There shall be a fee of five dollars and fifty cents for a monthly listing of all new sales tax permits. All fees collected pursuant to this section for electronic access to records through the portal shall be deposited in the Records Management Cash Fund and shall be distributed as provided in any agreements between the State Records Board and the department.

Source: Laws 1998, LB 924, § 29; Laws 2012, LB719, § 5.
Effective date July 19, 2012.

77-2708 Sales and use tax; returns; date due; failure to file; penalty; deduction; amount; claim for refund; allowance; disallowance; proceedings.

(1)(a) The sales and use taxes imposed by the Nebraska Revenue Act of 1967 shall be due and payable to the Tax Commissioner monthly on or before the twentieth day of the month next succeeding each monthly period unless otherwise provided pursuant to the Nebraska Revenue Act of 1967.

(b)(i) On or before the twentieth day of the month following each monthly period or such other period as the Tax Commissioner may require, a return for such period, along with all taxes due, shall be filed with the Tax Commissioner in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The Tax Commissioner, if he or she deems it necessary in order to insure payment to or facilitate the collection by the state of the amount of sales or use taxes due, may require returns and payment of the amount of such taxes for periods other than monthly periods in the case of a particular seller, retailer, or purchaser, as the case may be. The Tax Commissioner shall by rule and regulation require reports and tax payments from sellers, retailers, or purchasers depending on their yearly tax liability. Except as required by the streamlined sales and use tax agreement, annual returns shall be required if such sellers', retailers', or purchasers' yearly tax liability is less than nine hundred dollars, quarterly returns shall be required if their yearly tax liability is nine hundred dollars or more and less than three thousand dollars, and monthly returns shall be required if their yearly tax liability is three thousand dollars or more. The Tax Commissioner shall have the discretion to allow an annual return for seasonal retailers, even when their yearly tax liability exceeds the amounts listed in this subdivision.

The Tax Commissioner may adopt and promulgate rules and regulations to allow annual, semiannual, or quarterly returns for any retailer making monthly remittances or payments of sales and use taxes by electronic funds transfer or for any retailer remitting tax to the state pursuant to the streamlined sales and use tax agreement. Such rules and regulations may establish a method of determining the amount of the payment that will result in substantially all of the tax liability being paid each quarter. At least once each year, the difference between the amount paid and the amount due shall be reconciled. If the difference is more than ten percent of the amount paid, a penalty of fifty percent of the unpaid amount shall be imposed.

(ii) For purposes of the sales tax, a return shall be filed by every retailer liable for collection from a purchaser and payment to the state of the tax, except that a combined sales tax return may be filed for all licensed locations which are subject to common ownership. For purposes of this subdivision, common ownership means the same person or persons own eighty percent or more of each licensed location. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person who has purchased property, the storage, use, or other consumption of which is subject to the use tax, but who has not paid the use tax due to a retailer required to collect the tax.

(iii) The Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath.

(iv) A taxpayer who keeps his or her regular books and records on a cash basis, an accrual basis, or any generally recognized accounting basis which correctly reflects the operation of the business may file the sales and use tax returns required by the Nebraska Revenue Act of 1967 on the same accounting basis that is used for the regular books and records, except that on credit, conditional, and installment sales, the retailer who keeps his or her books on an accrual basis may report such sales on the cash basis and pay the tax upon the

collections made during each month. If a taxpayer transfers, sells, assigns, or otherwise disposes of an account receivable, he or she shall be deemed to have received the full balance of the consideration for the original sale and shall be liable for the remittance of the sales tax on the balance of the total sale price not previously reported, except that such transfer, sale, assignment, or other disposition of an account receivable by a retailer to a subsidiary shall not be deemed to require the retailer to pay the sales tax on the credit sale represented by the account transferred prior to the time the customer makes payment on such account. If the subsidiary does not obtain a Nebraska sales tax permit, the taxpayer shall obtain a surety bond in favor of the State of Nebraska to insure payment of the tax and any interest and penalty imposed thereon under this section in an amount not less than two times the amount of tax payable on outstanding accounts receivable held by the subsidiary as of the end of the prior calendar year. Failure to obtain either a sales tax permit or a surety bond in accordance with this section shall result in the payment on the next required filing date of all sales taxes not previously remitted. When the retailer has adopted one basis or the other of reporting credit, conditional, or installment sales and paying the tax thereon, he or she will not be permitted to change from that basis without first having notified the Tax Commissioner.

(c) Except as provided in the streamlined sales and use tax agreement, the taxpayer required to file the return shall deliver or mail any required return together with a remittance of the net amount of the tax due to the office of the Tax Commissioner on or before the required filing date. Failure to file the return, filing after the required filing date, failure to remit the net amount of the tax due, or remitting the net amount of the tax due after the required filing date shall be cause for a penalty, in addition to interest, of ten percent of the amount of tax not paid by the required filing date or twenty-five dollars, whichever is greater, unless the penalty is being collected under subdivision (1)(i) or (1)(j)(i) of section 77-2703 by a county treasurer or the Department of Motor Vehicles, in which case the penalty shall be five dollars.

(d) The taxpayer shall deduct and withhold, from the taxes otherwise due from him or her on his or her tax return, two and one-half percent of the first three thousand dollars remitted each month to reimburse himself or herself for the cost of collecting the tax. Taxpayers filing a combined return as allowed by subdivision (1)(b)(ii) of this subsection shall compute such collection fees on the basis of the receipts and liability of each licensed location.

(2)(a) If the Tax Commissioner determines that any sales or use tax amount, penalty, or interest has been paid more than once, has been erroneously or illegally collected or computed, or has been paid and the purchaser qualifies for a refund under section 77-2708.01, the Tax Commissioner shall set forth that fact in his or her records and the excess amount collected or paid may be credited on any sales, use, or income tax amounts then due and payable from the person under the Nebraska Revenue Act of 1967. Any balance may be refunded to the person by whom it was paid or his or her successors, administrators, or executors.

(b) No refund shall be allowed unless a claim therefor is filed with the Tax Commissioner by the person who made the overpayment or his or her attorney, executor, or administrator within three years from the required filing date following the close of the period for which the overpayment was made, within six months after any determination becomes final under section 77-2709, or within six months from the date of overpayment with respect to such determi-

nations, whichever of these three periods expires later, unless the credit relates to a period for which a waiver has been given. Failure to file a claim within the time prescribed in this subsection shall constitute a waiver of any demand against the state on account of overpayment.

(c) Every claim shall be in writing on forms prescribed by the Tax Commissioner and shall state the specific amount and grounds upon which the claim is founded. No refund shall be made in any amount less than two dollars.

(d) The Tax Commissioner shall allow or disallow a claim within one hundred eighty days after it has been filed. A request for a hearing shall constitute a waiver of the one-hundred-eighty-day period. The claimant and the Tax Commissioner may also agree to extend the one-hundred-eighty-day period. If a hearing has not been requested and the Tax Commissioner has neither allowed nor disallowed a claim within either the one hundred eighty days or the period agreed to by the claimant and the Tax Commissioner, the claim shall be deemed to have been allowed.

(e) Within thirty days after disallowing any claim in whole or in part, the Tax Commissioner shall serve notice of his or her action on the claimant in the manner prescribed for service of notice of a deficiency determination.

(f) Within thirty days after the mailing of the notice of the Tax Commissioner's action upon a claim filed pursuant to the Nebraska Revenue Act of 1967, the action of the Tax Commissioner shall be final unless the taxpayer seeks review of the Tax Commissioner's determination as provided in section 77-27,127.

(g) Upon the allowance of a credit or refund of any sum erroneously or illegally assessed or collected, of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, interest shall be allowed and paid on the amount of such credit or refund at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the date such sum was paid or from the date the return was required to be filed, whichever date is later, to the date of the allowance of the refund or, in the case of a credit, to the due date of the amount against which the credit is allowed, but in the case of a voluntary and unrequested payment in excess of actual tax liability or a refund under section 77-2708.01, no interest shall be allowed when such excess is refunded or credited.

(h) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

(i) The Tax Commissioner may recover any refund or part thereof which is erroneously made and any credit or part thereof which is erroneously allowed by issuing a deficiency determination within one year from the date of refund or credit or within the period otherwise allowed for issuing a deficiency determination, whichever expires later.

(j)(i) Credit shall be allowed to the retailer, contractor, or repairperson for sales or use taxes paid pursuant to the Nebraska Revenue Act of 1967 on any deduction taken that is attributed to bad debts not including interest. Bad debt has the same meaning as in 26 U.S.C. 166, as such section existed on January 1, 2003. However, the amount calculated pursuant to 26 U.S.C. 166 shall be adjusted to exclude: Financing charges or interest; sales or use taxes charged on the purchase price; uncollectible amounts on property that remains in the

possession of the seller until the full purchase price is paid; and expenses incurred in attempting to collect any debt and repossessed property.

(ii) Bad debts may be deducted on the return for the period during which the bad debt is written off as uncollectible in the claimant's books and records and is eligible to be deducted for federal income tax purposes. A claimant who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the claimant's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the claimant was required to file a federal income tax return.

(iii) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

(iv) When the amount of bad debt exceeds the amount of taxable sales for the period during which the bad debt is written off, a refund claim may be filed within the otherwise applicable statute of limitations for refund claims. The statute of limitations shall be measured from the due date of the return on which the bad debt could first be claimed.

(v) If filing responsibilities have been assumed by a certified service provider, the service provider may claim, on behalf of the retailer, any bad debt allowance provided by this section. The certified service provider shall credit or refund the full amount of any bad debt allowance or refund received to the retailer.

(vi) For purposes of reporting a payment received on a previously claimed bad debt, any payments made on a debt or account are applied first proportionally to the taxable price of the property or service and the sales tax thereon, and secondly to interest, service charges, and any other charges.

(vii) In situations in which the books and records of the party claiming the bad debt allowance support an allocation of the bad debts among the member states in the streamlined sales and use tax agreement, the state shall permit the allocation.

Source: Laws 1967, c. 487, § 8, p. 1558; Laws 1967, c. 490, § 5, p. 1665; Laws 1969, c. 683, § 5, p. 2635; Laws 1976, LB 996, § 1; Laws 1981, LB 179, § 15; Laws 1981, LB 167, § 51; Laws 1982, Spec. Sess., LB 2, § 1; Laws 1983, LB 101, § 1; Laws 1983, LB 571, § 2; Laws 1984, LB 758, § 1; Laws 1985, LB 715, § 7; Laws 1985, LB 273, § 46; Laws 1987, LB 775, § 15; Laws 1987, LB 523, § 16; Laws 1988, LB 1234, § 1; Laws 1991, LB 829, § 23; Laws 1992, LB 1063, § 183; Laws 1992, Second Spec. Sess., LB 1, § 156; Laws 1992, Fourth Spec. Sess., LB 1, § 28; Laws 1993, LB 128, § 1; Laws 1993, LB 345, § 56; Laws 1995, LB 9, § 1; Laws 1995, LB 118, § 1; Laws 1996, LB 1041, § 7; Laws 2002, Second Spec. Sess., LB 32, § 3; Laws 2003, LB 282, § 71; Laws 2005, LB 216, § 8; Laws 2008, LB916, § 25; Laws 2011, LB210, § 9; Laws 2012, LB801, § 99.
Effective date July 19, 2012.

77-2709 Sales and use tax; return; Tax Commissioner; deficiency determination; penalty; deficiency; notice; hearing; order.

(1) If the Tax Commissioner is not satisfied with the return or returns of the tax or the amount of tax required to be paid to the state by any person, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within his or her possession or which may come into his or her possession. One or more deficiency determinations of the amount due for one or more than one period may be made. To the amount of the deficiency determination for each period shall be added a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. In making a determination, the Tax Commissioner may offset overpayments for a period or periods, together with interest on the overpayments, against underpayments for other period or periods, against penalties, and against the interest on the underpayments.

The interest on underpayments and overpayments shall be computed in the manner set forth hereinafter.

(2) If any person fails to make a return, the Tax Commissioner shall make an estimate of the amount of the gross receipts of the person or, as the case may be, of the amount of the total sales, rent, or lease price of property sold, rented, or leased or purchased, by the person, the storage, use, or consumption of which in this state is subject to the use tax. The estimate shall be made for the period or periods in respect to which the person failed to make a return and shall be based upon any information which is in the Tax Commissioner's possession or may come into his or her possession. Upon the basis of this estimate, the Tax Commissioner shall compute and determine the amount required to be paid to the state, adding to the sum thus arrived at a penalty equal to ten percent thereof or twenty-five dollars, whichever is greater. One or more determinations may be made for one or more than one period.

(3) The amount of the determination of any deficiency exclusive of penalties shall bear interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, from the twentieth of the month following the period for which the amount should have been returned until the date of payment.

(4) If any part of a deficiency for which a deficiency determination is made is the result of fraud or an intent to evade the Nebraska Revenue Act of 1967 or authorized rules and regulations, a penalty of twenty-five percent of the amount of the determination or fifty dollars, whichever is greater, shall be added thereto.

(5)(a) Promptly after making his or her determination, the Tax Commissioner shall give to the person written notice of his or her determination.

(b) The notice may be served personally or by mail, and if by mail the notice shall be addressed to the person at his or her address as it appears in the records of the Tax Commissioner. In case of service by mail of any notice required by the Nebraska Revenue Act of 1967, the service is complete at the time of deposit in the United States post office.

(c) Every notice of a deficiency determination shall be personally served or mailed within three years after the last day of the calendar month following the period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires the later. In the case of failure to make a return, every notice of determination shall be mailed or personally

served within five years after the last day of the calendar month following the period for which the amount is proposed to be determined.

(d) When, before the expiration of the time prescribed in this section for the mailing of a notice of deficiency determination, both the Tax Commissioner and the taxpayer have consented in writing to its mailing after such time, the notice of the deficiency determination may be mailed at any time prior to the expiration of the period agreed upon. The agreed-upon period may be extended by subsequent agreement, in writing, made before the expiration of the period previously agreed upon.

(6) When a business is discontinued, a determination may be made at any time thereafter within the periods specified in this section as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in the Nebraska Revenue Act of 1967.

(7) Any person against whom a determination is made under subsections (1) and (2) of this section or any person directly interested may petition for a redetermination within sixty days after service upon the person of notice thereof. For the purposes of this subsection, a person is directly interested in a deficiency determination when such deficiency could be collected from such person. If a petition for redetermination is not filed within the sixty-day period, the determination becomes final at the expiration of the period.

(8) If a petition for redetermination is filed within the sixty-day period, the Tax Commissioner shall reconsider the determination and, if the person has so requested in his or her petition, shall grant the person an oral hearing and shall give him or her ten days' notice of the time and place of the hearing. The Tax Commissioner may continue the hearing from time to time as may be necessary.

(9) The Tax Commissioner may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Tax Commissioner at or before the hearing, upon which assertion the petitioner shall be entitled to a thirty-day continuance of the hearing to allow him or her to obtain and produce further evidence applicable to the items upon which the increase is based.

(10) The order or decision of the Tax Commissioner upon a petition for redetermination shall become final thirty days after service upon the petitioner of notice thereof.

(11) All determinations made by the Tax Commissioner under the provisions of subsections (1) and (2) of this section are due and payable at the time they become final. If they are not paid when due and payable, a penalty of ten percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

(12) Any notice required by this section shall be served personally or by mail in the manner prescribed in subsection (5) of this section.

Source: Laws 1967, c. 487, § 9, p. 1562; Laws 1969, c. 683, § 6, p. 2639; Laws 1976, LB 996, § 2; Laws 1981, LB 167, § 52; Laws 1985, LB 273, § 47; Laws 1992, Fourth Spec. Sess., LB 1, § 30; Laws 1993, LB 345, § 58; Laws 2008, LB914, § 7; Laws 2011, LB210, § 10.

77-2711 Sales and use tax; Tax Commissioner; enforcement; records; retain; reports; wrongful disclosures; exceptions; information provided to municipality; penalty; waiver; streamlined sales and use tax agreement; confidentiality rights.

(1)(a) The Tax Commissioner shall enforce sections 77-2701.04 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 and the accuracy of the allocation made between the various counties, cities, villages, and municipal counties of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner, the State Treasurer, or the Department of Administrative Services to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and

activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party, (g) the disclosure of information pursuant to section 77-27,195 or 77-5731, or (h) the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2701.04 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-3716 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and tax return information open to inspection by or disclosure to Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No employee of the Auditor of Public Accounts or Legislative Performance Audit Section shall disclose to any person, other than another Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor. For purposes of this subsection, employee includes a former Auditor of Public Accounts or Legislative Performance Audit Section employee.

(12) For purposes of this subsection and subsections (11) and (14) of this section:

(a) Disclosure means the making known to any person in any manner a tax return or return information;

(b) Return information means:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Tax return or return means any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2701 to 77-2713 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including

supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

(13) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon request, provide any municipality which has adopted the local option sales tax under the Local Option Revenue Act with a list of the names and addresses of the retailers which have collected the local option sales tax for the municipality. The request may be made annually and shall be submitted to the Tax Commissioner on or before June 30 of each year. The information provided by the Tax Commissioner shall indicate only the names and addresses of the retailers. The Tax Commissioner may provide additional information to a municipality so long as the information does not include any data detailing the specific revenue, expenses, or operations of any particular business.

(14)(a) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner shall, upon written request, provide a municipal employee certified under subdivision (b) of this subsection representing a municipality which has adopted the local option sales tax under the Local Option Revenue Act with confidential sales tax returns and sales tax return information regarding taxpayers that possess a sales tax permit and the amounts remitted by such permitholders at locations within the boundaries of the requesting municipality. Any written request pursuant to this subsection shall provide the Department of Revenue with no less than ten business days to prepare the sales tax returns and sales tax return information requested. Such returns and return information shall be viewed only upon the premises of the department.

(b) Each municipality that seeks to request information under subdivision (a) of this subsection shall certify to the Department of Revenue one municipal employee who is authorized by such municipality to make such request and review the documents described in subdivision (a) of this subsection.

(c) No municipal employee certified by a municipality pursuant to subdivision (b) of this subsection shall disclose to any person any information obtained pursuant to a review by that municipal employee pursuant to this subsection. A municipal employee certified by a municipality pursuant to subdivision (b) of this subsection shall remain subject to this subsection after he or she (i) is no longer certified or (ii) is no longer in the employment of the certifying municipality.

(d) Any person who violates the provisions of this subsection shall be guilty of a Class I misdemeanor.

(e) The Department of Revenue shall not be held liable by any person for an impermissible disclosure by a municipality or any agent or employee thereof of any information obtained pursuant to a review under this subsection.

(15) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act or interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted.

(16)(a) The purpose of this subsection is to set forth the state's policy for the protection of the confidentiality rights of all participants in the system operated pursuant to the streamlined sales and use tax agreement and of the privacy interests of consumers who deal with model 1 sellers.

(b) For purposes of this subsection:

(i) Anonymous data means information that does not identify a person;

(ii) Confidential taxpayer information means all information that is protected under a member state's laws, regulations, and privileges; and

(iii) Personally identifiable information means information that identifies a person.

(c) The state agrees that a fundamental precept for model 1 sellers is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(d) The governing board of the member states in the streamlined sales and use tax agreement may certify a certified service provider only if that certified service provider certifies that:

(i) Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected;

(ii) Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 with respect to exempt purchasers;

(iii) It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. Such notice shall be satisfied by a written privacy policy statement accessible by the public on the web site of the certified service provider;

(iv) Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased; and

(v) It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

(e) The state shall provide public notification to consumers, including exempt purchasers, of the state's practices relating to the collection, use, and retention of personally identifiable information.

(f) When any personally identifiable information that has been collected and retained is no longer required for the purposes set forth in subdivision (16)(d)(iv) of this section, such information shall no longer be retained by the member states.

(g) When personally identifiable information regarding an individual is retained by or on behalf of the state, it shall provide reasonable access by such individual to his or her own information in the state's possession and a right to correct any inaccurately recorded information.

(h) If anyone other than a member state, or a person authorized by that state's law or the agreement, seeks to discover personally identifiable information, the state from whom the information is sought should make a reasonable and timely effort to notify the individual of such request.

(i) This privacy policy is subject to enforcement by the Attorney General.

(j) All other laws and regulations regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, this subsection does not enlarge or limit the state's authority to:

(i) Conduct audits or other reviews as provided under the agreement and state law;

(ii) Provide records pursuant to the federal Freedom of Information Act, disclosure laws with governmental agencies, or other regulations;

(iii) Prevent, consistent with state law, disclosure of confidential taxpayer information;

(iv) Prevent, consistent with federal law, disclosure or misuse of federal return information obtained under a disclosure agreement with the Internal Revenue Service; and

(v) Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

Source: Laws 1967, c. 487, § 11, p. 1566; Laws 1969, c. 683, § 7, p. 2641; Laws 1977, LB 39, § 239; Laws 1981, LB 170, § 6; Laws 1982, LB 705, § 2; Laws 1984, LB 962, § 12; Laws 1985, LB 344, § 4; Laws 1987, LB 523, § 17; Laws 1991, LB 773, § 10; Laws 1992, LB 871, § 61; Laws 1992, Fourth Spec. Sess., LB 1, § 31; Laws 1993, LB 345, § 60; Laws 1994, LB 1175, § 1; Laws 1995, LB 134, § 3; Laws 1996, LB 1177, § 18; Laws 2001, LB 142, § 56; Laws 2003, LB 282, § 73; Laws 2005, LB 216, § 9; Laws 2005, LB 312, § 11; Laws 2006, LB 588, § 8; Laws 2007, LB94, § 1; Laws 2007, LB223, § 9; Laws 2008, LB914, § 8; Laws 2009, LB165, § 10; Laws 2010, LB563, § 14; Laws 2010, LB879, § 9; Laws 2012, LB209, § 1; Laws 2012, LB1053, § 25.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB209, section 1, with LB1053, section 25, to reflect all amendments.

Note: Changes made by LB1053 became operative July 1, 2012. Changes made by LB209 became effective July 19, 2012.

Cross References

Contractor Registration Act, see section 48-2101.
Employee Classification Act, see section 48-2901.
Employment Security Law, see section 48-601.
Local Option Revenue Act, see section 77-27,148.
Nebraska Visitors Development Act, see section 81-1263.

77-2712.03 Streamlined sales and use tax agreement; ratified; governing board; members.

(1) The streamlined sales and use tax agreement, as adopted by the streamlined sales tax implementing states on November 12, 2002, including amendments through December 31, 2010, is hereby ratified by the Legislature. The Governor shall enter into the agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the Department of Revenue is authorized to act jointly with other states that are members under Articles VII or VIII of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions permissible under law reasonably required to implement the provisions set forth in the agreement. Other actions authorized by this section include, but are not limited

to, the adoption and promulgation of rules and regulations and the joint procurement, with other member states, of goods and services in furtherance of the agreement.

(2) The Tax Commissioner or his or her designee and two representatives of the Legislature appointed by the Executive Board of the Legislative Council are authorized to represent Nebraska before the other member states under the agreement. The state also agrees to participate in and comply with the procedures of and decisions made by the governing board of the member states. These provisions of the agreement include the creation of the organization as provided in Article VII of the agreement, the requirements for state entry and withdrawal as provided in Article VIII of the agreement, amendments to the agreement as provided in Article IX of the agreement, and a dispute resolution process as provided in Article X of the agreement.

Source: Laws 2001, LB 172, § 4; Laws 2003, LB 282, § 75; Laws 2007, LB223, § 10; Laws 2010, LB879, § 10; Laws 2011, LB211, § 6.

Cross References

Executive Board of the Legislative Council, see section 50-401.01.

(c) INCOME TAX

77-2715.01 Income and sales tax; Legislature; set rates; limitations; primary rate; Tax Rate Review Committee; members; meetings; report.

(1)(a) Commencing in 1987 the Legislature shall set the rates for the income tax imposed by section 77-2715 and the rate of the sales tax imposed by subsection (1) of section 77-2703. For taxable years beginning or deemed to begin before January 1, 2013, the rate of the income tax set by the Legislature shall be considered the primary rate for establishing the tax rate schedules used to compute the tax.

(b) The Legislature shall set the rates of the sales tax and income tax so that the estimated funds available plus estimated receipts from the sales, use, income, and franchise taxes will be not less than three percent nor more than seven percent in excess of the appropriations and express obligations for the biennium for which the appropriations are made. The purpose of this subdivision is to insure that there shall be maintained in the state treasury an adequate General Fund balance, considering cash flow, to meet the appropriations and express obligations of the state.

(c) For purposes of this section, express obligation shall mean an obligation which has fiscal impact identifiable by a sum certain or by an established percentage or other determinative factor or factors.

(2) The Speaker of the Legislature and the chairpersons of the Legislature's Executive Board, Revenue Committee, and Appropriations Committee shall constitute a committee to be known as the Tax Rate Review Committee. The Tax Rate Review Committee shall meet with the Tax Commissioner within ten days after July 15 and November 15 of each year and shall determine whether the rates for sales tax and income tax should be changed. In making such determination the committee shall recalculate the requirements pursuant to the formula set forth in subsection (1) of this section, taking into consideration the appropriations and express obligations for any session, all miscellaneous claims, deficiency bills, and all emergency appropriations. The committee shall prepare an annual report of its determinations under this section. The commit-

tee shall submit such report electronically to the Legislature and shall append the tax expenditure report required under section 77-382.

In the event it is determined by a majority vote of the committee that the rates must be changed as a result of a regular or special session or as a result of a change in the Internal Revenue Code of 1986 and amendments thereto, other provisions of the laws of the United States relating to federal income taxes, and the rules and regulations issued under such laws, the committee shall petition the Governor to call a special session of the Legislature to make whatever rate changes may be necessary.

Source: Laws 1969, c. 684, § 3, p. 2654; Laws 1971, LB 167, § 1; Laws 1973, LB 10, § 1; Laws 1975, LB 589, § 1; Laws 1975, Spec. Sess., LB 4, § 1; Laws 1976, LB 651, § 1; Laws 1978, LB 327, § 1; Laws 1982, LB 304, § 1; Laws 1982, LB 454, § 1; Laws 1982, LB 757, § 1; Laws 1982, LB 693, § 1; Laws 1983, LB 59, § 1; Laws 1983, LB 169, § 2; Laws 1983, LB 363, § 3; Laws 1984, LB 892, § 7; Laws 1985, LB 282, § 1; Laws 1986, LB 258, § 17; Laws 1987, LB 773, § 7; Laws 1988, LB 130, § 1; Laws 2012, LB962, § 2; Laws 2012, LB970, § 3.
Effective date July 19, 2012.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB962, section 2, with LB970, section 3, to reflect all amendments.

77-2715.02 Rate schedules; established; other taxes; tax rate.

(1) The following rate schedules are hereby established for the Nebraska individual income tax and shall be in the following form:

(a) For taxable years beginning or deemed to begin before January 1, 2007, income amounts for columns A and E shall be:

(i) $0, $2,400, $17,500, and $27,000, for single returns;

(ii) $0, $4,000, $31,000, and $50,000, for married filing joint returns;

(iii) $0, $3,800, $25,000, and $35,000, for head-of-household returns;

(iv) $0, $2,000, $15,500, and $25,000, for married filing separate returns; and

(v) $0, $500, $4,700, and $15,150, for estates and trusts;

(b) For taxable years beginning or deemed to begin on or after January 1, 2007, and before January 1, 2013, income amounts for columns A and E shall be:

(i) $0, $2,400, $17,500, and $27,000, for single returns;

(ii) $0, $4,800, $35,000, and $54,000, for married filing joint returns;

(iii) $0, $4,500, $28,000, and $40,000, for head-of-household returns;

(iv) $0, $2,400, $17,500, and $27,000, for married filing separate returns; and

(v) $0, $500, $4,700, and $15,150, for estates and trusts;

(c) The amount in column C shall be the total amount of the tax imposed on income less than the amount in column A;

(d) The amount in column D shall be the rate on the income in excess of the amount in column E;

(e) For taxable years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax

rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6784, .9432, 1.3541, and 1.8054;

(f) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2013, under the Internal Revenue Code of 1986, as amended, the primary rate set by the Legislature shall be multiplied by the following factors to compute the tax rates for column D. The factors for the brackets, from lowest to highest bracket, shall be .6932, .9646, 1.3846, and 1.848;

(g) The amounts for column C shall be rounded to the nearest dollar, and the amounts in column D shall be rounded to hundredths of one percent; and

(h) One rate schedule shall be established for each federal filing status.

(2) The tax rate schedules shall use the format set forth in this subsection.

A Taxable income over	B but not over	C pay	D plus	E of the amount over

(3) For taxable years beginning or deemed to begin before January 1, 2013, the tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be eight times the primary rate.

Source: Laws 1990, LB 1059, § 34; Laws 1993, LB 240, § 3; Laws 1994, LB 977, § 11; Laws 1997, LB 401, § 1; Laws 1998, LB 1028, § 1; Laws 2002, LB 1085, § 17; Laws 2003, LB 759, § 21; Laws 2006, LB 968, § 7; Laws 2007, LB367, § 19; Laws 2012, LB970, § 4. Effective date July 19, 2012.

77-2715.03 Individual income tax brackets and rates; Tax Commissioner; duties; tax tables; other taxes; tax rate.

(1) For taxable years beginning or deemed to begin on or after January 1, 2013, and before January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate
1	$0-2,399	$0-4,799	$0-4,499	$0-2,399	$0-499	2.46%
2	$2,400-17,499	$4,800-34,999	$4,500-27,999	$2,400-17,499	$500-4,699	3.51%
3	$17,500-26,999	$35,000-53,999	$28,000-39,999	$17,500-26,999	$4,700-15,149	5.01%
4	$27,000 and Over	$54,000 and Over	$40,000 and Over	$27,000 and Over	$15,150 and Over	6.84%

(2) For taxable years beginning or deemed to begin on or after January 1, 2014, the following brackets and rates are hereby established for the Nebraska individual income tax:

Individual Income Tax Brackets and Rates

Bracket Number	Single Individuals	Married, Filing Jointly	Head of Household	Married, Filing Separate	Estates and Trusts	Tax Rate
1	$0-2,999	$0-5,999	$0-5,599	$0-2,999	$0-499	2.46%
2	$3,000-17,999	$6,000-35,999	$5,600-28,799	$3,000-17,999	$500-4,699	3.51%
3	$18,000-28,999	$36,000-57,999	$28,800-42,999	$18,000-28,999	$4,700-15,149	5.01%
4	$29,000 and Over	$58,000 and Over	$43,000 and Over	$29,000 and Over	$15,150 and Over	6.84%

(3) Whenever the tax brackets or tax rates are changed by the Legislature, the Tax Commissioner shall update the tax rate schedules to reflect the new tax brackets or tax rates and shall publish such updated schedules.

(4) The Tax Commissioner shall prepare, from the rate schedules, tax tables which can be used by a majority of the taxpayers to determine their Nebraska tax liability. The design of the tax tables shall be determined by the Tax Commissioner. The size of the tax table brackets may change as the level of income changes. The difference in tax between two tax table brackets shall not exceed fifteen dollars. The Tax Commissioner may build the personal exemption credit and standard deduction amounts into the tax tables.

(5) For taxable years beginning or deemed to begin on or after January 1, 2013, the tax rate applied to other federal taxes included in the computation of the Nebraska individual income tax shall be 29.6 percent.

(6) The Tax Commissioner may require by rule and regulation that all taxpayers shall use the tax tables if their income is less than the maximum income included in the tax tables.

Source: Laws 2012, LB970, § 5.
Effective date July 19, 2012.

77-2715.07 Income tax credits.

(1) There shall be allowed to qualified resident individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit equal to the federal credit allowed under section 22 of the Internal Revenue Code; and

(b) A credit for taxes paid to another state as provided in section 77-2730.

(2) There shall be allowed to qualified resident individuals against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) For returns filed reporting federal adjusted gross incomes of greater than twenty-nine thousand dollars, a nonrefundable credit equal to twenty-five percent of the federal credit allowed under section 21 of the Internal Revenue Code of 1986, as amended;

(b) For returns filed reporting federal adjusted gross income of twenty-nine thousand dollars or less, a refundable credit equal to a percentage of the federal credit allowable under section 21 of the Internal Revenue Code of 1986, as amended, whether or not the federal credit was limited by the federal tax liability. The percentage of the federal credit shall be one hundred percent for incomes not greater than twenty-two thousand dollars, and the percentage shall be reduced by ten percent for each one thousand dollars, or fraction thereof, by which the reported federal adjusted gross income exceeds twenty-two thousand dollars;

(c) A refundable credit as provided in section 77-5209.01 for individuals who qualify for an income tax credit as a qualified beginning farmer or livestock producer under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended;

(d) A refundable credit for individuals who qualify for an income tax credit under the Angel Investment Tax Credit Act, the Nebraska Advantage Microen-

terprise Tax Credit Act, or the Nebraska Advantage Research and Development Act; and

(e) A refundable credit equal to ten percent of the federal credit allowed under section 32 of the Internal Revenue Code of 1986, as amended.

(3) There shall be allowed to all individuals as a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit for personal exemptions allowed under section 77-2716.01;

(b) A credit for contributions to certified community betterment programs as provided in the Community Development Assistance Act. Each partner, each shareholder of an electing subchapter S corporation, each beneficiary of an estate or trust, or each member of a limited liability company shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, estate, trust, or limited liability company income;

(c) A credit for investment in a biodiesel facility as provided in section 77-27,236; and

(d) A credit as provided in the New Markets Job Growth Investment Act.

(4) There shall be allowed as a credit against the income tax imposed by the Nebraska Revenue Act of 1967:

(a) A credit to all resident estates and trusts for taxes paid to another state as provided in section 77-2730;

(b) A credit to all estates and trusts for contributions to certified community betterment programs as provided in the Community Development Assistance Act; and

(c) A refundable credit for individuals who qualify for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended. The credit allowed for each partner, shareholder, member, or beneficiary of a partnership, corporation, limited liability company, or estate or trust qualifying for an income tax credit as an owner of agricultural assets under the Beginning Farmer Tax Credit Act shall be equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount of tax credit distributed pursuant to subsection (4) of section 77-5211.

(5)(a) For all taxable years beginning on or after January 1, 2007, and before January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to fifty percent of the partner's, shareholder's, member's, or beneficiary's portion of the amount of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(b) For all taxable years beginning on or after January 1, 2009, under the Internal Revenue Code of 1986, as amended, there shall be allowed to each partner, shareholder, member, or beneficiary of a partnership, subchapter S corporation, limited liability company, or estate or trust a nonrefundable credit against the income tax imposed by the Nebraska Revenue Act of 1967 equal to the partner's, shareholder's, member's, or beneficiary's portion of the amount

of franchise tax paid to the state under sections 77-3801 to 77-3807 by a financial institution.

(c) Each partner, shareholder, member, or beneficiary shall report his or her share of the credit in the same manner and proportion as he or she reports the partnership, subchapter S corporation, limited liability company, or estate or trust income. If any partner, shareholder, member, or beneficiary cannot fully utilize the credit for that year, the credit may not be carried forward or back.

Source: Laws 1987, LB 773, § 6; Laws 1989, LB 739, § 2; Laws 1993, LB 5, § 3; Laws 1993, LB 121, § 503; Laws 1993, LB 240, § 4; Laws 1993, LB 815, § 23; Laws 1994, LB 977, § 12; Laws 1996, LB 898, § 5; Laws 1998, LB 1028, § 2; Laws 1999, LB 630, § 1; Laws 2001, LB 433, § 4; Laws 2005, LB 312, § 12; Laws 2006, LB 968, § 8; Laws 2006, LB 990, § 1; Laws 2007, LB343, § 3; Laws 2007, LB367, § 20; Laws 2007, LB456, § 1; Laws 2009, LB165, § 12; Laws 2011, LB389, § 12; Laws 2012, LB1128, § 22. Operative date January 1, 2012.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.
Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
New Markets Job Growth Investment Act, see section 77-1101.

77-2716 Income tax; adjustments.

(1) The following adjustments to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be made for interest or dividends received:

(a) There shall be subtracted interest or dividends received by the owner of obligations of the United States and its territories and possessions or of any authority, commission, or instrumentality of the United States to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States;

(b) There shall be subtracted that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (a) of this subsection as reported to the recipient by the regulated investment company;

(c) There shall be added interest or dividends received by the owner of obligations of the District of Columbia, other states of the United States, or their political subdivisions, authorities, commissions, or instrumentalities to the extent excluded in the computation of gross income for federal income tax purposes except that such interest or dividends shall not be added if received by a corporation which is a regulated investment company;

(d) There shall be added that portion of the total dividends and other income received from a regulated investment company which is attributable to obligations described in subdivision (c) of this subsection and excluded for federal income tax purposes as reported to the recipient by the regulated investment company; and

(e)(i) Any amount subtracted under this subsection shall be reduced by any interest on indebtedness incurred to carry the obligations or securities described in this subsection or the investment in the regulated investment compa-

ny and by any expenses incurred in the production of interest or dividend income described in this subsection to the extent that such expenses, including amortizable bond premiums, are deductible in determining federal taxable income.

(ii) Any amount added under this subsection shall be reduced by any expenses incurred in the production of such income to the extent disallowed in the computation of federal taxable income.

(2) There shall be allowed a net operating loss derived from or connected with Nebraska sources computed under rules and regulations adopted and promulgated by the Tax Commissioner consistent, to the extent possible under the Nebraska Revenue Act of 1967, with the laws of the United States. For a resident individual, estate, or trust, the net operating loss computed on the federal income tax return shall be adjusted by the modifications contained in this section. For a nonresident individual, estate, or trust or for a partial-year resident individual, the net operating loss computed on the federal return shall be adjusted by the modifications contained in this section and any carryovers or carrybacks shall be limited to the portion of the loss derived from or connected with Nebraska sources.

(3) There shall be subtracted from federal adjusted gross income for all taxable years beginning on or after January 1, 1987, the amount of any state income tax refund to the extent such refund was deducted under the Internal Revenue Code, was not allowed in the computation of the tax due under the Nebraska Revenue Act of 1967, and is included in federal adjusted gross income.

(4) Federal adjusted gross income, or, for a fiduciary, federal taxable income shall be modified to exclude the portion of the income or loss received from a small business corporation with an election in effect under subchapter S of the Internal Revenue Code or from a limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act that is not derived from or connected with Nebraska sources as determined in section 77-2734.01.

(5) There shall be subtracted from federal adjusted gross income or, for corporations and fiduciaries, federal taxable income dividends received or deemed to be received from corporations which are not subject to the Internal Revenue Code.

(6) There shall be subtracted from federal taxable income a portion of the income earned by a corporation subject to the Internal Revenue Code of 1986 that is actually taxed by a foreign country or one of its political subdivisions at a rate in excess of the maximum federal tax rate for corporations. The taxpayer may make the computation for each foreign country or for groups of foreign countries. The portion of the taxes that may be deducted shall be computed in the following manner:

(a) The amount of federal taxable income from operations within a foreign taxing jurisdiction shall be reduced by the amount of taxes actually paid to the foreign jurisdiction that are not deductible solely because the foreign tax credit was elected on the federal income tax return;

(b) The amount of after-tax income shall be divided by one minus the maximum tax rate for corporations in the Internal Revenue Code; and

(c) The result of the calculation in subdivision (b) of this subsection shall be subtracted from the amount of federal taxable income used in subdivision (a) of this subsection. The result of such calculation, if greater than zero, shall be subtracted from federal taxable income.

(7) Federal adjusted gross income shall be modified to exclude any amount repaid by the taxpayer for which a reduction in federal tax is allowed under section 1341(a)(5) of the Internal Revenue Code.

(8)(a) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced, to the extent included, by income from interest, earnings, and state contributions received from the Nebraska educational savings plan trust created in sections 85-1801 to 85-1814.

(b) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be reduced by any contributions as a participant in the Nebraska educational savings plan trust, to the extent not deducted for federal income tax purposes, but not to exceed two thousand five hundred dollars per married filing separate return or five thousand dollars for any other return.

(c) Federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Nebraska educational savings plan trust to the extent previously deducted as a contribution to the trust.

(9)(a) For income tax returns filed after September 10, 2001, for taxable years beginning or deemed to begin before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by eighty-five percent of any amount of any federal bonus depreciation received under the federal Job Creation and Worker Assistance Act of 2002 or the federal Jobs and Growth Tax Act of 2003, under section 168(k) or section 1400L of the Internal Revenue Code of 1986, as amended, for assets placed in service after September 10, 2001, and before December 31, 2005.

(b) For a partnership, limited liability company, cooperative, including any cooperative exempt from income taxes under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, subchapter S corporation, or joint venture, the increase shall be distributed to the partners, members, shareholders, patrons, or beneficiaries in the same manner as income is distributed for use against their income tax liabilities.

(c) For a corporation with a unitary business having activity both inside and outside the state, the increase shall be apportioned to Nebraska in the same manner as income is apportioned to the state by section 77-2734.05.

(d) The amount of bonus depreciation added to federal adjusted gross income or, for corporations and fiduciaries, federal taxable income by this subsection shall be subtracted in a later taxable year. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin before January 1, 2003, under the Internal Revenue Code of 1986, as amended, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2005, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years. Twenty percent of the total amount of bonus depreciation added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or

deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following taxable years.

(10) For taxable years beginning or deemed to begin on or after January 1, 2003, and before January 1, 2006, under the Internal Revenue Code of 1986, as amended, federal adjusted gross income or, for corporations and fiduciaries, federal taxable income shall be increased by the amount of any capital investment that is expensed under section 179 of the Internal Revenue Code of 1986, as amended, that is in excess of twenty-five thousand dollars that is allowed under the federal Jobs and Growth Tax Act of 2003. Twenty percent of the total amount of expensing added back by this subsection for tax years beginning or deemed to begin on or after January 1, 2003, may be subtracted in the first taxable year beginning or deemed to begin on or after January 1, 2006, under the Internal Revenue Code of 1986, as amended, and twenty percent in each of the next four following tax years.

(11)(a) Federal adjusted gross income shall be reduced by contributions, up to two thousand dollars per married filing jointly return or one thousand dollars for any other return, and any investment earnings made as a participant in the Nebraska long-term care savings plan under the Long-Term Care Savings Plan Act, to the extent not deducted for federal income tax purposes.

(b) Federal adjusted gross income shall be increased by the withdrawals made as a participant in the Nebraska long-term care savings plan under the act by a person who is not a qualified individual or for any reason other than transfer of funds to a spouse, long-term care expenses, long-term care insurance premiums, or death of the participant, including withdrawals made by reason of cancellation of the participation agreement or termination of the plan, to the extent previously deducted as a contribution or as investment earnings.

(12) There shall be added to federal adjusted gross income for individuals, estates, and trusts any amount taken as a credit for franchise tax paid by a financial institution under sections 77-3801 to 77-3807 as allowed by subsection (5) of section 77-2715.07.

Source: Laws 1967, c. 487, § 16, p. 1579; Laws 1983, LB 619, § 1; Laws 1984, LB 962, § 15; Laws 1984, LB 1124, § 3; Laws 1985, LB 273, § 50; Laws 1986, LB 774, § 9; Laws 1987, LB 523, § 20; Laws 1987, LB 773, § 9; Laws 1989, LB 458, § 2; Laws 1989, LB 459, § 3; Laws 1991, LB 773, § 13; Laws 1993, LB 121, § 504; Laws 1994, LB 977, § 13; Laws 1997, LB 401, § 2; Laws 1998, LB 1028, § 3; Laws 2000, LB 1003, § 15; Laws 2002, LB 1085, § 18; Laws 2003, LB 596, § 1; Laws 2005, LB 216, § 10; Laws 2006, LB 965, § 6; Laws 2006, LB 968, § 9; Laws 2007, LB338, § 1; Laws 2007, LB368, § 135; Laws 2007, LB456, § 2; Laws 2010, LB197, § 1; Laws 2010, LB888, § 104.

Cross References

Limited Liability Company Act, see section 21-2601.
Long-Term Care Savings Plan Act, see section 77-6101.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2717 Income tax; estates; trusts; rate; fiduciary return; contents; filing; state income tax; contents; credits.

(1)(a) The tax imposed on all resident estates and trusts shall be a percentage of the federal taxable income of such estates and trusts as modified in section 77-2716, plus a percentage of the federal alternative minimum tax and the federal tax on premature or lump-sum distributions from qualified retirement plans. The additional taxes shall be recomputed by (i) substituting Nebraska taxable income for federal taxable income, (ii) calculating what the federal alternative minimum tax would be on Nebraska taxable income and adjusting such calculations for any items which are reflected differently in the determination of federal taxable income, and (iii) applying Nebraska rates to the result. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all resident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all resident estates and trusts as provided in the New Markets Job Growth Investment Act.

(b) The tax imposed on all nonresident estates and trusts shall be the portion of the tax imposed on resident estates and trusts which is attributable to the income derived from sources within this state. The tax which is attributable to income derived from sources within this state shall be determined by multiplying the liability to this state for a resident estate or trust with the same total income by a fraction, the numerator of which is the nonresident estate's or trust's Nebraska income as determined by sections 77-2724 and 77-2725 and the denominator of which is its total federal income after first adjusting each by the amounts provided in section 77-2716. The federal credit for prior year minimum tax, after the recomputations required by the Nebraska Revenue Act of 1967, reduced by the percentage of the total income which is attributable to income from sources outside this state, and the credits provided in the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act shall be allowed as a reduction in the income tax due. A refundable income tax credit shall be allowed for all nonresident estates and trusts under the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, and the Nebraska Advantage Research and Development Act. A nonrefundable income tax credit shall be allowed for all nonresident estates and trusts as provided in the New Markets Job Growth Investment Act.

(2) In all instances wherein a fiduciary income tax return is required under the provisions of the Internal Revenue Code, a Nebraska fiduciary return shall be filed, except that a fiduciary return shall not be required to be filed regarding a simple trust if all of the trust's beneficiaries are residents of the State of Nebraska, all of the trust's income is derived from sources in this state, and the trust has no federal tax liability. The fiduciary shall be responsible for making the return for the estate or trust for which he or she acts, whether the income be taxable to the estate or trust or to the beneficiaries thereof. The fiduciary shall include in the return a statement of each beneficiary's distributive share of net income when such income is taxable to such beneficiaries.

(3) The beneficiaries of such estate or trust who are residents of this state shall include in their income their proportionate share of such estate's or trust's

federal income and shall reduce their Nebraska tax liability by their proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, and the New Markets Job Growth Investment Act. There shall be allowed to a beneficiary a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) If any beneficiary of such estate or trust is a nonresident during any part of the estate's or trust's taxable year, he or she shall file a Nebraska income tax return which shall include (a) in Nebraska adjusted gross income that portion of the estate's or trust's Nebraska income, as determined under sections 77-2724 and 77-2725, allocable to his or her interest in the estate or trust and (b) a reduction of the Nebraska tax liability by his or her proportionate share of the credits as provided in the Angel Investment Tax Credit Act, the Nebraska Advantage Microenterprise Tax Credit Act, the Nebraska Advantage Research and Development Act, and the New Markets Job Growth Investment Act and shall execute and forward to the fiduciary, on or before the original due date of the Nebraska fiduciary return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the Nebraska fiduciary return for such taxable year.

(5) In the absence of the nonresident beneficiary's executed agreement being attached to the Nebraska fiduciary return, the estate or trust shall remit a portion of such beneficiary's income which was derived from or attributable to Nebraska sources with its Nebraska return for the taxable year. For taxable years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. For taxable years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident beneficiary's share of the estate or trust income which was derived from or attributable to sources within this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the beneficiary.

(6) The Tax Commissioner may allow a nonresident beneficiary to not file a Nebraska income tax return if the nonresident beneficiary's only source of Nebraska income was his or her share of the estate's or trust's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the estate or trust has remitted the amount required by subsection (5) of this section on behalf of such nonresident beneficiary. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident beneficiary.

(7) For purposes of this section, unless the context otherwise requires, simple trust shall mean any trust instrument which (a) requires that all income shall be distributed currently to the beneficiaries, (b) does not allow amounts to be paid, permanently set aside, or used in the tax year for charitable purposes, and (c)

does not distribute amounts allocated in the corpus of the trust. Any trust which does not qualify as a simple trust shall be deemed a complex trust.

(8) For purposes of this section, any beneficiary of an estate or trust that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the beneficiary.

Source: Laws 1967, c. 487, § 17, p. 1579; Laws 1969, c. 690, § 1, p. 2683; Laws 1973, LB 531, § 1; Laws 1985, LB 273, § 51; Laws 1987, LB 523, § 21; Laws 1991, LB 773, § 14; Laws 1994, LB 977, § 14; Laws 2000, LB 1223, § 1; Laws 2001, LB 433, § 5; Laws 2005, LB 312, § 13; Laws 2006, LB 1003, § 6; Laws 2007, LB367, § 22; Laws 2008, LB915, § 1; Laws 2011, LB389, § 13; Laws 2012, LB970, § 6; Laws 2012, LB1128, § 23.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB970, section 6, with LB1128, section 23, to reflect all amendments.

Note: Changes made by LB1128 became operative January 1, 2012. Changes made by LB970 became effective July 19, 2012.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.
Beginning Farmer Tax Credit Act, see section 77-5201.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
New Markets Job Growth Investment Act, see section 77-1101.

77-2727 Income tax; partnership; subject to act; credit.

(1) A partnership as such shall not be subject to the income tax imposed by the Nebraska Revenue Act of 1967. Persons or their authorized representatives carrying on business as partners shall be liable for the income tax imposed by the Nebraska Revenue Act of 1967 only in their separate or individual capacities.

(2) The partners of such partnership who are residents of this state or corporations shall include in their incomes their proportionate share of such partnership's income.

(3) If any partner of such partnership is a nonresident individual during any part of the partnership's reporting year, he or she shall file a Nebraska income tax return which shall include in Nebraska adjusted gross income that portion of the partnership's Nebraska income, as determined under the provisions of sections 77-2728 and 77-2729, allocable to his or her interest in the partnership and shall execute and forward to the partnership, on or before the original due date of the Nebraska partnership return, an agreement which states that he or she will file a Nebraska income tax return and pay income tax on all income derived from or attributable to sources in this state, and such agreement shall be attached to the partnership's Nebraska return for such reporting year.

(4)(a) Except as provided in subdivision (c) of this subsection, in the absence of the nonresident individual partner's executed agreement being attached to the Nebraska partnership return, the partnership shall remit a portion of such partner's income which was derived from or attributable to Nebraska sources with its Nebraska return for the reporting year. For tax years beginning or deemed to begin before January 1, 2013, the amount of remittance, in such instance, shall be the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state. For tax years beginning or deemed to begin on or after January 1, 2013, the amount of remittance, in such instance, shall be the

highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident individual partner's share of the partnership income which was derived from or attributable to sources within this state.

(b) Any amount remitted on behalf of any partner shall be allowed as a credit against the Nebraska income tax liability of the partner.

(c) Subdivision (a) of this subsection does not apply to a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code of 1986, as amended, that is treated as a partnership for the purposes of the code and that has agreed to file an annual information return with the Department of Revenue reporting the name, address, taxpayer identification number, and other information requested by the department of each unit holder with an income in the state in excess of five hundred dollars.

(5) The Tax Commissioner may allow a nonresident individual partner to not file a Nebraska income tax return if the nonresident individual partner's only source of Nebraska income was his or her share of the partnership's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the partnership has remitted the amount required by subsection (4) of this section on behalf of such nonresident individual partner. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual partner.

(6) For purposes of this section, any partner that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the partner.

Source: Laws 1967, c. 487, § 27, p. 1583; Laws 1973, LB 531, § 2; Laws 1985, LB 273, § 52; Laws 1991, LB 773, § 15; Laws 2005, LB 216, § 11; Laws 2008, LB915, § 2; Laws 2012, LB970, § 7. Effective date July 19, 2012.

77-2734.01 Small business corporation shareholders; limited liability company members; determination of income; credit; Tax Commissioner; powers; return; when required.

(1) Residents of Nebraska who are shareholders of a small business corporation having an election in effect under subchapter S of the Internal Revenue Code or who are members of a limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act shall include in their Nebraska taxable income, to the extent includable in federal gross income, their proportionate share of such corporation's or limited liability company's federal income adjusted pursuant to this section. Income or loss from such corporation or limited liability company conducting a business, trade, profession, or occupation shall be included in the Nebraska taxable income of a shareholder or member who is a resident of this state to the extent of such shareholder's or member's proportionate share of the net income or loss from the conduct of such business, trade, profession, or occupation within this state, determined under subsection (2) of this section. A resident of Nebraska shall include in Nebraska taxable income fair compensation for services rendered to such corporation or limited liability company. Compensation actually paid shall be presumed to be fair unless it is apparent to the Tax Commissioner that such compensation is materially different from fair

value for the services rendered or has been manipulated for tax avoidance purposes.

(2) The income of any small business corporation having an election in effect under subchapter S of the Internal Revenue Code or limited liability company organized pursuant to the Limited Liability Company Act or the Nebraska Uniform Limited Liability Company Act that is derived from or connected with Nebraska sources shall be determined in the following manner:

(a) If the small business corporation is a member of a unitary group, the small business corporation shall be deemed to be doing business within this state if any part of its income is derived from transactions with other members of the unitary group doing business within this state, and such corporation shall apportion its income by using the apportionment factor determined for the entire unitary group, including the small business corporation, under sections 77-2734.05 to 77-2734.15;

(b) If the small business corporation or limited liability company is not a member of a unitary group and is subject to tax in another state, it shall apportion its income under sections 77-2734.05 to 77-2734.15; and

(c) If the small business corporation or limited liability company is not subject to tax in another state, all of its income is derived from or connected with Nebraska sources.

(3) Nonresidents of Nebraska who are shareholders of such corporations or members of such limited liability companies shall file a Nebraska income tax return and shall include in Nebraska adjusted gross income their proportionate share of the corporation's or limited liability company's Nebraska income as determined under subsection (2) of this section.

(4) The nonresident shareholder or member shall execute and forward to the corporation or limited liability company before the filing of the corporation's or limited liability company's return an agreement which states he or she will file a Nebraska income tax return and pay the tax on the income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's or limited liability company's Nebraska return for such taxable year.

(5) For taxable years beginning or deemed to begin before January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.02 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. For taxable years beginning or deemed to begin on or after January 1, 2013, in the absence of the nonresident shareholder's or member's executed agreement being attached to the Nebraska return, the corporation or limited liability company shall remit with the return an amount equal to the highest individual income tax rate determined under section 77-2715.03 multiplied by the nonresident shareholder's or member's share of the corporation's or limited liability company's income which was derived from or attributable to this state. The amount remitted shall be allowed as a credit against the Nebraska income tax liability of the shareholder or member.

(6) The Tax Commissioner may allow a nonresident individual shareholder or member to not file a Nebraska income tax return if the nonresident individual

shareholder's or member's only source of Nebraska income was his or her share of the small business corporation's or limited liability company's income which was derived from or attributable to sources within this state, the nonresident did not file an agreement to file a Nebraska income tax return, and the small business corporation or limited liability company has remitted the amount required by subsection (5) of this section on behalf of such nonresident individual shareholder or member. The amount remitted shall be retained in satisfaction of the Nebraska income tax liability of the nonresident individual shareholder or member.

(7) A small business corporation or limited liability company return shall be filed only if one or more of the shareholders of the corporation or members of the limited liability company are not residents of the State of Nebraska or if such corporation or limited liability company has income derived from sources outside this state.

(8) For purposes of this section, any shareholder or member of the corporation or limited liability company that is a grantor trust of a nonresident shall be disregarded and this section shall apply as though the nonresident grantor was the shareholder or member.

Source: Laws 1984, LB 1124, § 4; Laws 1985, LB 273, § 54; Laws 1987, LB 523, § 23; Laws 1987, LB 773, § 18; Laws 1991, LB 773, § 16; Laws 1993, LB 121, § 508; Laws 2005, LB 216, § 12; Laws 2008, LB915, § 3; Laws 2010, LB888, § 105; Laws 2012, LB970, § 8.
Effective date July 19, 2012.

Cross References

Limited Liability Company Act, see section 21-2601.
Nebraska Uniform Limited Liability Company Act, see section 21-101.

77-2734.02 Corporate taxpayer; income tax rate; how determined.

(1) Except as provided in subsection (2) of this section, a tax is hereby imposed on the taxable income of every corporate taxpayer that is doing business in this state:

(a) For taxable years beginning or deemed to begin before January 1, 2013, at a rate equal to one hundred fifty and eight-tenths percent of the primary rate imposed on individuals under section 77-2701.01 on the first one hundred thousand dollars of taxable income and at the rate of two hundred eleven percent of such rate on all taxable income in excess of one hundred thousand dollars. The resultant rates shall be rounded to the nearest one hundredth of one percent; and

(b) For taxable years beginning or deemed to begin on or after January 1, 2013, at a rate equal to 5.58 percent on the first one hundred thousand dollars of taxable income and at the rate of 7.81 percent on all taxable income in excess of one hundred thousand dollars.

For corporate taxpayers with a fiscal year that does not coincide with the calendar year, the individual rate used for this subsection shall be the rate in effect on the first day, or the day deemed to be the first day, of the taxable year.

(2) An insurance company shall be subject to taxation at the lesser of the rate described in subsection (1) of this section or the rate of tax imposed by the state or country in which the insurance company is domiciled if the insurance

company can establish to the satisfaction of the Tax Commissioner that it is domiciled in a state or country other than Nebraska that imposes on Nebraska domiciled insurance companies a retaliatory tax against the tax described in subsection (1) of this section.

(3) For a corporate taxpayer that is subject to tax in another state, its taxable income shall be the portion of the taxpayer's federal taxable income, as adjusted, that is determined to be connected with the taxpayer's operations in this state pursuant to sections 77-2734.05 to 77-2734.15.

(4) Each corporate taxpayer shall file only one income tax return for each taxable year.

Source: Laws 1984, LB 1124, § 5; Laws 1987, LB 773, § 19; Laws 1995, LB 300, § 2; Laws 2008, LB888, § 1; Laws 2012, LB970, § 9. Effective date July 19, 2012.

77-2734.03 Income tax; tax credits.

(1)(a) For taxable years commencing prior to January 1, 1997, any (i) insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, (ii) electric cooperative organized under the Joint Public Power Authority Act, or (iii) credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as taxes on such premiums and assessments and taxes in lieu of intangible tax.

(b) For taxable years commencing on or after January 1, 1997, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523, any electric cooperative organized under the Joint Public Power Authority Act, or any credit union shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as (i) taxes on such premiums and assessments included as Nebraska premiums and assessments under section 77-2734.05 and (ii) taxes in lieu of intangible tax.

(c) For taxable years commencing or deemed to commence prior to, on, or after January 1, 1998, any insurer paying a tax on premiums and assessments pursuant to section 77-908 or 81-523 shall be credited, in the computation of the tax due under the Nebraska Revenue Act of 1967, with the amount paid during the taxable year as assessments allowed as an offset against premium and related retaliatory tax liability pursuant to section 44-4233.

(2) There shall be allowed to corporate taxpayers a tax credit for contributions to community betterment programs as provided in the Community Development Assistance Act.

(3) There shall be allowed to corporate taxpayers a refundable income tax credit under the Beginning Farmer Tax Credit Act for all taxable years beginning or deemed to begin on or after January 1, 2001, under the Internal Revenue Code of 1986, as amended.

(4) 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 of 1986, as amended.

(5) There shall be allowed to corporate taxpayers refundable income tax credits under the Nebraska Advantage Microenterprise Tax Credit Act and the Nebraska Advantage Research and Development Act.

(6) There shall be allowed to corporate taxpayers a nonrefundable income tax credit for investment in a biodiesel facility as provided in section 77-27,236.

(7) There shall be allowed to corporate taxpayers a nonrefundable income tax credit as provided in the New Markets Job Growth Investment Act.

Source: Laws 1984, LB 1124, § 6; Laws 1985, LB 273, § 55; Laws 1986, LB 1114, § 19; Laws 1992, LB 719A, § 176; Laws 1992, LB 1063, § 184; Laws 1993, LB 5, § 4; Laws 1993, LB 815, § 25; Laws 1996, LB 898, § 6; Laws 1997, LB 55, § 4; Laws 1997, LB 61, § 1; Laws 1998, LB 1035, § 24; Laws 2000, LB 1223, § 2; Laws 2001, LB 433, § 6; Laws 2004, LB 983, § 68; Laws 2005, LB 312, § 14; Laws 2007, LB343, § 6; Laws 2007, LB367, § 23; Laws 2012, LB1128, § 24.
Operative date January 1, 2012.

Cross References

Beginning Farmer Tax Credit Act, see section 77-5201.
Community Development Assistance Act, see section 13-201.
Joint Public Power Authority Act, see section 70-1401.
Nebraska Advantage Microenterprise Tax Credit Act, see section 77-5901.
Nebraska Advantage Research and Development Act, see section 77-5801.
New Markets Job Growth Investment Act, see section 77-1101.

77-2734.04 Income tax; terms, defined.

As used in sections 77-2734.01 to 77-2734.15, unless the context otherwise requires:

(1) Annual average amortized loan balance means the total of the ending monthly values in the tax year divided by the number of months in the tax year;

(2) Application service means computer-based services provided to customers over a network for a fee without selling, renting, leasing, licensing, or otherwise transferring computer software. Application service includes, but is not limited to, software as a service, platform as a service, or infrastructure as a service;

(3) Billing address means the location indicated in the books and records of the taxpayer as the address of record where the bill relating to the customer's account is mailed;

(4) Borrower located in this state means:

(a) A borrower who is engaged in a trade or business in this state; or

(b) A borrower whose billing address is in this state, but is not engaged in a trade or business in this state;

(5) Buyer includes a buyer, licensee, user, or person providing consideration for the use of an item or service;

(6) Commercial domicile means the principal place from which the trade or business of the taxpayer is directed or managed;

(7) Communications company means any entity that:

(a) Is:

(i) A telecommunications company as defined in section 86-119 that provides a telecommunications service as defined in section 86-121 or provides broadband, Internet, or video services as defined in section 86-593;

(ii) A communications company that provides the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, and includes such transmission,

conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as a voice over Internet protocol service or is classified by the Federal Communications Commission as enhanced or value added. The company may also provide video programming provided by, or generally considered comparable to programming provided by, a television broadcast station, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Video programming includes, but is not limited to, cable service as defined in 47 U.S.C. 522 and video programming services delivered by providers of commercial mobile radio service, as defined in 47 C.F.R. 20.3; or

(iii) A broadcast company that provides an over-the-air broadcast radio station or over-the-air broadcast television station; and

(b) Owns, operates, manages, or controls any plant or equipment used to furnish telecommunications service, communication services, broadband services, Internet service, or broadcast services directly or indirectly to the general public at large and derives at least seventy percent of its gross sales for the current taxable year from the provision of these services. For purposes of the seventy-percent test, gross sales does not include interest, dividends, rents, royalties, capital gains, or ordinary gains from asset dispositions, other than in the normal course of business;

(8) Compensation means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services;

(9) Corporate taxpayer means any corporation that is not a part of a unitary business or the part of a unitary business, whether it is one or more corporations, that is doing business in this state. Corporate taxpayer does not include any corporation that has a valid election under subchapter S of the Internal Revenue Code or any financial institution as defined in section 77-3801;

(10) Corporation means all corporations and all other entities that are taxed as corporations under the Internal Revenue Code;

(11) Credit card means a credit card, debit card, purchase card, charge card, and travel or entertainment card;

(12) Doing business in this state means the exercise of the corporation's franchise in this state or the conduct of operations in this state that exceed the limitations provided in 15 U.S.C. 381 on a state imposing an income tax;

(13) Federal taxable income means the corporate taxpayer's federal taxable income as reported to the Internal Revenue Service or as subsequently changed or amended. Except as provided in subsection (5) or (6) of section 77-2716, no adjustment shall be allowed for a change from any election made or the method used in computing federal taxable income. An election to file a federal consolidated return shall not require the inclusion in any unitary group of a corporation that is not a part of the unitary business;

(14) Intangible property means all personal property which is not tangible personal property and includes, but is not limited to, patents, copyrights, trademarks, trade names, service names, franchises, licenses, royalties, processes, techniques, formulas, and technical know-how but excludes money;

(15) Loan means any extension of credit resulting from direct negotiations between the taxpayer and its customer or the purchase, in whole or in part, of

an extension of credit from another person. Loan includes participations, syndications, and leases treated as loans for federal income tax purposes. Loan does not include properties treated as loans under section 595 of the Internal Revenue Code prior to its repeal by Public Law l04-188, futures or forward contracts, options, notional principal contracts such as swaps, credit card receivables, including purchased credit card relationships, noninterest bearing balances due from depository institutions, cash items in the process of collection, federal funds sold, securities purchased under agreements to resell, assets held in a trading account, securities, interests in a real estate mortgage investment conduit or other mortgage-backed or asset-backed security, and other similar items;

(16) Loan secured by real property means a loan or other obligation which, at the time the original loan or obligation was incurred or during the current taxable year, was secured by real property. A loan secured by real property includes an installment sales contract for real property;

(17) Loan secured by tangible personal property means a loan or other obligation which, at the time the original loan or obligation was incurred or during the current taxable year, was secured by tangible personal property. A loan secured by tangible personal property includes an installment sales contract for tangible personal property;

(18) Loan servicing fee includes (a) fees or charges for originating and processing loan applications, including, but not limited to, prepaid interest and loan discounts, (b) fees or charges for collecting, tracking, and accounting for loan payments received, and (c) gross receipts from the sale of loan servicing rights;

(19) Participation means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral;

(20) Sales means all gross receipts of the taxpayer, except:

(a) Income from discharge of indebtedness;

(b) Amounts received from hedging transactions involving intangible assets; or

(c) Net gains from marketable securities held for investment;

(21) Single economic unit means a business in which there is a sharing or exchange of value between the parts of the unit. A sharing or exchange of value occurs when the parts of the business are linked by (a) common management or (b) common operational resources that produce material (i) economies of scale, (ii) transfers of value, or (iii) flow of goods, capital, or services between the parts of the unit.

(A) For the purposes of this subdivision, common management includes, but is not limited to, (I) a centralized executive force or (II) review or approval authority over long-term operations with or without the exercise of control over the day-to-day operations.

(B) For the purposes of this subdivision, common operational resources includes, but is not limited to, centralization of any of the following: Accounting, advertising, engineering, financing, insurance, legal, personnel, pension or benefit plans, purchasing, research and development, selling, or union relations;

(22) State means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof;

(23) Subject to the Internal Revenue Code means a corporation that meets the requirements of section 243 of the Internal Revenue Code in order for its distributions to qualify for the dividends-received deduction;

(24) Taxable income means federal taxable income as adjusted and, if appropriate, as apportioned;

(25) Taxable year means the period the corporate taxpayer used on its federal income tax return;

(26) Treasury function is the pooling, management, and investment of intangible assets to satisfy the cash-flow needs of the trade or business, including, but not limited to, providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, or business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function with respect to income so produced;

(27) Unitary business means a business that is conducted as a single economic unit by one or more corporations with common ownership and shall include all activities in different lines of business that contribute to the single economic unit.

For the purposes of this subdivision, common ownership means one or more corporations owning fifty percent or more of another corporation; and

(28) Unitary group means the group of corporations that are conducting a unitary business.

Source: Laws 1984, LB 1124, § 7; Laws 1986, LB 774, § 10; Laws 1987, LB 773, § 20; Laws 2012, LB872, § 1.
Operative date January 1, 2014.

77-2734.14 Income tax; sales factor; how determined.

(1) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales everywhere during the tax period.

(2) Sales of tangible personal property in this state include:

(a) Property delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale;

(b) Property shipped from an office, store, warehouse, factory, or other place of storage in this state if (i) the purchaser is the United States Government or (ii) for all taxable years beginning or deemed to begin before January 1, 1995, under the Internal Revenue Code of 1986, as amended, the taxpayer is not taxable in the state of the purchaser;

(c) For all taxable years beginning or deemed to begin on or after January 1, 1995, and before January 1, 1996, under the Internal Revenue Code of 1986, as amended, two-thirds of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser; or

(d) For all taxable years beginning or deemed to begin on or after January 1, 1996, but before January 1, 1997, under the Internal Revenue Code of 1986, as amended, one-third of the property shipped from an office, store, warehouse, factory, or other place of storage in this state if the taxpayer is not taxable in the state of the purchaser.

(3) For sales other than sales of tangible personal property, except for sales as described in subsection (4) of this section:

(a) Sales of a service are in this state if the sales are derived from a buyer within this state. Sales of a service are derived from a buyer within this state if:

(i) The service, when rendered, relates to real property located in this state;

(ii) The service, when rendered, relates to tangible personal property located in this state at the time the service is received;

(iii) The service, when rendered, is provided to an individual physically present in this state at the time the service is received; or

(iv) The service, when rendered, is provided to a buyer engaged in a trade or business in this state and relates to that part of the trade or business then operated in this state. For services described in this subdivision, if the buyer uses the service within and without this state, calculated using any reasonable method, the sales are apportioned between the use in this state in proportion to the use of the service in this state and the other states;

(b) Sales of an application service are in this state if the buyer uses the application service in this state. The application service is used in this state if, the buyer, from a location in this state:

(i) Uses it in the regular course of business in this state; or

(ii) If the buyer is an individual, his or her billing address is in this state.

If the buyer is not an individual and uses the application service within and without this state, calculated using any reasonable method, the sales are apportioned between the use in this state in proportion to the use of the application service in this state and the other states. If the location of a sale cannot be determined, the sale of an application service is in the state from which the order was placed in the regular course of the customer's business. If that office cannot be determined, the sales are considered received at the customer's billing address;

(c) Sales of intangible property are in this state if the buyer uses the intangible property at a location in this state. If the buyer uses the intangible property within and without this state, the sales are apportioned between this state in proportion to the use of the intangible property in this state and the other states. If the location of a sale cannot be determined, the sale of intangible property is in this state if the buyer's billing address is in this state;

(d) Interest, dividends, investment income, and other net gains from transactions in intangible assets held in connection with a treasury function, other than net gains from the sale or redemption of marketable securities, are in this state to the extent that it is included in taxable income and to the extent the investment, management, and record-keeping activities associated with corporate investments occur in this state;

(e) Gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, secured by real

property or tangible personal property are in this state if the property securing the loan is located in this state. If the real or tangible personal property securing the loan is located within and without this state, the gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, are based upon the ratio of the annual average amortized loan balance of a loan secured by the real property or tangible personal property located in this state to the annual average amortized loan balance of a loan secured by the real property or tangible personal property located within and without this state;

(f) Gross interest, fees, points, charges, and penalties from loans, net gains from the sale of loans, and loan servicing fees derived from loans owned by the taxpayer or another person, including servicing participations, that are not secured by real or tangible personal property are in this state if the borrower is located in this state, which location shall be presumed to be the borrower's billing address;

(g) Gross interest, fees, points, charges, and penalties from credit card receivables and gross receipts from annual fees and other fees charged to credit card holders are in this state if the billing address of the credit card holder is in this state;

(h) Net gains, but not less than zero, from the sale of credit card receivables are in this state if the billing address of the credit card holder is in this state;

(i) Gross receipts from the lease, rental, or licensing of tangible personal property are in this state to the extent the property is located in this state;

(j) Gross receipts from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state; and

(k) Sales other than sales of tangible personal property not specifically addressed in this subsection must be sourced so as to fairly represent the extent of the taxpayer's business activity in this state. This requirement will be considered met in the following situations: (i) If the buyer is an individual, a sale is deemed to have occurred at the buyer's billing address; and (ii) if the buyer is not an individual and the sale is from an order placed in the regular course of the customer's business, the sale is deemed to have occurred in the state from which the order was placed and, if that place cannot be readily determined, the sale is deemed to have occurred at the customer's billing address.

(4) To continue the tax policy of this state which enhances the deployment of broadband in rural and underserved areas of this state, sales, other than sales of tangible personal property, of a communications company are in this state if: (a) The income-producing activity is performed in this state; or (b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

Source: Laws 1984, LB 1124, § 17; Laws 1985, LB 273, § 58; Laws 1995, LB 559, § 1; Laws 2012, LB872, § 2.
Operative date January 1, 2014.

77-2756 Income tax; employer or payor; withholding for tax.

(1) Except as provided in subsection (2) of this section, every employer or payor required to deduct and withhold income tax under the Nebraska Revenue Act of 1967 shall, for each calendar quarter, on or before the last day of the month following the close of such calendar quarter, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depositary designated by the Tax Commissioner the taxes so required to be deducted and withheld in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. When the aggregate amount required to be deducted and withheld by any employer or payor for either the first or second month of a calendar quarter exceeds five hundred dollars, the employer or payor shall, by the fifteenth day of the succeeding month, pay over such aggregate amount to the Tax Commissioner or to a depositary designated by the Tax Commissioner. The amount so paid shall be allowed as a credit against the liability shown on the employer's or payor's quarterly withholding return required by this section. The Tax Commissioner may, by rule and regulation, provide for the filing of returns and the payment of the tax deducted and withheld on other than a quarterly basis.

(2) When the aggregate amount required to be deducted and withheld by any employer or payor for the entire calendar year is less than five hundred dollars or the employer or payor is allowed to file federal withholding returns annually, the employer or payor shall, for each calendar year, on or before the last day of the month following the close of such calendar year, file a withholding return as prescribed by the Tax Commissioner and pay over to the Tax Commissioner or to a depositary designated by the Tax Commissioner the taxes so required to be deducted and withheld in such form and content as the Tax Commissioner may prescribe and containing such information as the Tax Commissioner deems necessary for the proper administration of the Nebraska Revenue Act of 1967. The employer or payor may elect or the Tax Commissioner may require the filing of returns and the payment of taxes on a quarterly basis.

(3) Whenever any employer or payor fails to collect, truthfully account for, pay over, or make returns of the income tax as required by this section, the Tax Commissioner may serve a notice requiring such employer or payor to collect the taxes which become collectible after service of such notice, to deposit such taxes in a bank approved by the Tax Commissioner in a separate account in trust for and payable to the Tax Commissioner, and to keep the amount of such tax in such account until paid over to the Tax Commissioner. Such notice shall remain in effect until a notice of cancellation is served by the Tax Commissioner.

(4) Any employer or payor may appoint an agent in accordance with section 3504 of the Internal Revenue Code of 1986, as amended, for the purpose of withholding, reporting, or making payment of amounts withheld on behalf of the employer or payor. The agent shall be considered an employer or payor for purposes of the Nebraska Revenue Act of 1967 and, with the actual employer or payor, shall be jointly and severally liable for any amount required to be withheld and paid over to the Tax Commissioner and any additions to tax, penalties, and interest with respect thereto.

(5) The employer or payor shall also file on or before February 1 of the succeeding year a copy of each statement furnished by such employer or payor to each employee or payee with respect to taxes withheld on wages or payments subject to withholding. Any employer, payor, or agent who furnished more than

fifty statements for a year shall file the required copies electronically in a manner approved by the Tax Commissioner that is compatible with federal electronic filing requirements or methods.

Source: Laws 1967, c. 487, § 56, p. 1596; Laws 1984, LB 962, § 21; Laws 1988, LB 1064, § 2; Laws 1997, LB 62, § 2; Laws 2005, LB 216, § 14; Laws 2007, LB223, § 13; Laws 2010, LB879, § 11.

77-2769.02 Repealed. Laws 2010, LB 879, § 29.

77-2776 Income tax; Tax Commissioner; return; examination; failure to file; notice; deficiency; notice.

(1) As soon as practical after an income tax return is filed, the Tax Commissioner shall examine it to determine the correct amount of tax. If the Tax Commissioner finds that the amount of tax shown on the return is less than the correct amount, he or she shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the Tax Commissioner finds that the tax paid is more than the correct amount, he or she shall credit the overpayment against any taxes due by the taxpayer and refund the difference. The Tax Commissioner shall, upon request, make prompt assessment of taxes due as provided by the laws of the United States for federal income tax purposes.

(2) If the taxpayer fails to file an income tax return, the Tax Commissioner shall estimate the taxpayer's tax liability from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(3) A notice of deficiency shall set forth the reason for the proposed assessment or for the change in the amount of credit or loss to be carried over to another year. The notice may be mailed to the taxpayer at his or her last-known address. In the case of a joint return, the notice of deficiency may be a single joint notice, except that if the Tax Commissioner is notified by either spouse that separate residences have been established, the Tax Commissioner shall mail joint notices to each spouse. If the taxpayer is deceased or under a legal disability, a notice of deficiency may be mailed to his or her last-known address unless the Tax Commissioner has received notice of the existence of a fiduciary relationship with respect to such taxpayer.

(4) A notice of deficiency regarding an item of entity income may be mailed to the entity at its last-known address or to the address of the entity's tax matters person for federal income tax purposes. Such notice shall be deemed to have been received by each partner, shareholder, or member of such entity, but only for items of entity income reported by the partner, shareholder, or member.

Source: Laws 1967, c. 487, § 76, p. 1604; Laws 2005, LB 216, § 16; Laws 2012, LB727, § 41.
Operative date April 12, 2012.

77-2779 Income tax; notice of Tax Commissioner's determination; mailing; contents.

Notice of the Tax Commissioner's determination shall be mailed to the taxpayer and such notice shall set forth briefly the Tax Commissioner's findings

of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

Source: Laws 1967, c. 487, § 79, p. 1605; Laws 2012, LB727, § 42. Operative date April 12, 2012.

77-2789 Income tax; failure to file return; penalty.

(1) In case of failure to file any income tax return required under the provisions of the Nebraska Revenue Act of 1967 on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not the result of willful neglect, the Tax Commissioner may add to the amount required to be shown as tax on such return, five percent of the amount of such tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

(2) In case of each failure to file a statement of payment to another person, including the duplicate statement of tax withheld on wages, on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is the result of reasonable cause and not willful neglect, the Tax Commissioner may assess a penalty against the person so failing to file the statement, in the amount of two dollars for each statement not so filed but the total amount imposed on the delinquent person for all such failure during any calendar year shall not exceed two thousand dollars.

(3) In case of failure to file any return for income tax withheld on the date prescribed therefor, determined with regard to any extension of time to file, the Tax Commissioner may add to the amount required to be shown as tax on such return twenty-five dollars or the amount determined under subsection (1) of this section, whichever is greater.

(4) All determinations made by the Tax Commissioner under subsection (3) of this section are due and payable at the time they become final. If they are not paid when final, a penalty of ten percent of the total amount due, exclusive of interest and other penalties, shall be added to the total amount due.

Source: Laws 1967, c. 487, § 89, p. 1610; Laws 1993, LB 345, § 68; Laws 2010, LB879, § 12.

77-2790 Income tax; deficiency; interest; failure to report or file; prohibited acts; penalties.

(1)(a) If any part of a deficiency is the result of negligence or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the deficiency.

(b) If any part of a requested refund is overstated as a result of negligence, material misstatement, or intentional disregard of rules and regulations but without intent to defraud, the Tax Commissioner may add to the tax an amount equal to five percent of the overstatement of the refund.

(2)(a) If any part of a deficiency is the result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(b) If any part of a requested refund is overstated as a result of fraud, the Tax Commissioner may add to the tax an amount equal to fifty percent of the overstatement of the refund. This amount shall be in lieu of any amount determined under subsection (1) of this section.

(3) If any taxpayer fails to pay all or any part of an installment of any tax due, he or she shall be deemed to have made an underpayment of estimated tax. The Tax Commissioner shall determine the amount of underpayment of estimated tax in accordance with the laws of the United States.

(4) If any taxpayer, with intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, claims an excessive number of exemptions or in any other manner overstates the amount of withholding, he or she shall be guilty of a Class II misdemeanor. If any employer or payor, without intent to evade or defeat any income tax imposed by the Nebraska Revenue Act of 1967 or the payment thereof, fails to make a return and pay a tax withheld by him or her at the time required by or under the act, such employer or payor shall be liable for such taxes and shall pay the same together with interest thereon and any addition to tax assessed pursuant to subsection (1) of this section. Such interest and addition to tax shall not be charged to or collected from the employee or payee by the employer or payor. The Tax Commissioner shall have the same rights and powers for the collection of such tax, interest, and addition to tax against such employer or payor as are now prescribed by the act for the collection of income tax against a taxpayer.

(5) If any person required to collect, withhold, truthfully account for, and pay over the income tax imposed by the Nebraska Revenue Act of 1967 willfully fails to collect or withhold such tax or truthfully account for and pay over such tax or willfully attempts in any manner to evade or defeat the tax or the payment thereof, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect a penalty equal to the total amount of the tax evaded, not collected, not withheld, or not accounted for and paid over. No addition to tax under subsection (1) or (2) of this section shall be imposed for any offense to which this subsection applies.

(6) If any person with fraudulent intent fails to pay, or to deduct or withhold and pay, any income tax, to make, render, sign, or certify any return of estimated tax, or to supply any information within the time required, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars, in addition to any other amounts required under the income tax provisions of the Nebraska Revenue Act of 1967.

(7) If any person for frivolous or groundless reasons or with the intent to delay or impede the administration of the Nebraska Revenue Act of 1967 (a) fails to pay over any tax due and owing under such act, (b) fails to file any return required under such act, or (c) files what purports to be a return but which does not contain sufficient information from which to determine the correctness of the self-assessment of tax or which contains information that indicates that the self-assessment of tax is substantially incorrect, such person shall pay a penalty of five hundred dollars for each occurrence. The penalty

provided by this subsection shall be in addition to any other penalties provided by law.

(8) Any person who aids, procures, advises, or assists in the preparation of any return, affidavit, refund claim, or other document with the knowledge that its use will result in the material understatement of the tax liability of another person or the material overstatement of the amount of a refund of another person shall, in addition to other penalties provided by law, pay a penalty of one thousand dollars with respect to each separate return or other document.

(a) For the purposes of this subsection, a person furnishing typing, reproducing, or other mechanical assistance shall not be treated as having aided or assisted in the preparation of such document.

(b) A determination of a material deficiency shall not be sufficient to show that a person has aided or assisted in a material understatement of the tax liability of another person.

(c) The penalty in this subsection shall not be imposed more than once on any person for having aided or assisted in the preparation of documents for the same taxpayer, the same tax, and the same tax period regardless of the number of documents involved.

(d) Such penalty shall apply whether or not the understatement is with the consent of the person authorized to present the return, affidavit, refund claim, or other document.

(9) The additions to the income tax and penalties relating thereto provided by the Nebraska Revenue Act of 1967 shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes, and any reference in such act to income tax or the tax imposed by the act shall be deemed also to refer to additions to the tax and penalties provided by this section. For purposes of the deficiency procedures provided in section 77-2776, this subsection shall not apply to:

(a) Any addition to tax under subsection (1) or (4) of section 77-2789 except as to that portion attributable to a deficiency;

(b) Any addition to tax for underpayment of estimated tax as provided in subsection (3) of this section; or

(c) Any additional penalty under subsection (6), (7), or (8) of this section.

(10) For purposes of subsections (1) and (2) of this section relating to deficiencies resulting from negligence or fraud, the amount shown as the tax by the taxpayer upon his or her return shall be taken into account in determining the amount of the deficiency only if such return was filed on or before the last day prescribed for the filing of such return determined with regard to any extension of time for such filing.

(11) For purposes of subsections (5) and (6) of this section, the term person shall include an individual, corporation, partnership, or limited liability company, or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership or limited liability company, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

(12) If any person fails to comply with the reporting or filing requirements of sections 77-2772, 77-2775, and 77-2786 or the rules and regulations adopted and promulgated thereunder, the Tax Commissioner may impose, assess, and collect a penalty against such person for each instance of noncompliance of

twenty-five percent of the tax due. Such amount shall be in addition to any other penalty, tax, or interest otherwise imposed by law for such noncompliance.

(13) If any nonresident individual provides false information or statements to an employer or payor regarding the portion of his or her wages or payments that are subject to withholding for this state which if used would result in the amount withheld being less than seventy-five percent of his or her income tax liability on such wages or payments or if any employer or payor uses such information when the employer or payor knows such information is false or maintains records which show such information is false, the Tax Commissioner may, in addition to other penalties provided by law, impose, assess, and collect from such individual, payor, or employer the penalties provided in subsections (5) and (6) of this section.

(14) If any employer or payor employing twenty-five or more employees who is required to withhold and pay over income tax imposed by the Nebraska Revenue Act of 1967 fails to either (a) withhold at least one and one-half percent of the wages of any employee or (b) obtain satisfactory evidence from the employee justifying a lower withholding amount as required by subdivision (1)(b) of section 77-2753, the Tax Commissioner may impose, assess, and collect a penalty of not more than one thousand dollars per violation.

Source: Laws 1967, c. 487, § 90, p. 1611; Laws 1984, LB 962, § 29; Laws 1985, LB 273, § 65; Laws 1988, LB 1064, § 3; Laws 1993, LB 121, § 511; Laws 1993, LB 345, § 69; Laws 2007, LB223, § 14; Laws 2008, LB1004, § 2; Laws 2010, LB879, § 13.

77-2794 Income tax; overpayment; interest.

(1) Under regulations prescribed by the Tax Commissioner interest shall be allowed and paid at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, upon any overpayment in respect to the income tax imposed by the Nebraska Revenue Act of 1967.

(2) For purposes of this section:

(a) The date of overpayment shall be the last day prescribed for filing the original return of such tax;

(b) Any return filed before the last day prescribed for the filing thereof, determined without regard to any extension of time to file the return, shall be considered as filed on such last day;

(c) Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year, and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid on the last day prescribed for filing the return for the taxable year to which such amount constitutes a credit or payment, determined without regard to any extension of time granted the taxpayer;

(d) If at the time an overpayment is to be refunded, the taxpayer also has a reported underpayment of the same tax in another year: (i) If the overpayment is for a taxable year ending before the year of underpayment, the overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of underpayment; (ii) if the overpayment is for a taxable year ending after the year of underpayment, the

overpayment shall be applied to reduce such underpayment as of the last day prescribed for filing the original return of such tax for the year of overpayment; or (iii) if the overpayment is one for which interest is not allowed under this section, the overpayment shall be applied as of the date of the filing of the claim for refund; and interest shall be allowed for any remaining overpayment as provided in subdivision (a) of this subsection;

(e) The period of overpayment during which interest shall be allowed shall not include any period during which the overpayment continued due to the unreasonable delay by the taxpayer in filing the claim for refund. For this purpose, the burden of proof shall be on the taxpayer to show that a delay of more than ninety days after all of the facts required to prepare a correct claim for refund are available is not unreasonable; and

(f) The period of overpayment during which interest shall be allowed shall not include any period during which an agreement between the taxpayer and the Internal Revenue Service was not filed as required by subsection (6) of section 77-2786 and the first ninety days after such agreement is filed.

(3)(a) Except as provided in subdivision (b) of this subsection, if any overpayment of income tax imposed by the Nebraska Revenue Act of 1967 is refunded within ninety days after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within ninety days after any original return, and any amended return filed to carry back a loss, was filed, whichever is later, no interest shall be allowed under this section on overpayment.

(b) If the Tax Commissioner approves and implements an electronic form or method for filing the return and the return is not filed electronically, no interest shall be allowed under this section on overpayment.

(c) In the case of amended returns filed for any reason other than to carry back a loss, interest shall be allowed as provided in subsection (1) of this section.

Source: Laws 1967, c. 487, § 94, p. 1616; Laws 1981, LB 167, § 54; Laws 1991, LB 240, § 3; Laws 1992, Fourth Spec. Sess., LB 1, § 38; Laws 1993, LB 345, § 71; Laws 1996, LB 1041, § 8; Laws 2004, LB 955, § 2; Laws 2008, LB915, § 5; Laws 2010, LB879, § 14.

77-2796 Income tax; Tax Commissioner; claim for refund; denial; notice.

If the Tax Commissioner disallows a claim for refund, he or she shall notify the taxpayer accordingly. The action of the Tax Commissioner denying a claim for refund is final upon the expiration of thirty days after the date when he or she mails notice of his or her action to the taxpayer unless within this period the taxpayer seeks review of the Tax Commissioner's determination as hereinafter provided.

Source: Laws 1967, c. 487, § 96, p. 1617; Laws 2008, LB914, § 15; Laws 2010, LB879, § 15.

77-27,100 Income tax; claim for refund; limitation.

The action authorized in section 77-2798 shall be filed within three years from the last date prescribed for filing the return or within one year from the

date the tax was paid, or within thirty days after the denial of a claim for refund by the Tax Commissioner.

Source: Laws 1967, c. 487, § 100, p. 1617; Laws 2008, LB914, § 16; Laws 2010, LB879, § 16.

77-27,119 Income tax; Tax Commissioner; administer and enforce sections; prescribe forms; content; examination of return or report; uniform school district numbering system; audit by Auditor of Public Accounts or Legislative Auditor; wrongful disclosure; exception; penalty.

(1) The Tax Commissioner shall administer and enforce the income tax imposed by sections 77-2714 to 77-27,135, and he or she is authorized to conduct hearings, to adopt and promulgate such rules and regulations, and to require such facts and information to be reported as he or she may deem necessary to enforce the income tax provisions of such sections, except that such rules, regulations, and reports shall not be inconsistent with the laws of this state or the laws of the United States. The Tax Commissioner may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(2)(a) The Tax Commissioner may prescribe the form and contents of any return or other document required to be filed under the income tax provisions. Such return or other document shall be compatible as to form and content with the return or document required by the laws of the United States. The form shall have a place where the taxpayer shall designate the high school district in which he or she lives and the county in which the high school district is headquartered. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure compliance with this requirement.

(b) The State Department of Education, with the assistance and cooperation of the Department of Revenue, shall develop a uniform system for numbering all school districts in the state. Such system shall be consistent with the data processing needs of the Department of Revenue and shall be used for the school district identification required by subdivision (a) of this subsection.

(c) The proper filing of an income tax return shall consist of the submission of such form as prescribed by the Tax Commissioner or an exact facsimile thereof with sufficient information provided by the taxpayer on the face of the form from which to compute the actual tax liability. Each taxpayer shall include such taxpayer's correct social security number or state identification number and the school district identification number of the school district in which the taxpayer resides on the face of the form. A filing is deemed to occur when the required information is provided.

(3) The Tax Commissioner, for the purpose of ascertaining the correctness of any return or other document required to be filed under the income tax provisions, for the purpose of determining corporate income, individual income, and withholding tax due, or for the purpose of making an estimate of taxable income of any person, shall have the power to examine or to 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 and may by summons require the attendance of the person responsible for rendering such return or other document or remitting any tax, or any officer or employee of such person, or the attendance of any other person

having knowledge in the premises, and may take testimony and require proof material for his or her information, with power to administer oaths or affirmations to such person or persons.

(4) The time and place of examination pursuant to this section 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.

(5) No taxpayer shall be subjected to unreasonable or unnecessary examinations or investigations.

(6) Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, any officer or employee of the Tax Commissioner, any person engaged or retained by the Tax Commissioner on an independent contract basis, any person who pursuant to this section is permitted to inspect any report or return or to whom a copy, an abstract, or a portion of any report or return is furnished, any employee of the State Treasurer or the Department of Administrative Services, or any other person to divulge, make known, or use in any manner the amount of income or any particulars set forth or disclosed in any report or return required except for the purpose of enforcing sections 77-2714 to 77-27,135. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of the tax law to which he or she is a party or on behalf of any party to any action or proceeding under such sections when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of such reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing in this section shall be construed (a) to prohibit the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, personal representatives, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) to prohibit the inspection by the Attorney General, other legal representatives of the state, or a county attorney of the report or return of any taxpayer who brings an action to review the tax based thereon, against whom an action or proceeding for collection of tax has been instituted, or against whom an action, proceeding, or prosecution for failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) to prohibit furnishing to the Nebraska Workers' Compensation Court the names, addresses, and identification numbers of employers, and such information shall be furnished on request of the court, (e) to prohibit the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f) to prohibit the disclosure of information pursuant to section 77-27,195, 77-4110, or 77-5731, (g) to prohibit the disclosure to the Public Employees Retirement Board of the addresses of individuals who are members of the retirement systems administered by the board, and such information shall be furnished to the board solely for purposes of its administration of the retirement systems upon written request, which

request shall include the name and social security number of each individual for whom an address is requested, (h) to prohibit the disclosure of information to the Department of Labor necessary for the administration of the Employment Security Law, the Contractor Registration Act, or the Employee Classification Act, (i) to prohibit the disclosure to the Department of Motor Vehicles of tax return information pertaining to individuals, corporations, and businesses determined by the Department of Motor Vehicles to be delinquent in the payment of amounts due under agreements pursuant to the International Fuel Tax Agreement Act, and such disclosure shall be strictly limited to information necessary for the administration of the act, or (j) to prohibit the disclosure under section 42-358.08, 43-512.06, or 43-3327 to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services of an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child, spousal, or medical support. Information so obtained shall be used for no other purpose. Any person who violates this subsection shall be guilty of a felony and shall upon conviction thereof be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not more than five years, or be both so fined and imprisoned, in the discretion of the court and shall be assessed the costs of prosecution. If the offender is an officer or employee of the state, he or she shall be dismissed from office and be ineligible to hold any public office in this state for a period of two years thereafter.

(7) Reports and returns required to be filed under income tax provisions of sections 77-2714 to 77-27,135 shall be preserved until the Tax Commissioner orders them to be destroyed.

(8) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Secretary of the Treasury of the United States or his or her delegates or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer or may furnish to such officer or his or her authorized representative an abstract of the return of income of any taxpayer or supply him or her with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any taxpayer, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Tax Commissioner of this state as the officer charged with the administration of the income tax imposed by sections 77-2714 to 77-27,135.

(9) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(10)(a) Notwithstanding the provisions of subsection (6) of this section, the Tax Commissioner shall, upon written request by the Auditor of Public Accounts or the Legislative Performance Audit Committee, make tax returns and

tax return information open to inspection by or disclosure to officers and employees of the Auditor of Public Accounts or Legislative Performance Audit Section employees for the purpose of and to the extent necessary in making an audit of the Department of Revenue pursuant to section 50-1205 or 84-304. The Auditor of Public Accounts or Legislative Performance Audit Section shall statistically and randomly select the tax returns and tax return information to be audited based upon a computer tape provided by the Department of Revenue which contains only total population documents without specific identification of taxpayers. The Tax Commissioner shall have the authority to approve the statistical sampling method used by the Auditor of Public Accounts or Legislative Performance Audit Section. Confidential tax returns and tax return information shall be audited only upon the premises of the Department of Revenue. All audit workpapers pertaining to the audit of the Department of Revenue shall be stored in a secure place in the Department of Revenue.

(b) No officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee shall disclose to any person, other than another officer or employee of the Auditor of Public Accounts or Legislative Performance Audit Section employee whose official duties require such disclosure or as provided in subsections (2) and (3) of section 50-1213, any return or return information described in the Nebraska Revenue Act of 1967 in a form which can be associated with or otherwise identify, directly or indirectly, a particular taxpayer.

(c) Any person who violates the provisions of this subsection shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution. The guilty officer or employee shall be dismissed from employment and be ineligible to hold any position of employment with the State of Nebraska for a period of two years thereafter. For purposes of this subsection, officer or employee shall include a former officer or employee of the Auditor of Public Accounts or former Legislative Performance Audit Section employee.

(11) For purposes of subsections (10) through (13) of this section:

(a) Tax returns shall mean any tax or information return or claim for refund required by, provided for, or permitted under sections 77-2714 to 77-27,135 which is filed with the Tax Commissioner by, on behalf of, or with respect to any person and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return;

(b) Return information shall mean:

(i) A taxpayer's identification number and (A) the nature, source, or amount of his or her income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing or (B) any other data received by, recorded by, prepared by, furnished to, or collected by the Tax Commissioner with respect to a return or the determination of the existence or possible existence of liability or the amount of liability of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense; and

(ii) Any part of any written determination or any background file document relating to such written determination; and

(c) Disclosures shall mean the making known to any person in any manner a return or return information.

(12) The Auditor of Public Accounts or the Legislative Auditor of the Legislative Performance Audit Section shall (a) notify the Tax Commissioner in writing thirty days prior to the beginning of an audit of his or her intent to conduct an audit, (b) provide an audit plan, and (c) provide a list of the tax returns and tax return information identified for inspection during the audit.

(13) The Auditor of Public Accounts or the Legislative Performance Audit Section shall, as a condition for receiving tax returns and tax return information: (a) Subject employees involved in the audit to the same confidential information safeguards and disclosure procedures as required of Department of Revenue employees; (b) establish and maintain a permanent system of standardized records with respect to any request for tax returns or tax return information, the reason for such request, and the date of such request and any disclosure of the tax return or tax return information; (c) establish and maintain a secure area or place in the Department of Revenue in which the tax returns, tax return information, or audit workpapers shall be stored; (d) restrict access to the tax returns or tax return information only to persons whose duties or responsibilities require access; (e) provide such other safeguards as the Tax Commissioner determines to be necessary or appropriate to protect the confidentiality of the tax returns or tax return information; (f) provide a report to the Tax Commissioner which describes the procedures established and utilized by the Auditor of Public Accounts or Legislative Performance Audit Section for insuring the confidentiality of tax returns, tax return information, and audit workpapers; and (g) upon completion of use of such returns or tax return information, return to the Tax Commissioner such returns or tax return information, along with any copies.

(14) The Tax Commissioner may permit other tax officials of this state to inspect the tax returns and reports filed under sections 77-2714 to 77-27,135, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(15) The Tax Commissioner shall compile the school district information required by subsection (2) of this section. Insofar as it is possible, such compilation shall include, but not be limited to, the total adjusted gross income of each school district in the state. The Tax Commissioner shall adopt and promulgate such rules and regulations as may be necessary to insure that such compilation does not violate the confidentiality of any individual income tax return nor conflict with any other provisions of state or federal law.

Source: Laws 1967, c. 487, § 119, p. 1628; Laws 1969, c. 694, § 1, p. 2689; Laws 1971, LB 527, § 1; Laws 1971, LB 571, § 1; Laws 1973, LB 526, § 6; Laws 1979, LB 302, § 1; Laws 1981, LB 170, § 7; Laws 1984, LB 962, § 32; Laws 1985, LB 273, § 68; Laws 1985, LB 344, § 8; Laws 1985, LB 345, § 1; Laws 1989, LB 611, § 3; Laws 1990, LB 431, § 1; Laws 1991, LB 549, § 22; Laws 1993, LB 46, § 17; Laws 1993, LB 345, § 72; Laws 1997, LB 129, § 2; Laws 1997, LB 720, § 23; Laws 1997, LB 806, § 3; Laws 2002, LB 989, § 19; Laws 2005, LB 216, § 18; Laws 2005, LB 312, § 15; Laws 2006, LB 588, § 9; Laws 2006, LB 956, § 11; Laws 2008, LB915, § 6; Laws 2010, LB563, § 15; Laws 2010, LB879, § 17.

Cross References

Contractor Registration Act, see section 48-2101.
Employee Classification Act, see section 48-2901.
Employment Security Law, see section 48-601.
International Fuel Tax Agreement Act, see section 66-1401.

(d) GENERAL PROVISIONS

77-27,130 Tax Commissioner; tax; deficiency; disallowed by court; effect; frivolous objections; damages.

(1) If the amount of a deficiency determined by the Tax Commissioner is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor or, if payment has not been made, shall be abated.

(2) If the deficiency determined by the Tax Commissioner is disallowed by the court of review, the taxpayer shall have his or her costs as they would be allowable under the provisions of section 77-27,129. If the deficiency is disallowed in part, the court in its discretion may award the taxpayer a proportionate part of his or her costs.

(3) An assessment of a proposed income deficiency by the Tax Commissioner shall become final upon the expiration of the period specified in section 77-2777 for filing a written protest against the proposed assessment if no such protest has been filed within the time provided or, if the protest provided in section 77-2778 has been filed, upon the expiration of time provided for filing a petition for judicial review, upon the final judgment of the reviewing court, or upon the rendering by the Tax Commissioner of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making a petition for the review of a determination of the Tax Commissioner, the determination shall be deemed final on the date the notice of decision is mailed to the taxpayer as provided in section 77-2779.

(4) If any person institutes proceedings merely for delay or raises frivolous objections to compliance with the Nebraska Revenue Act of 1967, the Tax Commissioner may apply to a judge of the district court for the county where such person resides for damages in an amount not in excess of five thousand dollars for each tax year to be awarded to the State of Nebraska for expenses incurred by the Tax Commissioner in securing compliance. Damages so awarded by the court shall be payable upon notice and demand by the Tax Commissioner and shall be collected in the same manner as delinquent taxes under such act.

Source: Laws 1967, c. 487, § 130, p. 1635; Laws 1984, LB 962, § 34; Laws 2012, LB727, § 43.
Operative date April 12, 2012.

77-27,132 Revenue Distribution Fund; created; use; collections under act; disposition.

(1) There is hereby created a fund to be designated the Revenue Distribution Fund which shall be set apart and maintained by the Tax Commissioner. Revenue not required to be credited to the General Fund or any other specified fund may be credited to the Revenue Distribution Fund. Credits and refunds of such revenue shall be paid from the Revenue Distribution Fund. The balance of

the amount credited, after credits and refunds, shall be allocated as provided by the statutes creating such revenue.

(2) The Tax Commissioner shall pay to a depository bank designated by the State Treasurer all amounts collected under the Nebraska Revenue Act of 1967. The Tax Commissioner shall present to the State Treasurer bank receipts showing amounts so deposited in the bank, and of the amounts so deposited the State Treasurer shall:

(a) Credit to the Highway Trust Fund all of the proceeds of the sales and use taxes derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers, except that the proceeds equal to any sales tax rate provided for in section 77-2701.02 that is in excess of five percent derived from the sale or lease for periods of more than thirty-one days of motor vehicles, trailers, and semitrailers shall be credited to the Highway Allocation Fund; and

(b) For transactions occurring on or after July 1, 2013, and before July 1, 2033, of the proceeds of the sales and use taxes derived from transactions other than those listed in subdivision (2)(a) of this section from a sales tax rate of one-quarter of one percent, credit monthly eighty-five percent to the State Highway Capital Improvement Fund and fifteen percent to the Highway Allocation Fund.

The balance of all amounts collected under the Nebraska Revenue Act of 1967 shall be credited to the General Fund.

Source: Laws 1967, c. 487, § 132, p. 1636; Laws 1969, c. 695, § 1, p. 2692; Laws 1969, c. 313, § 2, p. 1130; Laws 1971, LB 53, § 9; Laws 1972, LB 343, § 23; Laws 1975, LB 233, § 2; Laws 1976, LB 868, § 1; Laws 1984, LB 466, § 5; Laws 1986, LB 599, § 23; Laws 1986, LB 539, § 3; Laws 1987, LB 730, § 30; Laws 1989, LB 258, § 11; Laws 2003, LB 759, § 22; Laws 2006, LB 904, § 4; Laws 2007, LB305, § 1; Laws 2011, LB84, § 6.

77-27,135 Notice; how given.

Whenever any notice required to be given by the Tax Commissioner under the provisions of the Nebraska Revenue Act of 1967 may be given by mail, it shall be given by first-class, registered, or certified mail, return receipt requested.

Source: Laws 1967, c. 487, § 135, p. 1637; Laws 2012, LB727, § 44. Operative date April 12, 2012.

(e) GOVERNMENTAL SUBDIVISION AID

77-27,136 Repealed. Laws 2011, LB 383, § 9.

77-27,137.01 Repealed. Laws 2011, LB 383, § 9.

77-27,137.02 Repealed. Laws 2011, LB 383, § 9.

77-27,137.03 Repealed. Laws 2011, LB 383, § 9.

77-27,139 Repealed. Laws 2011, LB 383, § 9.

77-27,139.02 Aid to municipalities; terms, defined.

For purposes of sections 77-27,139.01 to 77-27,139.04:

(1) Average per capita property tax levy means the total property taxes levied by all incorporated municipalities in each population group for the immediately preceding fiscal year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the current population of all incorporated municipalities as certified by the Department of Revenue pursuant to section 77-3,119. The average per capita property tax levy shall be calculated separately for each population group;

(2) Average property tax levy means the total property taxes levied by all incorporated municipalities for the prior year, except for the amount of property tax levies committed to provide for principal and interest payments on the indebtedness of all incorporated municipalities, divided by the total amount of valuation subject to property tax in all incorporated municipalities for the immediately preceding fiscal year;

(3) Population means the population of a municipality as determined in section 77-3,119; and

(4) Population group means one of three groupings of municipalities for which the aid established by sections 77-27,139.01 to 77-27,139.04 is calculated based on the average per capita property tax levy calculated separately for each group. The three population groups shall be (a) municipalities with a population of five thousand inhabitants or more, (b) municipalities with a population between eight hundred and five thousand inhabitants, and (c) municipalities with a population of eight hundred inhabitants or less.

Source: Laws 1996, LB 1177, § 2; Laws 1997, LB 269, § 54; Laws 2011, LB383, § 3.

77-27,139.03 Aid to municipalities; calculation of state aid.

(1) State aid provided to municipalities pursuant to sections 77-27,139.01 to 77-27,139.04 shall be calculated by determining the average property tax levy for operational purposes other than for principal and interest payments on the indebtedness of all incorporated municipalities. The Auditor of Public Accounts shall provide to the Department of Revenue a list of the bond and nonbond tax request amounts from the most recent budgets filed by incorporated municipalities. The information shall be used to calculate the bond and nonbond tax levies for aid purposes under this section. The auditor shall provide the information to the department by February 1 each year.

(2) Each municipality shall receive state aid from the Municipal Equalization Fund equal to (a) the product of the average per capita property tax of the appropriate population group multiplied by the current population of the municipality minus (b) the product of the average property tax levy multiplied by the certified valuation within the incorporated municipality, except that a municipality shall not receive any aid under this section if the calculation results in a negative number.

(3) If a municipal tax levy for operational purposes was less than the average property tax levy in the immediately preceding fiscal year, the state aid provided to such municipality shall be reduced by twenty percent for each one-cent increment the levy was below the average property tax levy but the reduction shall not exceed eighty percent.

(4) If the amount of money in the Municipal Equalization Fund is less than the total amount of state aid for all municipalities as required by the allocation formula in subsection (2) of this section, the money in the fund shall be allocated on a prorated basis to such municipalities. If the amount of money in the fund is more than the total amount of state aid for municipalities as required by the allocation formula, the excess money in the fund shall be credited to the General Fund.

Source: Laws 1996, LB 1177, § 3; Laws 1997, LB 269, § 55; Laws 1998, LB 989, § 5; Laws 1999, LB 141, § 10; Laws 2000, LB 968, § 72; Laws 2003, LB 622, § 1; Laws 2011, LB383, § 4; Laws 2012, LB1114, § 1.
Operative date July 1, 2012.

(g) LOCAL OPTION REVENUE ACT

77-27,142 Incorporated municipalities; sales and use tax; authorized; election.

(1) Any incorporated municipality by ordinance of its governing body is hereby authorized to impose a sales and use tax of one-half percent, one percent, one and one-half percent, one and three-quarters percent, or two percent upon the same transactions that are sourced under the provisions of sections 77-2703.01 to 77-2703.04 within such incorporated municipality on which the State of Nebraska is authorized to impose a tax pursuant to the Nebraska Revenue Act of 1967, as amended from time to time. No sales and use tax shall be imposed pursuant to this section until an election has been held and a majority of the qualified electors have approved such tax pursuant to sections 77-27,142.01 and 77-27,142.02.

(2)(a) Any incorporated municipality that proposes to impose a municipal sales and use tax at a rate greater than one and one-half percent or increase a municipal sales and use tax to a rate greater than one and one-half percent shall submit the question of such tax or increase at a primary or general election held within the incorporated municipality. The question shall be submitted upon an affirmative vote by at least seventy percent of all of the members of the governing body of the incorporated municipality.

(b) Any rate greater than one and one-half percent shall be used as follows:

(i) In a city of the metropolitan class, the proceeds from the first one-quarter percent of the rate greater than one and one-half percent shall be used to reduce other taxes, the proceeds from the next one-eighth percent of the rate greater than one and one-half percent shall be used for public infrastructure projects, and the proceeds from the next one-eighth percent of the rate greater than one and one-half percent shall be used for purposes of the interlocal agreement or joint public agency agreement described in subsection (3) of this section;

(ii) In a city of the primary class, up to fifteen percent of the proceeds from the rate in excess of one and one-half percent may be used for non-public infrastructure projects of an interlocal agreement or joint public agency agreement with another political subdivision within the municipality or the county in which the municipality is located, and the remaining proceeds shall be used for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705; and

(iii) In any incorporated municipality other than a city of the metropolitan or primary class, the proceeds from the rate in excess of one and one-half percent shall be used for public infrastructure projects or voter-approved infrastructure related to an economic development program as defined in section 18-2705.

For purposes of this section, public infrastructure project means and includes, but is not limited to, any of the following projects, or any combination thereof: Public highways and bridges and municipal roads, streets, bridges, and sidewalks; solid waste management facilities; wastewater, storm water, and water treatment works and systems, water distribution facilities, and water resources projects, including, but not limited to, pumping stations, transmission lines, and mains and their appurtenances; hazardous waste disposal systems; resource recovery systems; airports; port facilities; buildings and capital equipment used in the operation of municipal government; convention and tourism facilities; redevelopment projects as defined in section 18-2103; mass transit and other transportation systems, including parking facilities; and equipment necessary for the provision of municipal services.

(c) Any rate greater than one and one-half percent shall terminate no more than ten years after its effective date or, if bonds are issued and the local option sales and use tax revenue is pledged for payment of such bonds, upon payment of such bonds and any refunding bonds, whichever date is later, except as provided in subdivision (2)(d) of this section.

(d) If a portion of the rate greater than one and one-half percent is stated in the ballot question as being imposed for the purpose of the interlocal agreement or joint public agency agreement described in subdivision (2)(b)(ii) or subsection (3) of this section, and such portion is at least one-eighth percent, there shall be no termination date for the rate representing such portion rounded to the next higher one-quarter or one-half percent.

(e) Sections 13-518 to 13-522 apply to the revenue from any such tax or increase.

(3)(a) No municipal sales and use tax shall be imposed at a rate greater than one and one-half percent or increased to a rate greater than one and one-half percent unless the municipality is a party to an interlocal agreement pursuant to the Interlocal Cooperation Act or a joint public agency agreement pursuant to the Joint Public Agency Act with a political subdivision within the municipality or the county in which the municipality is located creating a separate legal or administrative entity relating to a public infrastructure project.

(b) Except as provided in subdivision (2)(b)(ii) of this section, such interlocal agreement or joint public agency agreement shall contain provisions, including benchmarks, relating to the long-term development of unified governance of public infrastructure projects with respect to the parties. The Legislature may provide additional requirements for such agreements, including benchmarks, but such additional requirements shall not apply to any debt outstanding at the time the Legislature enacts such additional requirements. The separate legal or administrative entity created shall not be one that was in existence for one calendar year preceding the submission of the question of such tax or increase at a primary or general election held within the incorporated municipality.

(c) Any other public agency as defined in section 13-803 may be a party to such interlocal cooperation agreement or joint public agency agreement.

(d) A municipality is not required to use all of the additional revenue generated by a sales and use tax imposed at a rate greater than one and one-

half percent or increased to a rate greater than one and one-half percent under this subsection for the purposes of the interlocal cooperation agreement or joint public agency agreement set forth in this subsection.

(4) The provisions of subsections (2) and (3) of this section do not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

(5) Notwithstanding any provision of any municipal charter, any incorporated municipality or interlocal agency or joint public agency pursuant to an agreement as provided in subsection (3) of this section may issue bonds in one or more series for any municipal purpose and pay the principal of and interest on any such bonds by pledging receipts from the increase in the municipal sales and use taxes authorized by such municipality. Any municipality which has or may issue bonds under this section may dedicate a portion of its property tax levy authority as provided in section 77-3442 to meet debt service obligations under the bonds. For purposes of this subsection, bond means any evidence of indebtedness, including, but not limited to, bonds, notes including notes issued pending long-term financing arrangements, warrants, debentures, obligations under a loan agreement or a lease-purchase agreement, or any similar instrument or obligation.

Source: Laws 1969, c. 629, § 1, p. 2530; Laws 1978, LB 394, § 1; Laws 1978, LB 902, § 1; Laws 1979, LB 365, § 1; Laws 1981, LB 40, § 1; Laws 1985, LB 116, § 1; Laws 1986, LB 890, § 1; Laws 2003, LB 282, § 80; Laws 2012, LB357, § 1.
Effective date July 19, 2012.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Revenue Act of 1967, see section 77-2701.

77-27,142.01 Incorporated municipalities; sales and use tax; modification; election required, when.

(1) The governing body of any incorporated municipality may submit the question of changing any terms and conditions of a sales and use tax previously authorized under section 77-27,142. Except as otherwise provided by section 77-27,142, the question of modification shall be submitted to the voters at any primary or general election or at a special election if the governing body submits a certified copy of the resolution proposing modification to the election commissioner or county clerk within the time prior to the primary, general, or special election prescribed in section 77-27,142.02.

(2) If the change imposes a sales and use tax at a rate greater than one and one-half percent or increases the sales and use tax to a rate greater than one and one-half percent, the question shall include, but not be limited to:

(a) The percentage increase of one-quarter percent or one-half percent in the sales and use tax rate;

(b) A list of reductions or elimination of other taxes or fees, if any;

(c) A description of the projects to be funded, in whole or in part, from the revenue collected, along with any savings or efficiencies resulting from the projects;

(d) The year or years within which the revenue will be collected and, if bonds will be issued with some or all of the revenue pledged for payment of such

bonds, a statement that the revenue will be collected until the payment in full of such bonds and any refunding bonds; and

(e)(i) The percentage of revenue collected to be used for the purposes of the interlocal agreement or joint public agency agreement as provided in subdivision (2)(b)(ii) or subsection (3) of section 77-27,142; (ii) a statement of the overall purpose of the agreement which is the long-term development of unified governance of public infrastructure projects, if applicable; and (iii) the name of any other political subdivision which is a party to the agreement.

This subsection does not apply to the first one and one-half percent of a sales and use tax imposed by a municipality.

Source: Laws 1978, LB 394, § 2; Laws 1997, LB 182A, § 7; Laws 2009, LB501, § 4; Laws 2012, LB357, § 2.
Effective date July 19, 2012.

77-27,142.02 Incorporated municipalities; sales and use tax; election; question; effect.

Except as otherwise provided by subsection (2) of section 77-27,142, the power granted by section 77-27,142 shall not be exercised unless and until the question has been submitted at a primary, general, or special election held within the incorporated municipality and in which all qualified electors shall be entitled to vote on such question. The officials of the incorporated municipality shall order the submission of the question by submitting a certified copy of the resolution proposing the tax to the election commissioner or county clerk by March 1 for a primary election, by September 1 for a general election, or at least fifty days before a special election. Except as otherwise provided by subsection (2) of section 77-27,142.01, the question may include any terms and conditions set forth in the resolution proposing the tax, such as a termination date or the specific project or program for which the revenue received from such tax will be allocated, and shall include the following language: Shall the governing body of the incorporated municipality impose a sales and use tax upon the same transactions within such municipality on which the State of Nebraska is authorized to impose a tax? If a majority of the votes cast upon such question shall be in favor of such tax, then the governing body of such incorporated municipality shall be empowered as provided by section 77-27,142 and shall forthwith proceed to impose a tax pursuant to the Local Option Revenue Act. If a majority of those voting on the question shall be opposed to such tax, then the governing body of the incorporated municipality shall not impose such a tax.

Source: Laws 1978, LB 394, § 3; Laws 1985, LB 116, § 2; Laws 1986, LB 890, § 2; Laws 2009, LB501, § 5; Laws 2012, LB357, § 3.
Effective date July 19, 2012.

77-27,143 Municipalities; sales and use tax laws; administration; termination; data bases; required.

(1) The administration of all sales and use taxes adopted under the Local Option Revenue Act shall be by the Tax Commissioner who may prescribe forms and adopt and promulgate reasonable rules and regulations in conformity with the act for the making of returns and for the ascertainment, assessment, and collection of taxes imposed under such act. The incorporated municipality shall furnish a certified copy of the adopting or repealing ordinance to the Tax

Commissioner in accordance with such rules and regulations as he or she may adopt and promulgate. For ordinances passed after October 1, 1969, the effective date shall be the first day of the next calendar quarter which is at least one hundred twenty days following receipt by the Tax Commissioner of the certified copy of the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the change in tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the Department of Revenue or by other electronic means.

(2) For ordinances containing a termination date and passed after October 1, 1986, the termination date shall be the first day of a calendar quarter. The incorporated municipality shall furnish a certified statement to the Tax Commissioner no more than one hundred eighty days and at least one hundred twenty days prior to the termination date that the termination date stated in the ordinance is still valid. If the certified statement is not furnished within the prescribed time, the tax shall remain in effect, and the Tax Commissioner shall continue to collect the tax until the first day of the calendar quarter which is at least one hundred twenty days after receipt of the certified statement notwithstanding the termination date stated in the ordinance. The Tax Commissioner shall provide at least sixty days' notice of the termination of the tax to retailers. Notice shall be provided to retailers within the municipality. Notice to retailers may be provided through the web site of the department or by other electronic means.

(3) For sales and use tax purposes only, local jurisdiction boundary changes apply only on the first day of a calendar quarter after a minimum of one hundred twenty days' notice to the Tax Commissioner and sixty days' notice to sellers.

(4) The state shall provide and maintain a data base that describes boundary changes for all local taxing jurisdictions. This data base shall include a description of any change and the effective date of the change for sales and use tax purposes.

(5) The state shall provide and maintain a data base of all sales and use tax rates for all of the local jurisdictions levying taxes within the state. For the identification of counties, cities, and villages, codes corresponding to the rates shall be provided according to Federal Information Processing Standards as developed by the National Institute of Standards and Technology.

(6) The state shall provide and maintain a data base that assigns each five-digit and nine-digit zip code within the state to the proper tax rates and jurisdictions. For purposes of the streamlined sales and use tax agreement, the data base shall apply the lowest combined tax rate imposed in the zip code area if the area includes more than one tax rate in any level of taxing jurisdictions. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller has attempted to determine the nine-digit zip code designation by utilizing software approved by the governing board that makes this designation from the street address and the five-digit zip code applicable to a purchase.

(7) For purposes of the streamlined sales and use tax agreement, the state may provide address-based boundary data base records for assigning taxing jurisdictions and their associated rates which shall be in addition to the requirements of subsection (6) of this section. The data base records shall be in the same approved format as the data base records pursuant to subsection (6) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a), as such act existed on January 1, 2003. The governing board may allow a member state to require sellers that register under the agreement to use an address-based boundary data base provided by that member state. If any member state develops an address-based boundary data base pursuant to the agreement, a seller or certified service provider may use those data base records in place of the five-digit and nine-digit zip code data base records provided for in subsection (6) of this section. If a seller or certified service provider is unable to determine the applicable rate and jurisdiction using an address-based boundary data base after exercising due diligence, the seller or certified service provider may apply the nine-digit zip code designation applicable to a purchase. If a nine-digit zip code designation is not available for a street address or if a seller or certified service provider is unable to determine the nine-digit zip code designation applicable to a purchase after exercising due diligence to determine the designation, the seller or certified service provider may apply the rate for the five-digit zip code area. For the purposes of this section, there is a rebuttable presumption that a seller or certified service provider has exercised due diligence if the seller or certified service provider has attempted to determine the tax rate and jurisdiction by utilizing software approved by the governing board that makes this assignment from the address and zip code information applicable to the purchase.

(8) The state may certify vendor-provided address-based boundary data bases for assigning tax rates and jurisdictions. The data bases shall be in the same approved format as the data base records pursuant to subsection (7) of this section and shall meet the requirements developed pursuant to the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. 119(a) as such act existed on January 1, 2003. If a state certifies a vendor-provided address-based boundary data base, a seller or certified service provider may use that data base in place of the data base provided for in subsection (6) or (7) of this section. Vendors providing address-based boundary data bases may request certification of their data bases from the governing board. Certification by the governing board does not replace the requirement that the data bases be certified by the states individually.

(9) Pursuant to the streamlined sales and use tax agreement, the state shall relieve retailers and certified service providers using data bases pursuant to subsection (6) or (7) of this section from liability to the state and local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the retailer or certified service provider relying on erroneous data provided by a member state on tax rates, boundaries, or taxing jurisdiction assignments. After providing adequate notice determined by the governing board, a member state that provides an address-based boundary data base for assigning taxing jurisdictions pursuant to subsection (7) or (8) of this section may cease providing liability relief for errors resulting from the reliance on the data base provided by the member state under the provisions of subsection (6) of this section. If a seller demonstrates that requiring the use of

the address-based boundary data base would create an undue hardship, the state and the governing board may extend the relief of liability to such seller for a designated period of time.

(10) The data bases provided for in this section shall be in a downloadable format approved by the governing board pursuant to the streamlined sales and use tax agreement. The data bases may be directly provided by the state or provided by a vendor as designated by the state. A data base provided by a vendor as designated by a state shall be applicable to and subject to all provisions of this section. The data bases shall be provided at no cost to the user of the data base. The provisions of subsections (6) and (7) of this section do not apply when the purchased product is received by the purchaser at the business location of the seller.

(11) A seller that did not have a requirement to register in this state prior to registering pursuant to the agreement or a certified service provider shall not be required to collect sales or use taxes for a state until the first day of the calendar quarter commencing more than sixty days after the state has provided the data bases required by this section.

Source: Laws 1969, c. 629, § 2, p. 2530; Laws 1969, c. 683, § 8, p. 2644; Laws 1986, LB 890, § 4; Laws 2003, LB 282, § 81; Laws 2003, LB 381, § 4; Laws 2005, LB 274, § 277; Laws 2006, LB 887, § 5; Laws 2011, LB211, § 7.

77-27,144 Municipalities; sales and use tax; Tax Commissioner; collection; distribution; refunds; notice; deduction.

(1) The Tax Commissioner shall collect the tax imposed by any incorporated municipality concurrently with collection of a state tax in the same manner as the state tax is collected. The Tax Commissioner shall remit monthly the proceeds of the tax to the incorporated municipalities levying the tax, after deducting the amount of refunds made and three percent of the remainder to be credited to the Municipal Equalization Fund.

(2) Deductions for a refund made pursuant to section 77-4105 or 77-5725 shall be delayed for one year after the refund has been made to the taxpayer. The Department of Revenue shall notify the municipality liable for the refund of the pending refund, the amount of the refund, and the month in which the deduction will be made or begin, except that if the amount of a refund claimed under section 77-4105 or 77-5725 exceeds twenty-five percent of the municipality's total sales and use tax receipts, net of any refunds or sales tax collection fees, for the municipality's prior fiscal year, the department shall deduct the refund over the period of one year in equal monthly amounts beginning after the one-year notification period required by this subsection. This subsection applies to refunds owed by cities of the first class, cities of the second class, and villages. This subsection applies beginning January 1, 2014.

(3) The Tax Commissioner shall keep full and accurate records of all money received and distributed under the provisions of the Local Option Revenue Act. When proceeds of a tax levy are received but the identity of the incorporated municipality which levied the tax is unknown and is not identified within six months after receipt, the amount shall be credited to the Municipal Equalization Fund. The municipality may request the names and addresses of the retailers which have collected the tax as provided in subsection (13) of section 77-2711 and may certify a municipal employee to request and review confiden-

tial sales tax returns and sales tax return information as provided in subsection (14) of section 77-2711.

Source: Laws 1969, c. 629, § 3, p. 2530; Laws 1971, LB 53, § 10; Laws 1976, LB 868, § 2; Laws 1996, LB 1177, § 19; Laws 1998, LB 1104, § 13; Laws 2007, LB94, § 2; Laws 2012, LB209, § 2. Effective date July 19, 2012.

(h) AIR AND WATER POLLUTION CONTROL TAX REFUND ACT

77-27,150 Refund; application; when; contents; hearing; approval.

(1) An application for a refund of Nebraska sales and use taxes paid for any air or water pollution control facility may be filed with the Tax Commissioner by the owner of such facility in such manner and in such form as may be prescribed by the commissioner. The application for a refund shall contain: (a) Plans and specifications of such facility including all materials incorporated therein; (b) a descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural waste pollution control; (c) the proposed operating procedure for the facility; (d) the acquisition cost of the facility for which a refund is claimed; and (e) a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151.

(2) The Tax Commissioner shall offer an applicant a hearing upon request of such applicant. The hearing shall not affect the authority of the Department of Environmental Quality to determine whether or not industrial or agricultural waste pollution control exists within the meaning of the Air and Water Pollution Control Tax Refund Act.

(3) A claim for refund received without a copy of the final findings of the Department of Environmental Quality issued pursuant to section 77-27,151 shall not be considered a valid claim and shall be returned to the applicant.

(4) Notice of the Tax Commissioner's refusal to issue a refund shall be mailed to the applicant.

Source: Laws 1972, LB 716, § 2; Laws 1974, LB 820, § 4; Laws 1977, LB 308, § 1; Laws 1978, LB 244, § 1; Laws 1993, LB 3, § 43; Laws 2002, LB 989, § 20; Laws 2012, LB727, § 45.
Operative date April 12, 2012.

77-27,152 Refund; notice; modify or revoke; when; effect.

(1) The Tax Commissioner, after giving notice by mail to the applicant and giving an opportunity for a hearing, shall modify or revoke the refund whenever the following appears: (a) The refund was obtained by fraud or misrepresentation regarding the payment of tax on materials incorporated into the facility or facilities; or (b) the Department of Environmental Quality has modified its findings regarding the facility covered by the refund.

(2) The Department of Environmental Quality may modify its findings when it determines any of the following: (a) The refund was obtained by fraud or misrepresentation regarding the facility or planned operation of the facility; (b) the applicant has failed substantially to operate the facility for the purpose and degree of control specified in the application or an amended application; or (c) the facility covered by the refund is no longer used for the primary purpose of pollution control.

(3) On the mailing to the refund applicant of notice of the action of the Tax Commissioner modifying or revoking the refund, the refund shall cease to be in force or shall remain in force only as modified. When a refund is revoked because a refund was obtained by fraud or misrepresentation, all taxes which would have been payable if no certificate had been issued shall be immediately due and payable with the maximum interest and penalties prescribed by the Nebraska Revenue Act of 1967. No statute of limitations shall operate in the event of fraud or misrepresentation.

Source: Laws 1972, LB 716, § 4; Laws 1977, LB 308, § 3; Laws 1993, LB 3, § 45; Laws 2002, LB 989, § 22; Laws 2012, LB727, § 46. Operative date April 12, 2012.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

(j) SETOFF FOR CHILD, SPOUSAL, AND MEDICAL SUPPORT DEBTS

77-27,165 Notice of claim to debtor; contents.

The Department of Health and Human Services shall send notification to the debtor of the assertion of the department's rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's income tax refund. The notice shall contain the procedures available to the debtor for protesting the offset, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the department within thirty days of the date of mailing the notice, and the defenses the debtor may raise. The debt shall be certified by the department through a preoffset review.

Source: Laws 1984, LB 845, § 11; Laws 1996, LB 1044, § 802; Laws 1997, LB 307, § 203; Laws 2010, LB849, § 29.

(m) NEBRASKA ADVANTAGE RURAL DEVELOPMENT ACT

77-27,187.02 Application; contents; fee; written agreement; contents.

(1) To earn the incentives set forth in the Nebraska Advantage Rural Development Act, the taxpayer shall file an application for an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the full expected employment or type of livestock production and the investment amount for a qualified business, as described in section 77-27,189, in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project; and

(c) An application fee of five hundred dollars. The fee shall be remitted to the State Treasurer for credit to the Nebraska Incentives Fund. The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, and the amounts of increased employment or investment.

(3)(a) The Tax Commissioner shall approve the application and authorize the total amount of credits expected to be earned as a result of the project if he or she is satisfied that the plan in the application defines a project that (i) meets the requirements established in section 77-27,188 and such requirements will

be reached within the required time period and (ii) for projects other than livestock modernization or expansion projects, is located in an eligible county, city, or village.

(b) The Tax Commissioner shall not approve further applications once the expected credits from the approved projects total two million five hundred thousand dollars in each of fiscal years 2004-05 and 2005-06, three million dollars in each of fiscal years 2006-07 through 2008-09, and four million dollars in fiscal year 2009-10. For applications filed in calendar years 2010 and 2011, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total four million dollars. For applications filed in calendar year 2012 and each year thereafter, the Tax Commissioner shall not approve further applications once the expected credits from the approved projects total one million dollars. Four hundred dollars of the application fee shall be refunded to the applicant if the application is not approved because the expected credits from approved projects exceed such amounts. It is the intent of the Legislature that all tax credits deemed unallocated for this section for calendar year 2011 shall be used for purposes of the Angel Investment Tax Credit Act.

(c) Applications for benefits shall be considered in the order in which they are received.

(d)(i) For applications filed in calendar year 2011, applications shall be filed by July 1 and shall be complete by August 1 of the calendar year. Any application that is filed after July 1 or that is not complete on August 1 shall be considered to be filed during the following calendar year.

(ii) For applications filed in calendar year 2012 and each year thereafter, applications shall be filed by November 1 and shall be complete by December 1 of each calendar year. Any application that is filed after November 1 or that is not complete on December 1 shall be considered to be filed during the following calendar year.

(4) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plans of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Rural Development Act up to the total amount that were authorized by the Tax Commissioner at the time of approval. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required level must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) The maximum amount of credits authorized.

Source: Laws 2003, LB 608, § 3; Laws 2005, LB 312, § 18; Laws 2006, LB 990, § 3; Laws 2007, LB223, § 17; Laws 2008, LB895, § 3; Laws 2008, LB914, § 17; Laws 2009, LB164, § 2; Laws 2011, LB389, § 14.

Cross References

Angel Investment Tax Credit Act, see section 77-6301.

(s) RENEWABLE ENERGY TAX CREDIT

77-27,235 Renewable energy tax credit; Department of Revenue; powers.

(1) Any producer of electricity generated by a new renewable electric generation facility shall earn a renewable energy tax credit. For electricity generated on or after July 14, 2006, and before October 1, 2007, the credit shall be .075 cent for each kilowatt-hour of electricity generated by a new renewable electric generation facility. For electricity generated on or after October 1, 2007, and before January 1, 2010, the credit shall be .1 cent for each kilowatt-hour of electricity generated by a new renewable electric generation facility. For electricity generated on or after January 1, 2010, and before January 1, 2013, the credit shall be .075 cent per kilowatt-hour for electricity generated by a new renewable electric generation facility. For electricity generated on or after January 1, 2013, the credit shall be .05 cent per kilowatt-hour for electricity generated by a new renewable electric generation facility. The credit may be earned for production of electricity for ten years after the date that the facility is placed in operation on or after July 14, 2006.

(2) For purposes of this section:

(a) Electricity generated by a new renewable electric generation facility means electricity that is exclusively produced by a new renewable electric generation facility;

(b) Eligible renewable resources means wind, moving water, solar, geothermal, fuel cell, methane gas, or photovoltaic technology; and

(c) New renewable electric generation facility means an electrical generating facility located in this state that is first placed into service on or after July 14, 2006, which utilizes eligible renewable resources as its fuel source.

(3) The credit allowed under this section may be used to reduce the producer's Nebraska income tax liability or to obtain a refund of state sales and use taxes paid by the producer of electricity generated by a new renewable electric generation facility. A claim to use the credit for refund of the state sales and use taxes paid, either directly or indirectly, by the producer may be filed quarterly for electricity generated during the previous quarter by the twentieth day of the month following the end of the calendar quarter. The credit may be used to obtain a refund of state sales and use taxes paid during the quarter immediately preceding the quarter in which the claim for refund is made, except that the amount refunded under this subsection shall not exceed the amount of the state sales and use taxes paid during the quarter.

(4) The Department of Revenue may adopt and promulgate rules and regulations to permit verification of the validity and timeliness of any renewable energy tax credit claimed.

(5) The total amount of renewable energy tax credits that may be used by all taxpayers shall be limited to fifty thousand dollars without further authorization from the Legislature.

(6) The credit allowed under this section may not be claimed by a producer who received a sales tax exemption under section 77-2704.57 for the new renewable electric generation facility.

Source: Laws 2006, LB 872, § 2; Laws 2007, LB367, § 24; Laws 2011, LB360, § 3.

ARTICLE 33

UNIFORM ACT ON INTERSTATE ARBITRATION AND COMPROMISE OF DEATH TAXES

Section
77-3311. Determination of domicile; election to invoke act; notice; rejection; effect.

77-3311 Determination of domicile; election to invoke act; notice; rejection; effect.

In any case in which this state and one or more other states each claims that it was a domicile of a decedent at the time of his or her death and no judicial determination of domicile for death tax purposes has been made in any of such states, any executor or administrator or the taxing official of any such state may elect to invoke the provisions of the Uniform Act on Interstate Arbitration and Compromise of Death Taxes. Such election shall be evidenced by mailing notice to the taxing officials of any such state and to each executor, ancillary administrator, and interested person. Any executor or administrator may reject such election by mailing notice to the taxing officials involved and to all other executors within forty days after the receipt of such notice of election. If such election is rejected, no further proceedings shall be had under the act. If such election is not rejected, the dispute as to the death taxes shall be determined solely as provided in the act, and no other proceedings to determine or assess such death taxes shall thereafter be instituted in the courts of this state or otherwise.

Source: Laws 1976, LB 584, § 11; Laws 1987, LB 93, § 21; Laws 2012, LB727, § 47.
Operative date April 12, 2012.

ARTICLE 34

POLITICAL SUBDIVISIONS, BUDGET LIMITATIONS

(d) LIMITATION ON PROPERTY TAXES

Section
77-3442. Property tax levies; maximum levy; exceptions.
77-3445. Council on public improvements and services; membership; powers and duties.

(e) BASE LIMITATION

77-3446. Base limitation, defined.

(d) LIMITATION ON PROPERTY TAXES

77-3442 Property tax levies; maximum levy; exceptions.

(1) Property tax levies for the support of local governments for fiscal years beginning on or after July 1, 1998, shall be limited to the amounts set forth in this section except as provided in section 77-3444.

(2)(a) Except as provided in subdivision (2)(e) of this section, school districts and multiple-district school systems, except learning communities and school districts that are members of learning communities, may levy a maximum levy of one dollar and five cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) For each fiscal year, learning communities may levy a maximum levy for the general fund budgets of member school districts of ninety-five cents per one

hundred dollars of taxable valuation of property subject to the levy. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.

(c) Except as provided in subdivision (2)(e) of this section, for each fiscal year, school districts that are members of learning communities may levy for purposes of such districts' general fund budget and special building funds a maximum combined levy of the difference of one dollar and five cents on each one hundred dollars of taxable property subject to the levy minus the learning community levies pursuant to subdivisions (2)(b) and (2)(g) of this section for such learning community.

(d) Excluded from the limitations in subdivisions (2)(a) and (2)(c) of this section are amounts levied to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination of employment and amounts levied to pay for special building funds and sinking funds established for projects commenced prior to April 1, 1996, for construction, expansion, or alteration of school district buildings. For purposes of this subsection, commenced means any action taken by the school board on the record which commits the board to expend district funds in planning, constructing, or carrying out the project.

(e) Federal aid school districts may exceed the maximum levy prescribed by subdivision (2)(a) or (2)(c) of this section only to the extent necessary to qualify to receive federal aid pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001. For purposes of this subdivision, federal aid school district means any school district which receives ten percent or more of the revenue for its general fund budget from federal government sources pursuant to Title VIII of Public Law 103-382, as such title existed on September 1, 2001.

(f) For school fiscal year 2002-03 through school fiscal year 2007-08, school districts and multiple-district school systems may, upon a three-fourths majority vote of the school board of the school district, the board of the unified system, or the school board of the high school district of the multiple-district school system that is not a unified system, exceed the maximum levy prescribed by subdivision (2)(a) of this section in an amount equal to the net difference between the amount of state aid that would have been provided under the Tax Equity and Educational Opportunities Support Act without the temporary aid adjustment factor as defined in section 79-1003 for the ensuing school fiscal year for the school district or multiple-district school system and the amount provided with the temporary aid adjustment factor. The State Department of Education shall certify to the school districts and multiple-district school systems the amount by which the maximum levy may be exceeded for the next school fiscal year pursuant to this subdivision (f) of this subsection on or before February 15 for school fiscal years 2004-05 through 2007-08.

(g) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for special building funds for member school districts. The proceeds from the levy pursuant to this subdivision shall be distributed pursuant to section 79-1073.01.

(h) For each fiscal year, learning communities may levy a maximum levy of two cents on each one hundred dollars of taxable property subject to the levy for elementary learning center facility leases, for remodeling of leased elemen-

tary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to section 79-2111.

(i) For each fiscal year, learning communities may levy a maximum levy of one cent on each one hundred dollars of taxable property subject to the levy for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects, except that no more than ten percent of such levy may be used for elementary learning center employees.

(3)(a) For fiscal years 2011-12 and 2012-13, community college areas may levy a maximum of ten and one-quarter cents per one hundred dollars of taxable valuation of property subject to the levy for operating expenditures and may also levy the additional levies provided in subdivisions (1)(b) and (c) of section 85-1517.

(b) For fiscal year 2013-14 and each fiscal year thereafter, community college areas may levy the levies provided in subdivisions (2)(a) through (c) of section 85-1517, in accordance with the provisions of such subdivisions. A community college area may exceed the levy provided in subdivision (2)(b) of section 85-1517 by the amount necessary to retire general obligation bonds assumed by the community college area or issued pursuant to section 85-1515 according to the terms of such bonds or for any obligation pursuant to section 85-1535 entered into prior to January 1, 1997.

(4)(a) Natural resources districts may levy a maximum levy of four and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(b) Natural resources districts shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2003-04, not to exceed one cent on each one hundred dollars of taxable valuation annually on all of the taxable property within the district.

(c) In addition, natural resources districts located in a river basin, subbasin, or reach that has been determined to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 by the Department of Natural Resources shall also have the power and authority to levy a tax equal to the dollar amount by which their restricted funds budgeted to administer and implement ground water management activities and integrated management activities under the Nebraska Ground Water Management and Protection Act exceed their restricted funds budgeted to administer and implement ground water management activities and integrated management activities for FY2005-06, not to exceed three cents on each one hundred dollars of taxable valuation on all of the taxable property within the district for fiscal year 2006-07 and each fiscal year thereafter through fiscal year 2017-18.

(5) Any educational service unit authorized to levy a property tax pursuant to section 79-1225 may levy a maximum levy of one and one-half cents per one hundred dollars of taxable valuation of property subject to the levy.

(6)(a) Incorporated cities and villages which are not within the boundaries of a municipal county may levy a maximum levy of forty-five cents per one hundred dollars of taxable valuation of property subject to the levy plus an additional five cents per one hundred dollars of taxable valuation to provide financing for the municipality's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201, museum pursuant to section 51-501, visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or statue, memorial, or monument pursuant to section 80-202.

(b) Incorporated cities and villages which are within the boundaries of a municipal county may levy a maximum levy of ninety cents per one hundred dollars of taxable valuation of property subject to the levy. The maximum levy shall include amounts paid to a municipal county for county services, amounts levied to pay for sums to support a library pursuant to section 51-201, a museum pursuant to section 51-501, a visiting community nurse, home health nurse, or home health agency pursuant to section 71-1637, or a statue, memorial, or monument pursuant to section 80-202.

(7) Sanitary and improvement districts which have been in existence for more than five years may levy a maximum levy of forty cents per one hundred dollars of taxable valuation of property subject to the levy, and sanitary and improvement districts which have been in existence for five years or less shall not have a maximum levy. Unconsolidated sanitary and improvement districts which have been in existence for more than five years and are located in a municipal county may levy a maximum of eighty-five cents per hundred dollars of taxable valuation of property subject to the levy.

(8) Counties may levy or authorize a maximum levy of fifty cents per one hundred dollars of taxable valuation of property subject to the levy, except that five cents per one hundred dollars of taxable valuation of property subject to the levy may only be levied to provide financing for the county's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. The maximum levy shall include amounts levied to pay for sums to support a library pursuant to section 51-201 or museum pursuant to section 51-501. The county may allocate up to fifteen cents of its authority to other political subdivisions subject to allocation of property tax authority under subsection (1) of section 77-3443 and not specifically covered in this section to levy taxes as authorized by law which do not collectively exceed fifteen cents per one hundred dollars of taxable valuation on any parcel or item of taxable property. The county may allocate to one or more other political subdivisions subject to allocation of property tax authority by the county under subsection (1) of section 77-3443 some or all of the county's five cents per one hundred dollars of valuation authorized for support of an agreement or agreements to be levied by the political subdivision for the purpose of supporting that political subdivision's share of revenue required under an agreement or agreements executed pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act. If an allocation by a county would cause another county to exceed its levy authority under this section, the second county may exceed the levy authority in order to levy the amount allocated. Property tax levies for costs of reassumption of the assessment

function pursuant to section 77-1340 or 77-1340.04 are not included in the levy limits established in this subsection for fiscal years 2010-11 through 2013-14.

(9) Municipal counties may levy or authorize a maximum levy of one dollar per one hundred dollars of taxable valuation of property subject to the levy. The municipal county may allocate levy authority to any political subdivision or entity subject to allocation under section 77-3443.

(10) Property tax levies (a) for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a political subdivision which require or obligate a political subdivision to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a political subdivision, (b) for preexisting lease-purchase contracts approved prior to July 1, 1998, (c) for bonds as defined in section 10-134 approved according to law and secured by a levy on property except as provided in section 44-4317 for bonded indebtedness issued by educational service units and school districts, and (d) for payments by a public airport to retire interest-free loans from the Department of Aeronautics in lieu of bonded indebtedness at a lower cost to the public airport are not included in the levy limits established by this section.

(11) The limitations on tax levies provided in this section are to include all other general or special levies provided by law. Notwithstanding other provisions of law, the only exceptions to the limits in this section are those provided by or authorized by sections 77-3442 to 77-3444.

(12) Tax levies in excess of the limitations in this section shall be considered unauthorized levies under section 77-1606 unless approved under section 77-3444.

(13) For purposes of sections 77-3442 to 77-3444, political subdivision means a political subdivision of this state and a county agricultural society.

(14) For school districts that file a binding resolution on or before May 9, 2008, with the county assessors, county clerks, and county treasurers for all counties in which the school district has territory pursuant to subsection (7) of section 79-458, if the combined levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, are in excess of the greater of (a) one dollar and twenty cents per one hundred dollars of taxable valuation of property subject to the levy or (b) the maximum levy authorized by a vote pursuant to section 77-3444, all school district levies, except levies for bonded indebtedness approved by the voters of the school district and levies for the refinancing of such bonded indebtedness, shall be considered unauthorized levies under section 77-1606.

Source: Laws 1996, LB 1114, § 1; Laws 1997, LB 269, § 56; Laws 1998, LB 306, § 36; Laws 1998, LB 1104, § 17; Laws 1999, LB 87, § 87; Laws 1999, LB 141, § 11; Laws 1999, LB 437, § 26; Laws 2001, LB 142, § 57; Laws 2002, LB 568, § 9; Laws 2002, LB 898, § 1; Laws 2002, LB 1085, § 19; Laws 2003, LB 540, § 2; Laws 2004, LB 962, § 110; Laws 2004, LB 1093, § 1; Laws 2005, LB 38, § 2; Laws 2006, LB 968, § 12; Laws 2006, LB 1024, § 14; Laws 2006, LB 1226, § 30; Laws 2007, LB342, § 31; Laws 2007, LB641, § 4; Laws 2007, LB701, § 33; Laws 2008, LB988, § 2; Laws 2008, LB1154, § 5; Laws 2009, LB121, § 11; Laws 2010,

LB1070, § 4; Laws 2010, LB1072, § 3; Laws 2011, LB59, § 2; Laws 2011, LB400, § 2; Laws 2012, LB946, § 10; Laws 2012, LB1104, § 1.

Note: Changes made by LB946 became effective February 14, 2012. Changes made by LB1104 became effective July 19, 2012.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.
Nebraska Ground Water Management and Protection Act, see section 46-701.
Tax Equity and Educational Opportunities Support Act, see section 79-1001.

77-3445 Council on public improvements and services; membership; powers and duties.

A council on public improvements and services may be created within each county or for adjoining counties by resolutions of county boards or by joint resolutions passed by at least three different types of political subdivisions located in the county which are authorized to levy property taxes or which may benefit from property taxes affected by the levy limits imposed by sections 77-3442 to 77-3444. Such councils shall include, but are not limited to, one elected official from each school board, county board, incorporated city or village, natural resources district, community college, educational service unit, hospital district, airport authority, fire protection district, and township taxing property within the county or counties. The elected governing body of each political subdivision which has the legal authority to request property tax funding or a levy set by the county board within a county may by resolution of the governing body appoint one elected official from the governing board to the council on public improvements and services.

Councils on public improvements and services may meet as often as necessary prior to the adoption of budgets and property tax requests affected by the levy limits described in sections 77-3442 to 77-3444. The council shall jointly examine the budgets and property tax requests of each governmental agency or quasi-governmental agency with statutory authority to request a share of the property tax. The county clerk of each county shall attend such meetings and keep a public record of the proceedings. Each council on public improvements and services which is created by resolution as provided in this section shall hold at least one public meeting prior to the adoption of public budgets affected by the levy limits imposed by sections 77-3442 to 77-3444. Such council may continue to meet to discuss issues of public service provision in an effective and coordinated manner, the impacts of levy limits, state and federal law, program, or aid changes, and the joint provision or use of capital facilities and equipment.

Source: Laws 1996, LB 1114, § 4; Laws 1998, LB 306, § 39; Laws 2012, LB801, § 100.
Effective date July 19, 2012.

(e) BASE LIMITATION

77-3446 Base limitation, defined.

Base limitation means the budget limitation rate applicable to school districts and the limitation on growth of restricted funds applicable to other political subdivisions prior to any increases in the rate as a result of special actions taken by a supermajority of any governing board or of any exception allowed by

law. The base limitation is two and one-half percent until adjusted, except that the base limitation for school districts for school fiscal year 2010-11 is twenty-five hundredths of one percent, the base limitation for school districts for school fiscal year 2011-12 is zero percent, and the base limitation for school districts for school fiscal year 2012-13 is one-half of one percent. The base limitation may be adjusted annually by the Legislature to reflect changes in the prices of services and products used by school districts and political subdivisions.

Source: Laws 1998, LB 989, § 15; Laws 2001, LB 365, § 1; Laws 2003, LB 540, § 3; Laws 2009, LB545, § 2; Laws 2009, First Spec. Sess., LB5, § 1; Laws 2011, LB235, § 1.

ARTICLE 35

HOMESTEAD EXEMPTION

Section

77-3517 Homestead; application for exemption; county assessor; Tax Commissioner; duties; refunds; liens.

(1) On or before August 1 of each year, the county assessor shall forward the approved applications for homestead exemptions and a copy of the certification of disability status that have been examined pursuant to section 77-3516 to the Tax Commissioner. The Tax Commissioner shall determine if the applicant meets the income requirements and may also review any other application information he or she deems necessary in order to determine whether the application should be approved. The Tax Commissioner shall, on or before November 1, certify his or her determinations to the county assessor. If the application is approved, the county assessor shall make the proper deduction on the assessment rolls. If the application is denied or approved in part, the Tax Commissioner shall notify the applicant of the denial or partial approval by mailing written notice to the applicant at the address shown on the application. The applicant may appeal the Tax Commissioner's denial or partial approval pursuant to section 77-3520. Late applications authorized by the county board shall be processed in a similar manner after approval by the county assessor.

(2)(a) Upon his or her own action or upon a request by an applicant, a spouse, or an owner-occupant, the Tax Commissioner may review any information necessary to determine whether an application is in compliance with sections 77-3501 to 77-3529. Any action taken by the Tax Commissioner pursuant to this subsection shall be taken within three years after December 31 of the year in which the exemption was claimed.

(b) If after completion of the review the Tax Commissioner determines that an exemption should have been approved or increased, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant and the county treasurer and assessor of his or her determination. The applicant, spouse, or owner-occupant shall receive a refund of the tax, if any, that was paid as a result of the exemption being denied, in whole or in part. The county treasurer shall make the refund and shall amend the county's claim for reimbursement from the state.

(c) If after completion of the review the Tax Commissioner determines that an exemption should have been denied or reduced, the Tax Commissioner shall notify the applicant, spouse, or owner-occupant of such denial or reduction. The applicant, the spouse, and any owner-occupant may appeal the Tax Commissioner's denial or reduction pursuant to section 77-3520. Upon the expiration of the appeal period in section 77-3520, the Tax Commissioner shall notify the county assessor of the denial or reduction and the county assessor shall remove or reduce the exemption from the tax rolls of the county. Upon notification by the Tax Commissioner to the county assessor, the amount of tax due as a result of the action of the Tax Commissioner shall become a lien on the homestead until paid. Upon attachment of the lien, the county treasurer shall refund to the Tax Commissioner the amount of tax equal to the denied or reduced exemption for deposit into the General Fund. No lien shall be created if a change in ownership of the homestead or death of the applicant, the spouse, and all other owner-occupants has occurred prior to the Tax Commissioner's notice to the county assessor.

Source: Laws 1979, LB 65, § 17; Laws 1980, LB 647, § 10; Laws 1986, LB 1258, § 8; Laws 1987, LB 376A, § 13; Laws 1989, LB 84, § 14; Laws 1991, LB 9, § 7; Laws 1991, LB 773, § 25; Laws 1995, LB 133, § 5; Laws 1995, LB 499, § 2; Laws 1996, LB 1039, § 9; Laws 1997, LB 397, § 31; Laws 2010, LB877, § 6.

77-3519 Homestead; exemption; county assessor; rejection; applicant; complaint; contents; hearing; appeal.

In any case when the county assessor rejects an application for homestead exemption, such applicant may obtain a hearing before the county board of equalization by filing a written complaint with the county clerk within thirty days from receipt of the notice from the county assessor showing such rejection. Such complaint shall specify his or her grievances and the pertinent facts in relation thereto, in ordinary and concise language and without repetition, and in such manner as to enable a person of common understanding to know what is intended. The board may take evidence pertinent to such complaint, and for that purpose may compel the attendance of witnesses and the production of books, records, and papers by subpoena. The board shall issue its decision on the complaint within thirty days after the filing of the complaint. Notice of the board's decision shall be mailed by the county clerk to the applicant within seven days after the decision. The taxpayer shall have the right to appeal from the board's decision with reference to the application for homestead exemption to the Tax Equalization and Review Commission in accordance with section 77-5013 within thirty days after the decision.

Source: Laws 1979, LB 65, § 19; Laws 1987, LB 376A, § 14; Laws 1995, LB 490, § 177; Laws 2004, LB 973, § 44; Laws 2011, LB384, § 19.

ARTICLE 38
FINANCIAL INSTITUTION TAXATION

Section
77-3806. Franchise tax; filing requirements; general provisions applicable; refunds; credit.

77-3806 Franchise tax; filing requirements; general provisions applicable; refunds; credit.

(1) The tax return shall be filed and the total amount of the franchise tax shall be due on the fifteenth day of the third month after the end of the taxable year. No extension of time to pay the tax shall be granted. If the Tax Commissioner determines that the amount of tax can be computed from available information filed by the financial institutions with either state or federal regulatory agencies, the Tax Commissioner may, by regulation, waive the requirement for the financial institutions to file returns.

(2) Sections 77-2714 to 77-27,135 relating to deficiencies, penalties, interest, the collection of delinquent amounts, and appeal procedures for the tax imposed by section 77-2734.02 shall also apply to the tax imposed by section 77-3802. If the filing of a return is waived by the Tax Commissioner, the payment of the tax shall be considered the filing of a return for purposes of sections 77-2714 to 77-27,135.

(3) No refund of the tax imposed by section 77-3802 shall be allowed unless a claim for such refund is filed within ninety days of the date on which (a) the tax is due or was paid, whichever is later, or (b) a change is made to the amount of deposits or the net financial income of the financial institution by a state or federal regulatory agency.

(4) Any such financial institution shall receive a credit on the franchise tax as provided under the Community Development Assistance Act and under the New Markets Job Growth Investment Act.

Source: Laws 1986, LB 774, § 6; Laws 1990, LB 1241, § 16; Laws 2001, LB 433, § 7; Laws 2007, LB367, § 25; Laws 2012, LB1128, § 25. Operative date January 1, 2012.

Cross References

Community Development Assistance Act, see section 13-201.
New Markets Job Growth Investment Act, see section 77-1101.

ARTICLE 39

UNIFORM STATE TAX LIEN REGISTRATION AND ENFORCEMENT

Section
77-3903. Notice of lien; filing; requirements; fee.
77-3906. Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.

77-3903 Notice of lien; filing; requirements; fee.

(1)(a) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon real property shall be presented in the office of the Secretary of State. Such notice of lien shall be transmitted by the Secretary of State to and filed in the office of the register of deeds by the register of deeds of the county or counties in which the real property subject to the lien is situated as designated in the notice of lien. The register of deeds shall enter the notice in the alphabetical state tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such presentments to the Secretary of State may be made by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained

in numerical order in a file designated state tax lien notices, except that in offices filing by the roll form of microfilm pursuant to section 23-1517.01, the original notices need not be retained. A lien subject to this subsection shall be effective upon real property when filed by the register of deeds as provided in this subsection.

(b) A notice of lien provided for in the Uniform State Tax Lien Registration and Enforcement Act upon personal property shall be filed in the office of the Secretary of State. The Secretary of State shall enter the notice in the state's central tax lien index, showing on one line the name and residence of the person liable named in such notice, the last four digits of the social security number or the federal tax identification number of such person, the Tax Commissioner's or Commissioner of Labor's serial number of such notice, the date and hour of filing, and the amount due. Such filings with the Secretary of State may be filed by direct input to the Secretary of State's data base or by other electronic means. All such notices of lien shall be retained in numerical order in a file designated state tax lien notices.

(2)(a) This subdivision applies until January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be two times the fee required for recording instruments with the register of deeds as provided in section 33-109. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be the fee required for recording instruments with the register of deeds as provided in section 33-109. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit the fee required for recording instruments with the register of deeds as provided in section 33-109 to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(b) This subdivision applies on and after January 1, 2018. The uniform fee, payable to the Secretary of State, for presenting for filing, releasing, continuing, or subordinating or for filing, releasing, continuing, or subordinating each tax lien pursuant to the Uniform State Tax Lien Registration and Enforcement Act shall be six dollars. There shall be no fee for the filing of a termination statement. The uniform fee for each county more than one designated pursuant to subdivision (1)(a) of this section shall be three dollars. The Secretary of State shall deposit each fee received pursuant to this subdivision in the Uniform Commercial Code Cash Fund. Of the fees received and deposited pursuant to this subdivision, the Secretary of State shall remit three dollars to the register of deeds of a county for each designation of such county in a filing pursuant to subdivision (1)(a) of this section.

(3) The Secretary of State shall bill the Tax Commissioner or Commissioner of Labor on a monthly basis for fees for documents presented to or filed with the Secretary of State. No payment of any fee shall be required at the time of presenting or filing any such lien document.

Source: Laws 1986, LB 1027, § 216; Laws 1987, LB 523, § 32; Laws 1995, LB 490, § 179; Laws 1998, LB 1321, § 100; Laws 1999, LB

165, § 4; Laws 1999, LB 550, § 46; Laws 2007, LB223, § 23; Laws 2007, LB334, § 89; Laws 2012, LB14, § 7.
Operative date January 1, 2013.

77-3906 Distraint and sale of taxpayer's property; procedures; conditions; powers and duties.

(1) In addition to all other remedies or actions provided by law under any tax program administered by the Tax Commissioner or Commissioner of Labor, it shall be lawful for the Tax Commissioner or Commissioner of Labor, after making demand for payment, to collect any delinquent taxes, together with any interest, penalties, and additions to such tax by distraint and sale of the real and personal property of the taxpayer. If the Tax Commissioner finds that the collection of any tax is in jeopardy pursuant to section 77-2710, 77-27,111, or 77-4311, notice and demand for immediate payment of such tax may be made by the Tax Commissioner and, upon failure or refusal to pay such tax, collection by levy shall be lawful.

(2)(a) In case of failure to pay taxes or deficiencies, the Tax Commissioner, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Tax Commissioner to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(b) In case of failure to pay taxes or deficiencies, the Commissioner of Labor, or his or her authorized employee, may levy or, by warrant issued under his or her own hand, authorize a sheriff or duly authorized employee of the Department of Labor to levy upon, seize, and sell such real and personal property belonging to the taxpayer, except exempt property, as is necessary to satisfy the liability for the payment of the amount due.

(c) As used in this section, exempt property shall mean such property as is exempt from execution under the laws of this state.

(3) When a warrant is issued or a levy is made by the Tax Commissioner or Commissioner of Labor, or his or her duly authorized employee, for the collection of any tax and any interest, penalty, or addition to such tax imposed by law under any tax program administered by the Tax Commissioner or Commissioner of Labor or for the enforcement of any tax lien authorized by the Uniform State Tax Lien Registration and Enforcement Act, such warrant or levy shall have the same force and effect of a levy and sale pursuant to a writ of execution. Such warrant or levy may be issued and sale made pursuant to it in the same manner and with the same force and effect of a levy and sale pursuant to a writ of execution. The Tax Commissioner or Commissioner of Labor shall pay the levying sheriff the same fees, commissions, and expenses pursuant to such warrant as are provided by law for similar services pursuant to a writ of execution, except that fees for publications in a newspaper shall be subject to approval by the Tax Commissioner or Commissioner of Labor. Such fees, commissions, and expenses shall be an obligation of the taxpayer and may be collected from the taxpayer by virtue of the warrant. Any such warrant shall show the name and last-known address of the taxpayer, the identity of the tax program, the year for which such tax and any interest, penalty, or addition to such tax is due and the amount thereof, the fact that the Tax Commissioner or Commissioner of Labor has complied with all provisions of the law for the

applicable tax program which he or she administers in the determination of the amount required to be paid, and that the tax and any interest, penalty, or addition to such tax is due and payable according to law.

(4)(a) Any person upon whom a levy is served who fails or refuses to honor the levy without cause may be held liable for the amount of the levy up to the value of the assets of the taxpayer under his or her control at the time the levy was served or thereafter. Such person may be subject to collection provisions as set forth in the act.

(b) The effect of a levy on salary, wages, or other regular payments due to or received by a taxpayer shall be continuous from the date the levy is served until the amount of the levy, with accrued interest, is satisfied.

(5) Notice of the sale and the time and place of the sale shall be given, to the delinquent taxpayer and to any other person with an interest in the property who has filed for record with the appropriate filing officer on such property, in writing at least twenty days prior to the date of such sale in the following manner: The notice shall be mailed to the taxpayer and to any other person with such interest at his or her last-known residence or place of business in this state. The notice shall also be given by publication at least once each week for four weeks prior to the date of the sale in the newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in the county, notice shall be posted in three public places in the county twenty days prior to the date of the sale. The notice shall contain a description of the property to be sold, a statement of the type of tax due and of the amount due, including interest, penalties, additions to tax, and costs, the name of the delinquent taxpayer, and the further statement that unless the amount due, including interest, penalties, additions to tax, and costs, is paid on or before the time fixed in the notice for the sale or such security as may be determined by the Tax Commissioner or Commissioner of Labor is placed with the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, on or before such time, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

(6) At the sale the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, shall sell the property in accordance with law and the notice and shall deliver to the purchaser a bill of sale for the property. The bill of sale shall vest the interest or title of the person liable for the amount in the purchaser. The unsold portion of any property seized shall remain in the custody and control of the Tax Commissioner or Commissioner of Labor, or his or her duly authorized representative, until offered for sale again in accordance with this section or redeemed by the taxpayer.

(7) Whenever any property which is seized and sold under this section is not sufficient to satisfy the claim of the state for which distraint or seizure is made, the sheriff or duly authorized employee of the Tax Commissioner or Department of Labor may thereafter, and as often as the same may be necessary, proceed to seize and sell in like manner any other property liable to seizure of the taxpayer against whom such claim exists until the amount due from such taxpayer, together with all expenses, is fully paid.

(8) If after the sale the money received exceeds the total of all amounts due the state, including any interest, penalties, additions to tax, and costs, and if there is no other interest in or lien upon such money received, the Tax

Commissioner or Commissioner of Labor shall return the excess to the person liable for the amounts and obtain a receipt. If any person having an interest or lien upon the property files with the Tax Commissioner or Commissioner of Labor prior to the sale notice of his or her interest or lien, the Tax Commissioner or Commissioner of Labor shall withhold any excess pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the person liable for the amount is not available, the Tax Commissioner or Commissioner of Labor shall deposit the excess money with the State Treasurer, as trustee for the owner, subject to the order of the person liable for the amount or his or her heirs, successors, or assigns. No interest earned, if any, shall become the property of the person liable for the amount.

(9) All persons and officers of companies or corporations shall, on demand of a sheriff or duly authorized employee of the Tax Commissioner or Department of Labor about to distrain or having distrained any property or right to property, exhibit all books containing evidence or statements relating to the property or rights of property liable to distraint for the tax due.

Source: Laws 1986, LB 1027, § 219; Laws 1990, LB 260, § 17; Laws 1993, LB 345, § 77; Laws 1995, LB 490, § 182; Laws 1999, LB 36, § 33; Laws 1999, LB 165, § 7; Laws 2007, LB334, § 92; Laws 2012, LB727, § 48.
Operative date April 12, 2012.

ARTICLE 40
TOBACCO PRODUCTS TAX

Section
77-4015. Return; review; deficiency; notice.
77-4016. Failure to file return; return and assessment by Tax Commissioner; notice.
77-4020. Final decision; notification; appeal.

77-4015 Return; review; deficiency; notice.

As soon as practicable after any return is filed, the Tax Commissioner shall examine the return. If the Tax Commissioner, in his or her judgment, finds that the return is incorrect and any amount of tax due from the licensee is unpaid, he or she shall notify the licensee of the deficiency. Such notice shall be mailed to the licensee.

Source: Laws 1987, LB 730, § 15; Laws 2012, LB727, § 49.
Operative date April 12, 2012.

77-4016 Failure to file return; return and assessment by Tax Commissioner; notice.

(1) If any licensee fails to file a return within the time prescribed, the Tax Commissioner may make a return for the licensee from his or her own knowledge and from such information as he or she can obtain through investigation and inspection or otherwise and shall assess a tax on such basis.

(2) Such tax shall be paid within ten days after the Tax Commissioner mails a written notice of the amount to the licensee. Any such return and assessment made by the Tax Commissioner on account of the failure of the licensee to make a return shall be deemed prima facie correct and valid, and the licensee shall have the burden of establishing that such return and assessment is

incorrect or invalid in any action or proceeding based on such return and assessment.

Source: Laws 1987, LB 730, § 16; Laws 2012, LB727, § 50.
Operative date April 12, 2012.

77-4020 Final decision; notification; appeal.

Within a reasonable time after the hearing pursuant to section 77-4019, the Tax Commissioner shall make a final decision or final determination and notify the licensee by mail of such decision or determination. If any tax or additional tax becomes due, such notice shall be accompanied by a demand for payment of any tax due. A licensee may appeal the decision of the Tax Commissioner, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1987, LB 730, § 20; Laws 1988, LB 352, § 162; Laws 2012, LB727, § 51.
Operative date April 12, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 41

EMPLOYMENT AND INVESTMENT GROWTH ACT

Section
77-4110. Annual report; contents.

77-4110 Annual report; contents.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer, and (d) the location of each project.

(3) The report shall also state by industry group (a) the specific incentive options applied for under the Employment and Investment Growth Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the number of jobs created, (g) the total number of employees employed in the state by the taxpayer on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state by the taxpayer on subsequent reporting dates, (h) the expansion of capital investment, (i) the estimated wage levels of jobs created subsequent to the application date, (j) the total number of qualified applicants, (k) the projected future state revenue gains and losses, (l) the sales tax refunds owed to the applicants, (m) the credits outstanding, and (n) the value of personal property exempted by class in each county.

(4) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1987, LB 775, § 10; Laws 1990, LB 431, § 3; Laws 2007, LB223, § 26; Laws 2012, LB782, § 138.
Operative date July 19, 2012.

ARTICLE 43

MARIJUANA AND CONTROLLED SUBSTANCES TAX

Section

77-4310.03 Marijuana and Controlled Substances Tax Administration Cash Fund; created; use; investment.

There is hereby created the Marijuana and Controlled Substances Tax Administration Cash Fund. Money in the fund shall be used by the Tax Commissioner for the purposes of administering, collecting, and enforcing the tax imposed by section 77-4303, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Any money in the Marijuana and Controlled Substances Tax Administration 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 1991, LB 773, § 32; Laws 1994, LB 1066, § 87; Laws 2009, First Spec. Sess., LB3, § 56.

Cross References

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

77-4312 Jeopardy determination; petition for redetermination; procedure; deficiency; interest; seized property; sale; when; procedure; return of property; conditions; injunction; Tax Commissioner; powers.

(1) Any person who receives a notice of jeopardy determination of the tax imposed by section 77-4303 may petition the Tax Commissioner for a redetermination of the amount of the assessed deficiency.

(2) The petition for redetermination shall be filed within ten days of the receipt of the notice of jeopardy determination whenever service is in person or within ten days of the mailing of such notice to the last-known address of the person.

(3) The petition for redetermination shall be in writing and shall state the specific grounds upon which the claim is founded.

(4) The petition for redetermination shall be accompanied by the payment of the tax or suitable security for the payment of the tax.

(5) The consideration of the petition for redetermination shall be made pursuant to the Administrative Procedure Act to the extent the act is not in conflict with sections 77-4301 to 77-4316.

(6) The determination of the amount of the deficiency shall become final and the amount shall be deemed to be assessed on the date provided in subsection (2) of this section if the person fails to file the petition for the redetermination and the appropriate security within the ten-day time period.

(7) When a petition for redetermination and the appropriate security is filed within the ten-day period, the amount of the deficiency shall be deemed to be

assessed upon the date the determination of the Tax Commissioner becomes final.

(8) If the amount of the deficiency determined under such sections is not paid upon the receipt of the notice, the deficiency shall accrue interest at the rate specified in section 45-104.02, as such rate may from time to time be adjusted, for the period from the date the tax was due until the date such deficiency is paid.

(9)(a) When a jeopardy determination or any other final determination has been made by the Tax Commissioner, the property seized for collection of the taxes and any penalty shall not be sold until the time has expired for filing an appeal. If an appeal has been filed, no sale shall be made unless the taxes and any penalty remain unpaid for a period of more than thirty days after final determination of the appeal by the district court.

(b) Notwithstanding subdivision (a) of this subsection, seized property may be sold if the taxpayer consents in writing to the sale or the Tax Commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping or that such property cannot be kept without great expense.

(c) The property seized shall be returned by the Tax Commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the Tax Commissioner, or deposits with the Tax Commissioner security in such form and amount as the Tax Commissioner deems necessary to insure payment of the liability but not more than twice the liability.

(d) Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

(e) Any action taken by the Tax Commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

(f) After the Tax Commissioner has seized the property of any person, that person may, upon giving forty-eight hours notice to the Tax Commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court deems equitable.

(10) If the taxpayer ignores all demands for payment, the Tax Commissioner may employ the services of any qualified collection agency or attorney and pay fees for such services out of any money recovered.

Source: Laws 1990, LB 260, § 12; Laws 1991, LB 773, § 34; Laws 1992, Fourth Spec. Sess., LB 1, § 40; Laws 1993, LB 161, § 5; Laws 2012, LB727, § 52.
Operative date April 12, 2012.

Cross References

Administrative Procedure Act, see section 84-920.

ARTICLE 49
QUALITY JOBS ACT

Section
77-4933. Report; contents.

77-4933 Report; contents.

(1) The Department of Revenue shall submit electronically an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits allowed under the Quality Jobs Act, (b) the number of direct jobs created at the project, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the project.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 1995, LB 829, § 33; Laws 2007, LB223, § 27; Laws 2012, LB782, § 139.
Operative date July 19, 2012.

ARTICLE 50
TAX EQUALIZATION AND REVIEW COMMISSION ACT

Section

77-5001 Act, how cited.

Sections 77-5001 to 77-5031 shall be known and may be cited as the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 1; Laws 1997, LB 270, § 100; Laws 1997, LB 397, § 34; Laws 1998, LB 1104, § 23; Laws 2003, LB 291, § 4; Laws 2004, LB 973, § 46; Laws 2011, LB384, § 20.

77-5003 Tax Equalization and Review Commission; created; commissioners; term; salary.

(1) The Tax Equalization and Review Commission is created. The Tax Commissioner has no supervision, authority, or control over the actions or decisions of the commission relating to its duties prescribed by law. Prior to July 1, 2011, the commission shall have four commissioners, one commissioner from each congressional district and one at-large commissioner. On July 1, 2011, the term of each commissioner shall expire, and thereafter the commission shall have three commissioners, one from each congressional district, with terms as provided in subsection (2) of this section. All commissioners shall be appointed by the Governor with the approval of a majority of the members of the Legislature. The salaries of the commissioners shall be fixed by the Governor.

(2) The term of the commissioner from district 1 expires January 1, 2016, the term of the commissioner from district 2 expires January 1, 2018, and the term of the commissioner from district 3 expires January 1, 2014. After the terms of the commissioners are completed as provided in this subsection, each subsequent term shall be for six years beginning and ending on January 1 of the applicable year. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of his or her term of office, a commissioner shall continue to serve until his or her successor has been appointed.

(3) The commission shall designate pursuant to rule and regulation its chairperson and vice-chairperson on a two-year, rotating basis.

(4) A commissioner may be removed by the Governor for misfeasance, malfeasance, or willful neglect of duty or other cause after notice and a public hearing unless notice and hearing are expressly waived in writing by the commissioner.

Source: Laws 1995, LB 490, § 3; Laws 1998, LB 1104, § 24; Laws 2001, LB 465, § 3; Laws 2003, LB 291, § 5; Laws 2007, LB167, § 4; Laws 2011, LB384, § 21.

77-5004 Commissioner; qualifications; conflict of interests; continuing education; expenses.

(1) Each commissioner shall be a qualified voter and resident of the state and a domiciliary of the district he or she represents.

(2) Each commissioner shall devote his or her full time and efforts to the discharge of his or her duties and shall not hold any other office under the laws of this state, any city or county in this state, or the United States Government while serving on the commission. Each commissioner shall possess:

(a) Appropriate knowledge of terms commonly used in or related to real property appraisal and of the writing of appraisal reports;

(b) Adequate knowledge of depreciation theories, cost estimating, methods of capitalization, and real property appraisal mathematics;

(c) An understanding of the principles of land economics, appraisal processes, and problems encountered in the gathering, interpreting, and evaluating of data involved in the valuation of real property, including complex industrial properties and mass appraisal techniques;

(d) Knowledge of the law relating to taxation, civil and administrative procedure, due process, and evidence in Nebraska;

(e) At least thirty hours of successfully completed class hours in courses of study, approved by the Real Property Appraiser Board, which relate to appraisal and which include the fifteen-hour National Uniform Standards of Professional Appraisal Practice Course. If a commissioner has not received such training prior to his or her appointment, such training shall be completed within one year after appointment; and

(f) Such other qualifications and skills as reasonably may be requisite for the effective and reliable performance of the commission's duties.

(3) At least one commissioner shall possess the certification or training required to become a licensed residential real property appraiser as set forth in section 76-2230.

(4) At least one commissioner shall have been engaged in the practice of law in the State of Nebraska for at least five years, which may include prior service as a judge, and shall be currently admitted to practice before the Nebraska Supreme Court.

(5) No commissioner or employee of the commission shall hold any position of profit or engage in any occupation or business interfering with or inconsistent with his or her duties as a commissioner or employee. A person is not eligible for appointment and may not hold the office of commissioner or be appointed by the commission to or hold any office or position under the commission if he or she holds any official office or position.

(6) Each commissioner shall annually attend a seminar or class of at least two days' duration that is:

(a) Sponsored by a recognized assessment or appraisal organization, in each of these areas: Utility and railroad appraisal; appraisal of complex industrial properties; appraisal of other hard to assess properties; and mass appraisal, residential or agricultural appraisal, or assessment administration; or

(b) Pertaining to management, law, civil or administrative procedure, or other knowledge or skill necessary for performing the duties of the office.

(7) Each commissioner shall within two years after his or her appointment attend at least thirty hours of instruction that constitutes training for judges or administrative law judges.

(8) The commissioners shall be considered employees of the state for purposes of sections 81-1320 to 81-1328 and 84-1601 to 84-1615.

(9) The commissioners shall be reimbursed as prescribed in sections 81-1174 to 81-1177 for their actual and necessary expenses in the performance of their official duties pursuant to the Tax Equalization and Review Commission Act.

Source: Laws 1995, LB 490, § 4; Laws 1996, LB 1038, § 2; Laws 1999, LB 32, § 1; Laws 2001, LB 170, § 19; Laws 2001, LB 465, § 4; Laws 2002, LB 994, § 28; Laws 2003, LB 292, § 15; Laws 2004,

LB 973, § 47; Laws 2006, LB 778, § 73; Laws 2007, LB186, § 25; Laws 2008, LB965, § 20; Laws 2010, LB931, § 25; Laws 2011, LB384, § 22.

77-5005 Commission; meetings; quorum; orders.

(1) Within ten days after appointment, the commissioners shall meet at their office in Lincoln, Nebraska, and enter upon the duties of their office.

(2) A majority of the commission shall at all times constitute a quorum to transact business, and one vacancy shall not impair the right of the remaining commissioners to exercise all the powers of the commission.

(3) Any investigation, inquiry, or hearing held or undertaken by the commission may be held or undertaken by a single commissioner in those appeals designated for hearing pursuant to section 77-5015.02.

(4) All investigations, inquiries, hearings, and decisions of a single commissioner and every order made by a single commissioner shall be deemed to be the order of the commission, except as provided in subsection (6) of section 77-5015.02. The full commission, on an application made within thirty days after the date of an order, may grant a rehearing and determine de novo any decisions of or orders made by the commission. The commission, on an application made within thirty days after the date of an order issued after a hearing by a single commissioner, except for an order dismissing an appeal or petition for failure of the appellant or petitioner to appear at a hearing on the merits, shall grant a rehearing on the merits before the commission. The thirty-day filing period for appeals under subsection (2) of section 77-5019 shall be tolled while a motion for rehearing is pending.

(5) All hearings or proceedings of the commission shall be open to the public.

(6) The Open Meetings Act applies only to hearings or proceedings of the commission held pursuant to the rulemaking authority of the commission.

Source: Laws 1995, LB 490, § 5; Laws 1998, LB 1104, § 25; Laws 2001, LB 465, § 5; Laws 2003, LB 291, § 6; Laws 2004, LB 821, § 23; Laws 2005, LB 15, § 7; Laws 2011, LB384, § 23.

Cross References

Open Meetings Act, see section 84-1407.

77-5007 Commission; powers and duties.

The commission has the power and duty to hear and determine appeals of:

(1) Decisions of any county board of equalization equalizing the value of individual tracts, lots, or parcels of real property so that all real property is assessed uniformly and proportionately;

(2) Decisions of any county board of equalization granting or denying tax-exempt status for real or personal property or an exemption from motor vehicle taxes and fees;

(3) Decisions of the Tax Commissioner determining the taxable property of a railroad company, car company, public service entity, or air carrier within the state;

(4) Decisions of the Tax Commissioner determining adjusted valuation pursuant to section 79-1016;

(5) Decisions of any county board of equalization on the valuation of personal property or any penalties imposed under sections 77-1233.04 and 77-1233.06;

(6) Decisions of any county board of equalization on claims that a levy is or is not for an unlawful or unnecessary purpose or in excess of the requirements of the county;

(7) Decisions of any county board of equalization granting or rejecting an application for a homestead exemption;

(8) Decisions of the Department of Motor Vehicles determining the taxable value of motor vehicles pursuant to section 60-3,188;

(9) Decisions of the Tax Commissioner made under section 77-1330;

(10) Any other decision of any county board of equalization;

(11) Any other decision of the Tax Commissioner regarding property valuation, exemption, or taxation;

(12) Decisions of the Tax Commissioner pursuant to section 77-3520;

(13) Final decisions of a county board of equalization appealed by the Tax Commissioner or Property Tax Administrator pursuant to section 77-701; and

(14) Any other decision, determination, action, or order from which an appeal to the commission is authorized.

The commission has the power and duty to hear and grant or deny relief on petitions.

Source: Laws 1995, LB 490, § 7; Laws 1996, LB 1038, § 3; Laws 1997, LB 270, § 102; Laws 1997, LB 397, § 35; Laws 1998, LB 306, § 40; Laws 1999, LB 140, § 2; Laws 1999, LB 194, § 33; Laws 2001, LB 170, § 20; Laws 2004, LB 973, § 48; Laws 2005, LB 15, § 8; Laws 2005, LB 261, § 8; Laws 2005, LB 274, § 280; Laws 2007, LB334, § 96; Laws 2010, LB877, § 7; Laws 2011, LB384, § 24.

77-5008 Commission; writs of mandamus; costs.

In addition to its other powers and duties, the commission may issue writs of mandamus compelling compliance with its orders and compelling the Tax Commissioner to enforce its orders and may charge the party which has not complied with the commission's orders with costs borne by the Tax Commissioner.

Source: Laws 1995, LB 490, § 8; Laws 2007, LB334, § 97; Laws 2011, LB384, § 25.

77-5013 Commission; jurisdiction; time for filing; filing fee.

(1) The commission obtains exclusive jurisdiction over an appeal or petition when:

(a) The commission has the power or authority to hear the appeal or petition;

(b) An appeal or petition is timely filed;

(c) The filing fee, if applicable, is timely received and thereafter paid; and

(d) In the case of an appeal, a copy of the decision, order, determination, or action appealed from, or other information that documents the decision, order, determination, or action appealed from, is timely filed.

Only the requirements of this subsection shall be deemed jurisdictional.

(2) A petition, an appeal, or the information required by subdivision (1)(d) of this section is timely filed and the filing fee, if applicable, is timely received if placed in the United States mail, postage prepaid, with a legible postmark for delivery to the commission, or received by the commission, on or before the date specified by law for filing the appeal or petition. If no date is otherwise provided by law, then an appeal shall be filed within thirty days after the decision, order, determination, or action appealed from is made.

(3) The filing fee for each appeal or petition filed with the commission is twenty-five dollars, except that no filing fee shall be required for an appeal by a county assessor, the Tax Commissioner, or the Property Tax Administrator acting in his or her official capacity or a county board of equalization acting in its official capacity.

(4) The form and requirements for execution of an appeal or petition may be specified by the commission in its rules and regulations.

Source: Laws 1995, LB 490, § 13; Laws 1998, LB 1104, § 28; Laws 2001, LB 170, § 21; Laws 2004, LB 973, § 49; Laws 2010, LB877, § 8.

77-5015 Appeals; hearing; notice.

In any case appealed to the commission all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time and place of the hearing. Opportunity shall be afforded all parties to present evidence and argument. The commission shall prepare an official record, which includes testimony and exhibits, in each case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purposes of rehearing, in which event the transcript and record shall be furnished by the commission upon request and tender of the cost of preparation. Informal disposition may also be made of any case by stipulation, agreed settlement, consent order, or default.

Source: Laws 1995, LB 490, § 15; Laws 1999, LB 140, § 3; Laws 2003, LB 291, § 8; Laws 2004, LB 973, § 50; Laws 2011, LB384, § 26.

77-5015.01 Appeal; petition; commission; powers; other parties; service.

The commission may determine an appeal or petition before it when it can be done without prejudice to the rights of others or by saving such rights; but when a determination of the appeal or petition cannot be had without the presence of other parties, the commission shall serve such other parties with notice of the proceeding.

Source: Laws 2011, LB384, § 27.

77-5015.02 Single commissioner hearing; evidence; record; rehearing.

(1) A single commissioner may hear an appeal and cross appeal and appeals and cross appeals consolidated with any such appeal and cross appeal when:

(a) The taxable value of each parcel is one million dollars or less as determined by the county board of equalization; and

(b) The appeal and cross appeal has been designated for hearing pursuant to this section by the chairperson of the commission or in such manner as the commission may provide in its rules and regulations.

(2) A proceeding held before a single commissioner shall be informal. The usual common-law or statutory rules of evidence, including rules of hearsay,

shall not apply, and the commissioner may consider and utilize all matters presented at the proceeding in making his or her determination.

(3) Any party to an appeal designated for hearing before a single commissioner pursuant to this section may, prior to a hearing, elect in writing to have the appeal heard by the commission. The commissioner conducting a proceeding pursuant to this section may at any time designate the appeal for hearing by the commission.

(4) Documents necessary to establish jurisdiction of the commission shall constitute the record of a proceeding before a single commissioner. No recording shall be made of a proceeding before a single commissioner.

(5) A party to a proceeding before a single commissioner may request a rehearing pursuant to section 77-5005.

(6) An order entered by a single commissioner pursuant to this section may not be appealed pursuant to section 77-5019 or any other provision of law.

(7) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of section 77-5016 apply to proceedings before a single commissioner.

Source: Laws 2011, LB384, § 28.

77-5016 Hearing or proceeding; commission; powers and duties; false statement; penalty; costs.

Any hearing or proceeding of the commission shall be conducted as an informal hearing unless a formal hearing is granted as determined by the commission according to its rules and regulations. In any hearing or proceeding heard by the commission:

(1) The commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs excluding incompetent, irrelevant, immaterial, and unduly repetitious evidence and shall give effect to the privilege rules of evidence in sections 27-501 to 27-513 but shall not otherwise be bound by the usual common-law or statutory rules of evidence except during a formal hearing. Any party to an appeal filed under section 77-5007 may request a formal hearing by delivering a written request to the commission not more than thirty days after the appeal is filed. The requesting party shall be liable for the payment of fees and costs of a court reporter pending a final decision. The commission shall be bound by the rules of evidence applicable in district court in any formal hearing held by the commission. Fees and costs of a court reporter shall be paid by the party or parties against whom a final decision is rendered, and all other costs shall be allocated as the commission may determine;

(2) The commission may administer oaths, issue subpoenas, and compel the attendance of witnesses and the production of any papers, books, accounts, documents, statistical analysis, and testimony. The commission may adopt and promulgate necessary rules for discovery which are consistent with the rules adopted by the Supreme Court pursuant to section 25-1273.01;

(3) The commission may consider and utilize the provisions of the Constitution of the United States, the Constitution of Nebraska, the laws of the United States, the laws of Nebraska, the Code of Federal Regulations, the Nebraska Administrative Code, any decision of the several courts of the United States or the State of Nebraska, and the legislative history of any law, rule, or regulation,

without making the document a part of the record. The commission may without inclusion in the record consider and utilize published treatises, periodicals, and reference works pertaining to the valuation or assessment of real or personal property or the meaning of words and phrases if the document is identified in the commission's rules and regulations;

(4) All evidence, other than that described in subdivision (3) of this section, including records and documents in the possession of the commission of which it desires to avail itself, shall be offered and made a part of the record in the case. No other factual information or evidence other than that set forth in this section shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference;

(5) Every party shall have the right of cross-examination of witnesses who testify and shall have the right to submit rebuttal evidence;

(6) The commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge or statistical information regarding general levels of assessment within a county or a class or subclass of real property within a county and measures of central tendency within such county or classes or subclasses within such county which have been made known to the commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material so noticed. They shall be afforded an opportunity to contest the facts so noticed. The commission may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it;

(7) Any person testifying under oath at a hearing who knowingly and intentionally makes a false statement to the commission or its designee is guilty of perjury. For the purpose of this section, perjury is a Class I misdemeanor;

(8) The commission may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal;

(9) In all appeals, excepting those arising under section 77-1606, if the appellant presents no evidence to show that the order, decision, determination, or action appealed from is incorrect, the commission shall deny the appeal. If the appellant presents any evidence to show that the order, decision, determination, or action appealed from is incorrect, such order, decision, determination, or action shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary;

(10) If the appeal concerns a decision by the county board of equalization that property is, in whole or in part, exempt from taxation, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the property unless stipulated by the parties according to subsection (2) of section 77-5017;

(11) If the appeal concerns a decision by the county board of equalization that property owned by the state or a political subdivision is or is not exempt and there has been no final determination of the value of the property, the decision to be rendered by the commission shall only determine the exemption status of the property. The decision shall not determine the taxable value of the

property unless stipulated by the parties according to subsection (2) of section 77-5017;

(12) The costs of any appeal, including the costs of witnesses, may be taxed by the commission as it deems just, except costs payable by the appellant pursuant to section 77-1510.01, unless (a) the appellant is the county assessor or county clerk in which case the costs shall be paid by the county or (b) the appellant is the Tax Commissioner or Property Tax Administrator in which case the costs shall be paid by the state;

(13) The commission shall deny relief to the appellant or petitioner in any hearing or proceeding unless a majority of the commissioners present determine that the relief should be granted; and

(14) Subdivisions (3), (6), (8), (9), (10), (11), and (12) of this section apply to hearings or proceedings before a single commissioner pursuant to section 77-5015.02.

Source: Laws 1995, LB 490, § 16; Laws 1997, LB 397, § 38; Laws 1999, LB 140, § 4; Laws 2000, LB 968, § 75; Laws 2001, LB 170, § 22; Laws 2001, LB 419, § 1; Laws 2001, LB 465, § 7; Laws 2002, LB 994, § 29; Laws 2003, LB 291, § 9; Laws 2004, LB 973, § 51; Laws 2005, LB 15, § 9; Laws 2007, LB167, § 6; Laws 2010, LB877, § 9; Laws 2011, LB384, § 29.

77-5017 Appeals or petitions; orders authorized.

(1) In resolving an appeal or petition, the commission may make such orders as are appropriate for resolving the dispute but in no case shall the relief be excessive compared to the problems addressed. The commission may make prospective orders requiring changes in assessment practices which will improve assessment practices or affect the general level of assessment or the measures of central tendency in a positive way. If no other relief is adequate to resolve disputes, the commission may order a reappraisal of property within a county, an area within a county, or classes or subclasses of property within a county.

(2) In an appeal specified in subdivision (10) or (11) of section 77-5016 for which the commission determines exempt property to be taxable, the commission shall order the county board of equalization to determine the taxable value of the property, unless the parties stipulate to such taxable value during the hearing before the commission. The order shall require the county board of equalization to determine the taxable value of the property pursuant to section 77-1507, send notice of the taxable value pursuant to section 77-1507 within ninety days after the date the commission's order is certified pursuant to section 77-5018, and apply interest at the rate specified in section 45-104.01, but not penalty, to the taxable value as of the date the commission's order was issued or the date the taxes were delinquent, whichever is later.

(3) A determination of the taxable value of the property made by the county board of equalization pursuant to subsection (2) of this section may be appealed to the commission within thirty days after the board's decision as provided in section 77-1507.

Source: Laws 1995, LB 490, § 17; Laws 2001, LB 419, § 2; Laws 2004, LB 973, § 61; Laws 2007, LB167, § 7; Laws 2011, LB384, § 30.

77-5018 Appeals; decisions and orders; requirements; publication on web site; correction of errors.

(1) The commission may issue decisions and orders which are supported by the evidence and appropriate for resolving the matters in dispute. Every final decision and order adverse to a party to the proceeding, rendered by the commission in a case appealed to the commission, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order shall be delivered or mailed to each party or his or her attorney of record. Within seven days of issuing a decision and order, the commission shall electronically publish such decision and order on a web site maintained by the commission that is accessible to the general public. The full text of final decisions and orders shall be published on the web site, except that final decisions and orders that are entered (a) on a dismissal by the appellant or petitioner, (b) on a default order when the appellant or petitioner failed to appear, (c) by agreement of the parties, or (d) by a single commissioner pursuant to section 77-5015.02 may be published on the web site in a summary manner identifying the parties, the case number, and the basis for the final decision and order. Any decision rendered by the commission shall be certified to the county treasurer and to the officer charged with the duty of preparing the tax list, and if and when such decision becomes final, such officers shall correct their records accordingly and the tax list pursuant to section 77-1613.02.

(2) The commission may, on its own motion, modify or change its findings or orders, at any time before an appeal and within ten days after the date of such findings or orders, for the purpose of correcting any ambiguity, clerical error, or patent or obvious error. The time for appeal shall not be lengthened because of the correction unless the correction substantially changes the findings or order.

(3) The Tax Commissioner or the Property Tax Administrator shall have thirty days after a final decision of the commission to appeal the commission's decision pursuant to section 77-5019.

Source: Laws 1995, LB 490, § 18; Laws 1997, LB 397, § 39; Laws 2001, LB 465, § 8; Laws 2005, LB 15, § 10; Laws 2007, LB166, § 11; Laws 2010, LB877, § 10; Laws 2011, LB384, § 31.

77-5019 Appeals; judicial review; procedure.

(1) Any party aggrieved by a final decision in a case appealed to the commission, any party aggrieved by a final decision of the commission on a petition, any party aggrieved by an order of the commission issued pursuant to section 77-5020 or sections 77-5023 to 77-5028, or any party aggrieved by a final decision of the commission appealed by the Tax Commissioner or the Property Tax Administrator pursuant to section 77-701 shall be entitled to judicial review in the Court of Appeals. Upon request of the county, the Attorney General may appear and represent the county or political subdivision in cases in which the commission is not a party. Nothing in this section shall be deemed to prevent resort to other means of review, redress, or relief provided by law.

(2)(a) Proceedings for review shall be instituted by filing a petition and the appropriate docket fees in the Court of Appeals:

(i) Within thirty days after the date on which a final appealable order is entered by the commission; or

(ii) For orders issued pursuant to section 77-5028, within thirty days after May 15 or thirty days after the date ordered pursuant to section 77-1514, whichever is later.

(b) All parties of record shall be made parties to the proceedings for review. The commission shall only be made a party of record if the action complained of is an order issued by the commission pursuant to section 77-1504.01 or 77-5020 or sections 77-5023 to 77-5028. Summons shall be served on all parties within thirty days after the filing of the petition in the manner provided for service of a summons in a civil action. The court, in its discretion, may permit other interested persons to intervene. No bond or undertaking is required for an appeal to the Court of Appeals.

(c) A petition for review shall set forth: (i) The name and mailing address of the petitioner; (ii) the name and mailing address of the county whose action is at issue or the commission; (iii) identification of the final decision at issue together with a duplicate copy of the final decision; (iv) the identification of the parties in the case that led to the final decision; (v) the facts to demonstrate proper venue; (vi) the petitioner's reasons for believing that relief should be granted; and (vii) a request for relief, specifying the type and extent of the relief requested.

(3) The filing of the petition or the service of summons upon the commission shall not stay enforcement of a decision. The commission may order a stay. The court may order a stay after notice of the application for the stay to the commission and to all parties of record. The court may require the party requesting the stay to give bond in such amount and conditioned as the court directs.

(4) Upon receipt of a petition the date for submission of the official record shall be determined by the court. The commission shall prepare a certified copy of the official record of the proceedings had before the commission in the case. The official record shall include: (a) Notice of all proceedings; (b) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the commission pertaining to the case; (c) the transcribed record of the hearing before the commission, including all exhibits and evidence introduced during the hearing, a statement of matters officially noticed by the commission during the proceeding, and all proffers of proof and objections and rulings thereon; and (d) the final order appealed from. The official record in an appeal of a commission decision issued pursuant to sections 77-5023 to 77-5028 may be limited by the request of a petitioner to those parts of the record pertaining to a specific county. The commission shall charge the petitioner with the reasonable direct cost or require the petitioner to pay the cost for preparing the official record for transmittal to the court in all cases except when the petitioner is not required to pay a filing fee. If payment is required, payment of the cost, as estimated by the commission, for preparation of the official record shall be paid to the commission prior to preparation of the official record and the commission shall not transmit the official record to the court until payment of the actual costs of its preparation is received.

(5) The review shall be conducted by the court for error on the record of the commission. If the court determines that the interest of justice would be served by the resolution of any other issue not raised before the commission, the court may remand the case to the commission for further proceedings. The court may affirm, reverse, or modify the decision of the commission or remand the case for further proceedings.

(6) Appeals under this section shall be given precedence over all civil cases.

Source: Laws 1995, LB 490, § 19; Laws 1997, LB 165, § 4; Laws 1999, LB 140, § 5; Laws 2000, LB 968, § 76; Laws 2001, LB 465, § 9; Laws 2005, LB 15, § 11; Laws 2006, LB 808, § 42; Laws 2008, LB965, § 21; Laws 2010, LB877, § 11; Laws 2011, LB384, § 32.

77-5022 Commission; annual meeting; powers and duties.

The commission shall annually equalize the assessed value or special value of all real property as submitted by the county assessors on the abstracts of assessments and equalize the values of real property that is valued by the state. The commission shall have the power to recess from time to time until the equalization process is complete. Meetings held pursuant to this section may be held by means of videoconference or telephone conference.

Source: Laws 1903, c. 73, § 130, p. 434; R.S.1913, § 6447; Laws 1921, c. 133, art. XI, § 4, p. 591; C.S.1922, § 5901; C.S.1929, § 77-1004; Laws 1933, c. 129, § 1, p. 505; C.S.Supp.,1941, § 77-1004; R.S. 1943, § 77-505; Laws 1969, c. 653, § 1, p. 2569; Laws 1987, LB 508, § 18; Laws 1992, LB 1063, § 57; Laws 1992, Second Spec. Sess., LB 1, § 55; R.S.1943, (1996), § 77-505; Laws 1997, LB 397, § 40; Laws 1999, LB 140, § 6; Laws 2003, LB 291, § 12; Laws 2004, LB 973, § 63; Laws 2006, LB 808, § 43; Laws 2009, LB166, § 19; Laws 2011, LB384, § 33.

77-5024.01 Notice; contents.

The commission shall give notice of the time and place of the first meeting held pursuant to sections 77-5022 to 77-5028 by publication in a newspaper of general circulation in the State of Nebraska. Such notice shall contain a statement that the agenda shall be readily available for public inspection at the principal office of the commission during normal business hours. The agenda shall be continually revised to remain current. The commission may thereafter modify the agenda and need only provide notice of the meeting to the affected counties in the manner provided in section 77-5026. The commission shall publish in its notice a list of those counties certified under section 77-5027 as having assessments which may fail to satisfy the requirements of law. The notice shall also contain a statement advising that any petition brought by a county board of equalization pursuant to section 77-1504.01 to adjust the value of a class or subclass of real property will be heard between July 26 and August 10 at a date, time, and place as provided in the agenda maintained by the commission.

Source: Laws 2003, LB 291, § 11; Laws 2005, LB 261, § 9; Laws 2011, LB384, § 34.

77-5027 Commission; change valuation; Property Tax Administrator; duties.

(1) The commission shall, pursuant to section 77-5026, raise or lower the valuation of any class or subclass of real property in a county when it is necessary to achieve equalization.

(2) On or before nineteen days following the final filing due date for the abstract of assessment for real property pursuant to section 77-1514, the Property Tax Administrator shall prepare and deliver to the commission and to each county assessor his or her annual reports and opinions. Beginning January 1, 2014, for any county with a population of at least one hundred fifty thousand inhabitants according to the most recent federal decennial census, the reports or opinions shall be prepared and delivered on or before fifteen days following such final filing due date.

(3) The annual reports and opinions of the Property Tax Administrator shall contain statistical and narrative reports informing the commission of the level of value and the quality of assessment of the classes and subclasses of real property within the county and a certification of the opinion of the Property Tax Administrator regarding the level of value and quality of assessment of the classes and subclasses of real property in the county.

(4) In addition to an opinion of level of value and quality of assessment in the county, the Property Tax Administrator may make nonbinding recommendations for consideration by the commission.

(5) The Property Tax Administrator shall employ the methods specified in section 77-112, the comprehensive assessment ratio study specified in section 77-1327, other statistical studies, and an analysis of the assessment practices employed by the county assessor. If necessary to determine the level of value and quality of assessment in a county, the Property Tax Administrator may use sales of comparable real property in market areas similar to the county or area in question or from another county as indicators of the level of value and the quality of assessment in a county. The Property Tax Administrator may use any other relevant information in providing the annual reports and opinions to the commission.

Source: Laws 1969, c. 628, § 1, p. 2528; Laws 1987, LB 508, § 22; Laws 1988, LB 1207, § 1; Laws 1989, LB 361, § 6; Laws 1995, LB 490, § 57; Laws 1997, LB 342, § 2; R.S.1943, (1996), § 77-508.01; Laws 1997, LB 397, § 45; Laws 2001, LB 170, § 26; Laws 2004, LB 973, § 65; Laws 2005, LB 263, § 15; Laws 2011, LB384, § 35.

77-5031 Tax Equalization and Review Commission Cash Fund; created; use; investment.

The Tax Equalization and Review Commission Cash Fund is hereby created. All money received by the commission for appeals and services performed and billed to other agencies or persons shall be credited to the fund. The commission shall only bill for the actual amount expended in performing services. The fund shall be used to carry out the provisions of the Tax Equalization and Review Commission Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. Expenditures from the Tax Equalization and Review Commission Cash Fund shall be made only when such funds are available. Any unexpended balance in the fund at the end of each fiscal year shall not lapse to the General Fund. Any money in the Tax Equalization and Review Commission 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 1997, LB 270, § 101; Laws 2009, First Spec. Sess., LB3, § 57.

Cross References

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

ARTICLE 52

BEGINNING FARMER TAX CREDIT ACT

Section
77-5204. Beginning Farmer Board; created; duties.
77-5210. Board; annual report.
77-5214. Board; support and assistance.

77-5204 Beginning Farmer Board; created; duties.

For the purpose of developing and directing programs to provide increased and enhanced opportunities for beginning farmers and livestock producers, the Beginning Farmer Board is created. For administrative and budgetary purposes only, the board shall be housed within the Department of Agriculture. The board shall be vested with the following duties and responsibilities:

(1) To approve and certify beginning farmers and livestock producers as eligible for the programs provided by the board, for eligibility to claim tax credits authorized by section 77-5209.01, and for eligibility to claim an exemption of taxable tangible personal property tax as provided by section 77-5209.02;

(2) To approve and certify owners of agricultural assets as eligible for the tax credits authorized by sections 77-5211 to 77-5213;

(3) To advocate joint ventures between beginning farmers or livestock producers and existing private and public credit and banking licensed institutions, as well as to advocate joint ventures with owners of agricultural assets desiring to assist beginning farmers and livestock producers seeking entry into farming or livestock production;

(4) To provide necessary and reasonable assistance and support to beginning farmers and livestock producers for qualification and participation in financial management programs approved by the board;

(5) To advocate appropriate changes in policies and programs of other public and private institutions or agencies which will directly benefit beginning farmers and livestock producers and may include changes regarding financing, taxation, and any other existing policies which prohibit or impede individuals from entering into farming or livestock production;

(6) To provide adequate explanations of facts and aspects of available programs offered or recommended by the board intended for beginning farmers and livestock producers;

(7) To assist and educate beginning farmers and livestock producers by acting as a liaison between beginning farmers or livestock producers and the Nebraska Investment Finance Authority;

(8) To encourage licensed financial institutions and individuals to use alternative amortization schedules for loans and land contracts granted to beginning farmers and livestock producers;

(9) To refer beginning farmers and livestock producers to agencies and organizations which may provide additional pertinent information and assistance;

(10) To provide any other assistance and support the board deems necessary and appropriate in order for entry into farming or livestock production;

(11) To adopt and promulgate rules and regulations necessary to carry out the purposes of the Beginning Farmer Tax Credit Act, including criteria required for tax credit eligibility and financial management program certification and guidelines which constitute a viably sized farm that is necessary to adequately support a beginning farmer or livestock producer. Such guidelines shall vary and take into account the region of the state, number of acres, land quality and type, type of operation, type of crops or livestock raised, and other factors of farming or livestock production; and

(12) To keep minutes of the board's meetings and other books and records which will adequately reflect actions and decisions of the board and to provide an annual report to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically.

Source: Laws 1999, LB 630, § 5; Laws 2000, LB 1223, § 4; Laws 2008, LB1027, § 5; Laws 2012, LB782, § 140.
Operative date July 19, 2012.

77-5210 Board; annual report.

The board shall submit an annual report of the activities and actions of the board for the preceding fiscal year to the Governor, the Legislative Fiscal Analyst, and the Clerk of the Legislature by December 1. The report submitted to the Legislative Fiscal Analyst and the Clerk of the Legislature shall be submitted electronically. Each member of the Legislature shall receive an electronic copy of such report by request to the chairperson of the board. Each report shall include the following information:

(1) A complete operating and financial statement for the board for the prior fiscal year;

(2) The number of qualified beginning farmers and livestock producers receiving assistance from the board;

(3) The number of owners of agricultural assets claiming tax credits and the monetary amount of credits granted by the board; and

(4) Any other relevant information which the board deems necessary to report.

No information furnished to the board shall be disclosed in the report in such a way as to reveal information from a tax return of any person.

Source: Laws 1999, LB 630, § 11; Laws 2000, LB 1223, § 6; Laws 2012, LB782, § 141.
Operative date July 19, 2012.

77-5214 Board; support and assistance.

In order to carry out the provisions of the Beginning Farmer Tax Credit Act, the Department of Agriculture shall provide any and all of the necessary support and assistance to the board.

Source: Laws 1999, LB 630, § 15; Laws 2012, LB782, § 142.
Operative date July 19, 2012.

ARTICLE 54

RURAL ECONOMIC OPPORTUNITIES ACT

Section
77-5412. Report; contents.

77-5412 Report; contents.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than June 30 of each year.

(2) The report shall state by industry group (a) the credits earned, (b) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (c) the number of jobs created, (d) the total number of employees employed by taxpayers at qualifying projects on the last day of the calendar quarter prior to the application date and the total number of employees employed by the taxpayers for the projects on subsequent reporting dates, (e) the expansion of capital investment, (f) the estimated wage levels of jobs created subsequent to the application date, (g) the total number of qualified applicants, (h) the projected future state revenue gains and losses, and (i) the credits outstanding.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2000, LB 936, § 12; Laws 2012, LB782, § 143.
Operative date July 19, 2012.

ARTICLE 55

INVEST NEBRASKA ACT

Section
77-5542. Report; contents.
77-5544. Audit; costs; confidentiality; violation; penalty.

77-5542 Report; contents.

(1) The Department of Revenue shall submit electronically an annual report to the Legislature no later than July 15 each year. The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each company, and (d) the location of each project.

(2) The report shall also state by industry group (a) the amount of wage benefit credits and investment tax credits allowed under the Invest Nebraska Act, (b) the number of direct jobs created at the projects, (c) the amount of direct capital investment under the act, (d) the estimated wage levels of jobs created by the companies at the projects, (e) the estimated indirect jobs and investment created on account of the projects, and (f) the projected future state and local revenue gains and losses from all revenue sources on account of the direct and indirect jobs and investment created on account of the projects.

(3) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2001, LB 620, § 42; Laws 2007, LB223, § 28; Laws 2012, LB782, § 144.
Operative date July 19, 2012.

77-5544 Audit; costs; confidentiality; violation; penalty.

(1) By January 1, 2005, and each January 1 every five years thereafter for so long as there are companies that have qualified for benefits and remain within the entitlement period and there are sufficient companies qualified for benefits so as not to reveal confidential information that allows identification of any company, there shall be an audit to determine compliance with the Invest Nebraska Act. The Tax Commissioner shall contract with a qualified independent accounting firm to conduct the audit. The cost of the audit shall be paid from funds appropriated to the Department of Revenue by the Legislature. Such cost shall include, in addition to the fees and costs of such independent firm, the incremental costs to the department to comply with this section, as determined by the department. If a qualified independent accounting firm cannot be located or engaged to conduct such audit, then such audit shall instead be performed by the department. A qualified independent firm shall be a firm that meets all of the following requirements: (a) The firm must be an accounting firm employing or comprised of at least ten certified public accountants who are licensed under the Public Accountancy Act to practice accounting and auditing in Nebraska; (b) the firm, at the time of the beginning of such audit, and for the period of at least twenty-four months before such audit commences, has not performed any services for any of the companies that at such time have filed applications under the Invest Nebraska Act, and the firm must agree not to engage in and to withdraw from representing any companies that file applications after such audit commences and before the audit report is issued; (c) the firm must have executed such audit contract as required by the Tax Commissioner; and (d) the firm, and all such accountants and personnel of such firm who will be involved in the audit, must have executed such confidentiality and nondisclosure agreements as required by the Tax Commissioner. In hiring such firm, the Tax Commissioner shall comply with all Nebraska laws pertaining to the selection and hiring of outside private sector services.

(2) The purpose of the audit is to examine information collected by the department in order to determine:

(a) The extent the data collected from the companies receiving benefits is verified;

(b) The extent to which the projects receiving benefits from the act are in compliance with the act initially and throughout the entitlement period;

(c) Whether the requirements of the act regarding the investment threshold have been attained and maintained by the companies;

(d) Whether and to what extent new employees are added by the companies to their workforce and employed at the project locations;

(e) Whether and to what extent the new jobs created meet the minimum compensation requirements of the act;

(f) The industry or industries in which the new jobs are created, by North American Industry Classification System Code;

(g) The extent to which the minimum new job threshold of the act has been attained and maintained by the companies;

(h) By category of spending, what is purchased by the companies that is claimed as qualified investments; and

(i) Gross sales from output of the project if reasonably determinable.

(3) After the audit is conducted, and on or before January 1, 2005, and each January 1 every five years thereafter, the auditor shall issue a report to the Legislature and Governor detailing the results of the audit. The report submitted to the Legislature shall be submitted electronically. The report shall be presented using aggregated information and other techniques so as not to reveal confidential information that allows identification of the company. The report shall not be issued until the Tax Commissioner has confirmed in writing that the report does not reveal any confidential information that allows identification of the company. For purposes of this section, confidential information includes all information that is (a) referred to as confidential in section 77-5534, (b) restricted from disclosure or treated as confidential under any federal or state law, or (c) provided by the company to the department in connection with the company's project under the act. The report shall detail all assumptions, methods, or models that were used in performing the analysis and shall report information by industry group or expenditure category so that further analysis can be performed. The firm shall have access to all records of the department with regard to the credits granted under the act and the companies receiving such credits. Such records shall remain confidential in the hands of the firm conducting the audit and shall not be revealed to any person that is not employed by the department or the firm conducting the audit. No officer or employee of the firm conducting the audit shall disclose any information to any other person if such information is protected by federal or state confidentiality laws. Notwithstanding any other provision of this section to the contrary, neither the independent accounting firm nor any of its personnel shall be provided by the department with any confidential information except to the extent and under conditions when the department is permitted without penalty to do so under applicable federal or state laws.

(4) All information provided by the department to the independent accounting firm shall be examined only on the premises of the department and shall be stored in a secure place. The firm shall make no copies of such information. Any qualified independent accounting firm, or any personnel of the firm, which violates this section shall be guilty of a Class IV felony and, in the discretion of the court, may be assessed the costs of prosecution.

(5) Nothing in this section shall be construed to require the company to provide, or require the department to obtain from the company, any information beyond that required as part of the application or beyond that required by the department to confirm the company is entitled to the benefits of the act or to obtain the information required in subsection (2) of this section. The independent accounting firm shall not request any information from the company or its personnel. The independent accounting firm shall be permitted and expected to obtain additional outside public information available from sources outside of the company and the department in order to comply with the requirements for the report if copies of all such data, information, and sources are made available to the public or included with the report.

(6) Information obtained in connection with the audit from either the department or the company is confidential and is not discoverable or admissible in evidence in any civil action, and no department or company personnel shall be compelled to testify in regard thereto. Such information may be discovered and be admissible, and testimony compelled in regard thereto, by the department or by the company in an action relating to the determination of whether the company is entitled to the benefits of the act.

Source: Laws 2001, LB 620, § 44; Laws 2006, LB 1003, § 11; Laws 2012, LB782, § 145.
Operative date July 19, 2012.

Cross References

Public Accountancy Act, see section 1-105.

ARTICLE 56
TAX AMNESTY PROGRAM

Section
77-5601. Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

77-5601 Tax amnesty program; application; department; powers and duties; Department of Revenue Enforcement Fund; Department of Revenue Enforcement Technology Fund; created; investment.

(1) From August 1, 2004, through October 31, 2004, there shall be conducted a tax amnesty program with regard to taxes due and owing that have not been reported to the Department of Revenue. Any person applying for tax amnesty shall pay all unreported taxes that were due on or before April 1, 2004. Any person that applies for tax amnesty and is accepted by the Tax Commissioner shall have any penalties and interest waived on unreported and delinquent taxes notwithstanding any other provisions of law to the contrary.

(2) To be eligible for the tax amnesty provided by this section, the person shall apply for amnesty within the amnesty period, file a return for each taxable period for which the amnesty is requested by December 31, 2004, if no return has been filed, and pay in full all taxes for which amnesty is sought with the return or within thirty days after the application if a return was filed prior to the amnesty period. Tax amnesty shall not be available for any person that is under civil or criminal audit, investigation, or prosecution for unreported or delinquent taxes by this state or the United States Government on or before April 16, 2004.

(3) The department shall not seek civil or criminal prosecution against any person for any taxable period for which amnesty has been granted. The Tax Commissioner shall develop forms for applying for the tax amnesty program, develop procedures for qualification for tax amnesty, and conduct a public awareness campaign publicizing the program.

(4) If a person elects to participate in the amnesty program, the election shall constitute an express and irrevocable relinquishment of all administrative and judicial rights to challenge the imposition of the tax or its amount. Nothing in this section shall prohibit the department from adjusting a return as a result of any state or federal audit.

(5)(a) Except for any local option sales tax collected and returned to the appropriate municipality and any motor vehicle fuel, diesel fuel, and compressed fuel taxes, which shall be deposited in the Highway Trust Fund or Highway Allocation Fund as provided by law, no less than eighty percent of all revenue received pursuant to the tax amnesty program shall be deposited in the General Fund; ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund; and ten percent, not to exceed five hundred thousand dollars, shall be deposited in the Department of Revenue Enforcement Technology Fund. Any amount that would otherwise be deposited in the Department of Revenue Enforcement Fund or the Department of Revenue Enforcement Technology Fund that is in excess of the five-hundred-thousand-dollar limitation shall be deposited in the General Fund.

(b) For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Fund shall be appropriated to the department for purposes of employing investigators, agents, and auditors and otherwise increasing personnel for enforcement of the Nebraska Revenue Act of 1967. For fiscal year 2005-06, all proceeds in the Department of Revenue Enforcement Technology Fund shall be appropriated to the department for the purposes of acquiring lists, software, programming, computer equipment, and other technological methods for enforcing the act.

(c) For fiscal years after fiscal year 2005-06, twenty percent of all proceeds received during the previous calendar year due to the efforts of auditors and investigators hired pursuant to subdivision (5)(b) of this section, not to exceed seven hundred fifty thousand dollars, shall be deposited in the Department of Revenue Enforcement Fund for purposes of employing investigators and auditors or continuing such employment for purposes of increasing enforcement of the act.

(d) Ten percent of all proceeds received during each calendar year due to the contracts entered into pursuant to section 77-367 shall be deposited in the Department of Revenue Enforcement Fund for purposes of identifying nonfilers of returns, underreporters, nonpayers of taxes, and improper or fraudulent payments.

(6)(a) The department shall prepare a report by April 1, 2005, and by February 1 of each year thereafter detailing the results of the tax amnesty program and the subsequent enforcement efforts. For the report due April 1, 2005, the report shall include (i) the amount of revenue obtained as a result of the tax amnesty program broken down by tax program, (ii) the amount obtained from instate taxpayers and from out-of-state taxpayers, and (iii) the amount obtained from individual taxpayers and from business enterprises.

(b) For reports due in subsequent years, the report shall include (i) the number of personnel hired for purposes of subdivision (5)(b) of this section and their duties, (ii) a description of lists, software, programming, computer equipment, and other technological methods acquired pursuant to such subdivision and the purposes of each, and (iii) the amount of new revenue obtained as a result of the new personnel and acquisitions during the prior calendar year, broken down into the same categories as described in subdivision (6)(a) of this section.

(7) The Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology Fund are created. Transfers may be made from the Department of Revenue Enforcement Fund to the General Fund at the

direction of the Legislature. The Department of Revenue Enforcement Fund may receive transfers from the Civic and Community Center Financing Fund at the direction of the Legislature for the purpose of administering the Sports Arena Facility Financing Assistance Act. Any money in the Department of Revenue Enforcement Fund and the Department of Revenue Enforcement Technology 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 Revenue Enforcement Technology Fund shall terminate on July 1, 2006. Any unobligated money in the fund at that time shall be deposited in the General Fund.

(8) For purposes of this section, taxes mean any taxes collected by the department, including, but not limited to state and local sales and use taxes, individual and corporate income taxes, financial institutions deposit taxes, motor vehicle fuel, diesel fuel, and compressed fuel taxes, cigarette taxes, transfer taxes, and charitable gaming taxes.

Source: Laws 2004, LB 1017, § 23; Laws 2009, First Spec. Sess., LB3, § 58; Laws 2010, LB779, § 18; Laws 2011, LB297, § 10; Laws 2011, LB642, § 2.

Cross References

Nebraska Capital Expansion Act, see section 72-1269.
Nebraska Revenue Act of 1967, see section 77-2701.
Nebraska State Funds Investment Act, see section 72-1260.
Sports Arena Facility Financing Assistance Act, see section 13-3101.

ARTICLE 57
NEBRASKA ADVANTAGE ACT

Section

77-5701 Act, how cited.

Sections 77-5701 to 77-5735 shall be known and may be cited as the Nebraska Advantage Act.

Source: Laws 2005, LB 312, § 23; Laws 2008, LB895, § 6; Laws 2009, LB403, § 10; Laws 2012, LB1118, § 1.
Effective date March 8, 2012.

77-5703 Definitions, where found.

For purposes of the Nebraska Advantage Act, the definitions found in sections 77-5704 to 77-5721 shall be used.

Source: Laws 2005, LB 312, § 25; Laws 2008, LB895, § 7; Laws 2012, LB1118, § 2.
Effective date March 8, 2012.

77-5705 Base year, defined.

Except for a tier 5 project that is sequential to a tier 2 large data center project, base year means the year immediately preceding the year of application. For a tier 5 project that is sequential to a tier 2 large data center project, the base year means the last year of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

Source: Laws 2005, LB 312, § 27; Laws 2012, LB1118, § 4.
Effective date March 8, 2012.

77-5707 Compensation, defined.

Compensation means the wages and other payments subject to the federal medicare tax.

Source: Laws 2005, LB 312, § 29; Laws 2010, LB918, § 1.

77-5707.02 Data center, defined.

Data center means computers, supporting equipment, and other organized assembly of hardware or software that are designed to centralize the storage, management, or dissemination of data and information, environmentally controlled structures or facilities or interrelated structures or facilities that provide the infrastructure for housing the equipment, such as raised flooring, electricity supply, communication and data lines, Internet access, cooling, security, and fire suppression, and any building housing the foregoing. A data center also includes a facility described in this section for the co-location of computers.

Source: Laws 2012, LB1118, § 3.
Effective date March 8, 2012.

77-5715 Qualified business, defined.

(1) For a tier 2, tier 3, tier 4, or tier 5 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The performance of data processing, telecommunication, insurance, or financial services. For purposes of this subdivision, financial services includes only financial services provided by any financial institution subject to tax under Chapter 77, article 38, or any person or entity licensed by the Department of Banking and Finance or the federal Securities and Exchange Commission and telecommunication services includes community antenna television service, Internet access, satellite ground station, call center, or telemarketing;

(c) The assembly, fabrication, manufacture, or processing of tangible personal property;

(d) The administrative management of the taxpayer's activities, including headquarter facilities relating to such activities or the administrative manage-

ment of any of the activities of any business entity or entities in which the taxpayer or a group of its shareholders holds any direct or indirect ownership interest of at least ten percent, including headquarter facilities relating to such activities;

(e) The storage, warehousing, distribution, transportation, or sale of tangible personal property;

(f) The sale of tangible personal property if the taxpayer derives at least seventy-five percent or more of the sales or revenue attributable to such activities relating to the project from sales to consumers who are not related persons and are located outside the state;

(g) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and located outside the state or to the United States Government, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project;

(h) The research, development, and maintenance of an Internet web portal. For purposes of this subdivision, Internet web portal means an Internet site that allows users to access, search, and navigate the Internet;

(i) The research, development, and maintenance of a data center; or

(j) Any combination of the activities listed in this subsection.

(2) For a tier 1 project, qualified business means any business engaged in:

(a) The conducting of research, development, or testing for scientific, agricultural, animal husbandry, food product, or industrial purposes;

(b) The assembly, fabrication, manufacture, or processing of tangible personal property;

(c) The sale of software development services, computer systems design, product testing services, or guidance or surveillance systems design services or the licensing of technology if the taxpayer derives at least seventy-five percent of the sales or revenue attributable to such activities relating to the project from sales or licensing either to customers who are not related persons and are located outside the state or to the United States Government, including sales of such services, systems, or products delivered by providing the customer with software or access to software over the Internet or by other electronic means, regardless of whether the software or data accessed by customers is stored on a computer owned by the applicant, the customer, or a third party and regardless of whether the computer storing the software or data is located at the project; or

(d) Any combination of activities listed in this subsection.

(3) For a tier 6 project, qualified business means any business except a business excluded by subsection (4) of this section.

(4) Except for business activity described in subdivision (1)(f) of this section, qualified business does not include any business activity in which eighty

percent or more of the total sales are sales to the ultimate consumer of (a) food prepared for immediate consumption or (b) tangible personal property which is not assembled, fabricated, manufactured, or processed by the taxpayer or used by the purchaser in any of the activities listed in subsection (1) or (2) of this section.

Source: Laws 2005, LB 312, § 37; Laws 2007, LB223, § 29; Laws 2008, LB895, § 12; Laws 2009, LB164, § 4; Laws 2010, LB918, § 2; Laws 2012, LB1118, § 5.
Effective date March 8, 2012.

77-5719 Taxpayer, defined.

Taxpayer means any person subject to sales and use taxes under the Nebraska Revenue Act of 1967 and subject to withholding under section 77-2753 and any corporation, partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture that is or would otherwise be a member of the same unitary group, if incorporated, that is subject to such sales and use taxes or such withholding. Taxpayer does not include a political subdivision or an organization that is exempt from income taxes under section 501(a) of the Internal Revenue Code of 1986, as amended, or any partnership, limited liability company, cooperative, including a cooperative exempt under section 521 of the Internal Revenue Code of 1986, as amended, limited cooperative association, or joint venture in which political subdivisions or organizations described in section 501(c) or (d) of the code hold an ownership interest of twenty percent or more.

Source: Laws 2005, LB 312, § 41; Laws 2006, LB 1003, § 12; Laws 2007, LB368, § 139; Laws 2010, LB918, § 3.

Cross References

Nebraska Revenue Act of 1967, see section 77-2701.

77-5723 Incentives; application; contents; fee; approval; agreements; contents; modification.

(1) In order to utilize the incentives set forth in the Nebraska Advantage Act, the taxpayer shall file an application, on a form developed by the Tax Commissioner, requesting an agreement with the Tax Commissioner.

(2) The application shall contain:

(a) A written statement describing the plan of employment and investment for a qualified business in this state;

(b) Sufficient documents, plans, and specifications as required by the Tax Commissioner to support the plan and to define a project;

(c) If more than one location within this state is involved, sufficient documentation to show that the employment and investment at different locations are interdependent parts of the plan. A headquarters shall be presumed to be interdependent with each other location directly controlled by such headquarters. A showing that the parts of the plan would be considered parts of a unitary business for corporate income tax purposes shall not be sufficient to show interdependence for the purposes of this subdivision;

(d) A nonrefundable application fee of one thousand dollars for a tier 1 project, two thousand five hundred dollars for a tier 2, tier 3, or tier 5 project,

five thousand dollars for a tier 4 project, and ten thousand dollars for a tier 6 project. The fee shall be credited to the Nebraska Incentives Fund; and

(e) A timetable showing the expected sales tax refunds and what year they are expected to be claimed. The timetable shall include both direct refunds due to investment and credits taken as sales tax refunds as accurately as possible.

The application and all supporting information shall be confidential except for the name of the taxpayer, the location of the project, the amounts of increased employment and investment, and the information required to be reported by sections 77-5731 and 77-5734.

(3) An application must be complete to establish the date of the application. An application shall be considered complete once it contains the items listed in subsection (2) of this section, regardless of the Tax Commissioner's additional needs pertaining to information or clarification in order to approve or not approve the application.

(4) Once satisfied that the plan in the application defines a project consistent with the purposes stated in the Nebraska Advantage Act in one or more qualified business activities within this state, that the taxpayer and the plan will qualify for benefits under the act, and that the required levels of employment and investment for the project will be met prior to the end of the fourth year after the year in which the application was submitted for a tier 1, tier 3, or tier 6 project or the end of the sixth year after the year in which the application was submitted for a tier 2, tier 4, or tier 5 project, the Tax Commissioner shall approve the application. For a tier 5 project that is sequential to a tier 2 large data center project, the required level of investment shall be met prior to the end of the fourth year after the expiration of the tier 2 large data center project entitlement period relating to direct sales tax refunds.

(5) After approval, the taxpayer and the Tax Commissioner shall enter into a written agreement. The taxpayer shall agree to complete the project, and the Tax Commissioner, on behalf of the State of Nebraska, shall designate the approved plan of the taxpayer as a project and, in consideration of the taxpayer's agreement, agree to allow the taxpayer to use the incentives contained in the Nebraska Advantage Act. The application, and all supporting documentation, to the extent approved, shall be considered a part of the agreement. The agreement shall state:

(a) The levels of employment and investment required by the act for the project;

(b) The time period under the act in which the required levels must be met;

(c) The documentation the taxpayer will need to supply when claiming an incentive under the act;

(d) The date the application was filed; and

(e) A requirement that the company update the Department of Revenue annually on any changes in plans or circumstances which affect the timetable of sales tax refunds as set out in the application. If the company fails to comply with this requirement, the Tax Commissioner may defer any pending sales tax refunds until the company does comply.

(6) The incentives contained in section 77-5725 shall be in lieu of the tax credits allowed by the Nebraska Advantage Rural Development Act for any project. In computing credits under the act, any investment or employment which is eligible for benefits or used in determining benefits under the Nebras-

ka Advantage Act shall be subtracted from the increases computed for determining the credits under section 77-27,188. New investment or employment at a project location that results in the meeting or maintenance of the employment or investment requirements, the creation of credits, or refunds of taxes under the Employment and Investment Growth Act shall not be considered new investment or employment for purposes of the Nebraska Advantage Act. The use of carryover credits under the Employment and Investment Growth Act, the Invest Nebraska Act, the Nebraska Advantage Rural Development Act, or the Quality Jobs Act shall not preclude investment and employment from being considered new investment or employment under the Nebraska Advantage Act. The use of property tax exemptions at the project under the Employment and Investment Growth Act shall not preclude investment not eligible for the property tax exemption from being considered new investment under the Nebraska Advantage Act.

(7) A taxpayer and the Tax Commissioner may enter into agreements for more than one project and may include more than one project in a single agreement. The projects may be either sequential or concurrent. A project may involve the same location as another project. No new employment or new investment shall be included in more than one project for either the meeting of the employment or investment requirements or the creation of credits. When projects overlap and the plans do not clearly specify, then the taxpayer shall specify in which project the employment or investment belongs.

(8) The taxpayer may request that an agreement be modified if the modification is consistent with the purposes of the act and does not require a change in the description of the project. An agreement may not be modified to a tier that would grant a higher level of benefits to the taxpayer or to a tier 1 project. Once satisfied that the modification to the agreement is consistent with the purposes stated in the act, the Tax Commissioner and taxpayer may amend the agreement. For a tier 6 project, the taxpayer must agree to limit the project to qualified activities allowable under tier 2 and tier 4.

Source: Laws 2005, LB 312, § 45; Laws 2006, LB 1003, § 13; Laws 2008, LB895, § 15; Laws 2008, LB914, § 22; Laws 2009, LB164, § 5; Laws 2012, LB1118, § 6.
Effective date March 8, 2012.

Cross References

Employment and Investment Growth Act, see section 77-4101.
Invest Nebraska Act, see section 77-5501.
Nebraska Advantage Rural Development Act, see section 77-27,187.
Quality Jobs Act, see section 77-4901.

77-5725 Tiers; requirements; incentives; enumerated.

(1) Applicants may qualify for benefits under the Nebraska Advantage Act in one of six tiers:

(a) Tier 1, investment in qualified property of at least one million dollars and the hiring of at least ten new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015, without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before

December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(b) Tier 2, (i) investment in qualified property of at least three million dollars and the hiring of at least thirty new employees or (ii) for a large data center project, investment in qualified property for the data center of at least two hundred million dollars and the hiring for the data center of at least thirty new employees;

(c) Tier 3, the hiring of at least thirty new employees. There shall be no new project applications for benefits under this tier filed after December 31, 2015, without further authorization of the Legislature. All complete project applications filed on or before December 31, 2015, shall be considered by the Tax Commissioner and approved if the project and taxpayer qualify for benefits. Agreements may be executed with regard to completed project applications filed on or before December 31, 2015. All project agreements pending, approved, or entered into before such date shall continue in full force and effect;

(d) Tier 4, investment in qualified property of at least ten million dollars and the hiring of at least one hundred new employees;

(e) Tier 5, investment in qualified property of at least thirty million dollars. Failure to maintain an average number of equivalent employees as defined in section 77-5727 greater than or equal to the number of equivalent employees in the base year shall result in a partial recapture of benefits; and

(f) Tier 6, investment in qualified property of at least ten million dollars and the hiring of at least seventy-five new employees or the investment in qualified property of at least one hundred million dollars and the hiring of at least fifty new employees. Agreements may be executed with regard to completed project applications filed before January 1, 2016. All project agreements pending, approved, or entered into before such date shall continue in full force and effect.

(2) When the taxpayer has met the required levels of employment and investment contained in the agreement for a tier 1, tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be entitled to the following incentives:

(a) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 from the date of the application through the meeting of the required levels of employment and investment for all purchases, including rentals, of:

(i) Qualified property used as a part of the project;

(ii) Property, excluding motor vehicles, based in this state and used in both this state and another state in connection with the project except when any such property is to be used for fundraising for or for the transportation of an elected official;

(iii) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the owner of the improvement to real estate when such property is incorporated into real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax;

(iv) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is annexed to,

but not incorporated into, real estate as a part of a project. The refund shall be based on the cost of materials subject to the sales and use tax that were annexed to real estate; and

(v) Tangible personal property by a contractor or repairperson after appointment as a purchasing agent of the taxpayer when such property is both (A) incorporated into real estate as a part of a project and (B) annexed to, but not incorporated into, real estate as a part of a project. The refund shall be based on fifty percent of the contract price, excluding any land, as the cost of materials subject to the sales and use tax; and

(b) A refund of all sales and use taxes for a tier 2, tier 4, tier 5, or tier 6 project or a refund of one-half of all sales and use taxes for a tier 1 project paid under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 on the types of purchases, including rentals, listed in subdivision (a) of this subsection for such taxes paid during each year of the entitlement period in which the taxpayer is at or above the required levels of employment and investment.

(3) Any taxpayer who qualifies for a tier 1, tier 2, tier 3, or tier 4 project shall be entitled to a credit equal to three percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least sixty percent of the Nebraska average annual wage for the year of application. The credit shall equal four percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least seventy-five percent of the Nebraska average annual wage for the year of application. The credit shall equal five percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred percent of the Nebraska average annual wage for the year of application. The credit shall equal six percent times the average wage of new employees times the number of new employees if the average wage of the new employees equals at least one hundred twenty-five percent of the Nebraska average annual wage for the year of application. For computation of such credit:

(a) Average annual wage means the total compensation paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year, divided by the number of equivalent employees making up such total compensation;

(b) Average wage of new employees means the average annual wage paid to employees during the year at the project who are not base-year employees and who are paid wages equal to at least sixty percent of the Nebraska average weekly wage for the year of application, excluding any compensation in excess of one million dollars paid to any one employee during the year; and

(c) Nebraska average annual wage means the Nebraska average weekly wage times fifty-two.

(4) Any taxpayer who qualifies for a tier 6 project shall be entitled to a credit equal to ten percent times the total compensation paid to all employees, other than base-year employees, excluding any compensation in excess of one million dollars paid to any one employee during the year, employed at the project.

(5) Any taxpayer who has met the required levels of employment and investment for a tier 2 or tier 4 project shall receive a credit equal to ten percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 1 project shall receive a credit equal to three percent of the investment made in qualified property at the project. Any taxpayer who has met the required levels of investment and employment for a tier 6 project shall receive a credit equal to fifteen percent of the investment made in qualified property at the project.

(6) The credits prescribed in subsections (3), (4), and (5) of this section shall be allowable for compensation paid and investments made during each year of the entitlement period that the taxpayer is at or above the required levels of employment and investment.

(7) The credit prescribed in subsection (5) of this section shall also be allowable during the first year of the entitlement period for investment in qualified property at the project after the date of the application and before the required levels of employment and investment were met.

(8)(a) Property described in subdivisions (8)(c)(i) through (v) of this section used in connection with a project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed, shall constitute separate classes of property and are eligible for exemption under the conditions and for the time periods provided in subdivision (8)(b) of this section.

(b)(i) A taxpayer who has met the required levels of employment and investment for a tier 4 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), and (iv) of this section. A taxpayer who has met the required levels of employment and investment for a tier 6 project shall receive the exemption of property in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(ii) A taxpayer who has filed an application that describes a tier 2 large data center project or a project under tier 4 or tier 6 shall receive the exemption of property in subdivision (8)(c)(i) of this section beginning with the first January 1 following the acquisition of the property. The exemption shall continue through the end of the period property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(iii) A taxpayer who has filed an application that describes a tier 2 large data center project or a tier 5 project that is sequential to a tier 2 large data center project for which the entitlement period has expired shall receive the exemption of all property in subdivision (8)(c) of this section beginning any January 1 after the acquisition of the property. Such property shall be eligible for exemption from the tax on personal property from the January 1 preceding the first claim for exemption approved under this subdivision through the ninth December 31 after the year the first claim for exemption is approved.

(iv) A taxpayer who has a project for an Internet web portal or a data center and who has met the required levels of employment and investment for a tier 2 project or the required level of investment for a tier 5 project, taking into

account only the employment and investment at the web portal or data center project, shall receive the exemption of property in subdivision (8)(c)(ii) of this section. Such property shall be eligible for the exemption from the first January 1 following the end of the year during which the required levels were exceeded through the ninth December 31 after the first year any property included in subdivisions (8)(c)(ii), (iii), (iv), and (v) of this section qualifies for the exemption.

(v) Such investment and hiring of new employees shall be considered a required level of investment and employment for this subsection and for the recapture of benefits under this subsection only.

(c) The following property used in connection with such project or projects and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed shall constitute separate classes of personal property:

(i) Turbine-powered aircraft, including turboprop, turbojet, and turbofan aircraft, except when any such aircraft is used for fundraising for or for the transportation of an elected official;

(ii) Computer systems, made up of equipment that is interconnected in order to enable the acquisition, storage, manipulation, management, movement, control, display, transmission, or reception of data involving computer software and hardware, used for business information processing which require environmental controls of temperature and power and which are capable of simultaneously supporting more than one transaction and more than one user. A computer system includes peripheral components which require environmental controls of temperature and power connected to such computer systems. Peripheral components shall be limited to additional memory units, tape drives, disk drives, power supplies, cooling units, data switches, and communication controllers;

(iii) Depreciable personal property used for a distribution facility, including, but not limited to, storage racks, conveyor mechanisms, forklifts, and other property used to store or move products;

(iv) Personal property which is business equipment located in a single project if the business equipment is involved directly in the manufacture or processing of agricultural products; and

(v) For a tier 2 large data center project or tier 6 project, any other personal property located at the project.

(d) In order to receive the property tax exemptions allowed by subdivision (8)(c) of this section, the taxpayer shall annually file a claim for exemption with the Tax Commissioner on or before May 1. The form and supporting schedules shall be prescribed by the Tax Commissioner and shall list all property for which exemption is being sought under this section. A separate claim for exemption must be filed for each project and each county in which property is claimed to be exempt. A copy of this form must also be filed with the county assessor in each county in which the applicant is requesting exemption. The Tax Commissioner shall determine whether a taxpayer is eligible to obtain exemption for personal property based on the criteria for exemption and the eligibility of each item listed for exemption and, on or before August 1, certify such to the taxpayer and to the affected county assessor.

(9)(a) The investment thresholds in this section for a particular year of application shall be adjusted by the method provided in this subsection.

(b) For tier 1, tier 2, tier 4, and tier 5, beginning October 1, 2006, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2006 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2006.

(c) For tier 6, beginning October 1, 2008, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2008 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2008.

(d) For a tier 2 large data center project, beginning October 1, 2012, and each October 1 thereafter, the average Producer Price Index for all commodities, published by the United States Department of Labor, Bureau of Labor Statistics, for the most recent twelve available periods shall be divided by the Producer Price Index for the first quarter of 2012 and the result multiplied by the applicable investment threshold. The investment thresholds shall be adjusted for cumulative inflation since 2012.

(e) If the resulting amount is not a multiple of one million dollars, the amount shall be rounded to the next lowest one million dollars.

(f) The investment thresholds established by this subsection apply for purposes of project qualifications for all applications filed on or after January 1 of the following year for all years of the project. Adjustments do not apply to projects after the year of application.

Source: Laws 2005, LB 312, § 47; Laws 2006, LB 1003, § 14; Laws 2007, LB223, § 30; Laws 2007, LB334, § 98; Laws 2008, LB895, § 16; Laws 2008, LB965, § 22; Laws 2009, LB164, § 6; Laws 2010, LB879, § 18; Laws 2010, LB918, § 4; Laws 2012, LB1118, § 7. Effective date March 8, 2012.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5726 Credits; use; refund claims; procedures; interest; appointment of purchasing agent; protest; appeal.

(1)(a) The credits prescribed in section 77-5725 shall be established by filing the forms required by the Tax Commissioner with the income tax return for the year. The credits may be used and shall be applied in the order in which they were first allowed. The credits may be used after any other nonrefundable credits to reduce the taxpayer's income tax liability imposed by sections 77-2714 to 77-27,135. Any decision on how part of the credit is applied shall not limit how the remaining credit could be applied under this section.

(b) The taxpayer may use the credit provided in subsection (3) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to the number of new employees at the project, excluding any compensation in excess of one million dollars paid to any one employee during

the year. The taxpayer may use the credit provided in subsection (4) of section 77-5725 to reduce the taxpayer's income tax withholding employer or payor tax liability under section 77-2756 or 77-2757 to the extent such liability is attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year. To the extent of the credit used, such withholding shall not constitute public funds or state tax revenue and shall not constitute a trust fund or be owned by the state. The use by the taxpayer of the credit shall not change the amount that otherwise would be reported by the taxpayer to the employee under section 77-2754 as income tax withheld and shall not reduce the amount that otherwise would be allowed by the state as a refundable credit on an employee's income tax return as income tax withheld under section 77-2755.

For a tier 1, tier 2, tier 3, or tier 4 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to new employees employed at the project, excluding any compensation in excess of one million dollars paid to any one employee during the year.

For a tier 6 project, the amount of credits used against income tax withholding shall not exceed the withholding attributable to all employees employed at the project, other than base-year employees and excluding any compensation in excess of one million dollars paid to any one employee during the year.

If the amount of credit used by the taxpayer against income tax withholding exceeds this amount, the excess withholding shall be returned to the Department of Revenue in the manner provided in section 77-2756, such excess amount returned shall be considered unused, and the amount of unused credits may be used as otherwise permitted in this section or shall carry over to the extent authorized in subdivision (1)(e) of this section.

(c) Credits may be used to obtain a refund of sales and use taxes under the Local Option Revenue Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not otherwise refundable that are paid on purchases, including rentals, for use at the project for a tier 1, tier 2, tier 3, or tier 4 project or for use within this state for a tier 2 large data center project or a tier 6 project.

(d) The credits earned for a tier 6 project may be used to obtain a payment from the state equal to the real property taxes due after the year the required levels of employment and investment were met and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. Once the required levels of employment and investment for a tier 2 large data center project have been met, the credits earned for a tier 2 large data center project may be used to obtain a payment from the state equal to the real property taxes due after the year of application and before the end of the carryover period, for real property that is included in such project and acquired by the taxpayer, whether by lease or purchase, after the date the application was filed. The payment from the state shall be made only after payment of the real property taxes have been made to the county as required by law. Payments shall not be allowed for any taxes paid on real property for which the taxes are divided under section 18-2147 or 58-507.

(e) Credits may be carried over until fully utilized, except that such credits may not be carried over more than nine years after the year of application for a

tier 1 or tier 3 project, fourteen years after the year of application for a tier 2 or tier 4 project, or more than one year past the end of the entitlement period for a tier 6 project.

(2)(a) No refund claims shall be filed until after the required levels of employment and investment have been met.

(b) Refund claims shall be filed no more than once each quarter for refunds under the Nebraska Advantage Act, except that any claim for a refund in excess of twenty-five thousand dollars may be filed at any time.

(c) Refund claims for materials purchased by a purchasing agent shall include:

(i) A copy of the purchasing agent appointment;

(ii) The contract price; and

(iii)(A) For refunds under subdivision (2)(a)(iii) or (2)(a)(v) of section 77-5725, a certification by the contractor or repairperson of the percentage of the materials incorporated into or annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent; or

(B) For refunds under subdivision (2)(a)(iv) of section 77-5725, a certification by the contractor or repairperson of the percentage of the contract price that represents the cost of materials annexed to the project and the percentage of the materials annexed to the project on which sales and use taxes were paid to Nebraska after appointment as purchasing agent.

(d) All refund claims shall be filed, processed, and allowed as any other claim under section 77-2708, except that the amounts allowed to be refunded under the Nebraska Advantage Act shall be deemed to be overpayments and shall be refunded notwithstanding any limitation in subdivision (2)(a) of section 77-2708. The refund may be allowed if the claim is filed within three calendar years from the end of the year the required levels of employment and investment are met or within the period set forth in section 77-2708.

(e) If a claim for a refund of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 of more than twenty-five thousand dollars is filed by June 15 of a given year, the refund shall be made on or after November 15 of the same year. If such a claim is filed on or after June 16 of a given year, the refund shall not be made until on or after November 15 of the following year. The Tax Commissioner shall notify the affected city, village, county, or municipal county of the amount of refund claims of sales and use taxes under the Local Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are in excess of twenty-five thousand dollars on or before July 1 of the year before the claims will be paid under this section.

(f) Interest shall not be allowed on any taxes refunded under the Nebraska Advantage Act.

(3) The appointment of purchasing agents shall be recognized for the purpose of changing the status of a contractor or repairperson as the ultimate consumer of tangible personal property purchased after the date of the appointment which is physically incorporated into or annexed to the project and becomes the property of the owner of the improvement to real estate or the taxpayer. The purchasing agent shall be jointly liable for the payment of the sales and use tax on the purchases with the owner of the property.

(4) A determination that a taxpayer is not engaged in a qualified business or has failed to meet or maintain the required levels of employment or investment

for incentives, exemptions, or recapture may be protested within sixty days after the mailing of the written notice of the proposed determination. If the notice of proposed determination is not protested within the sixty-day period, the proposed determination is a final determination. If the notice is protested, the Tax Commissioner shall issue a written order resolving such protests. The written order of the Tax Commissioner resolving a protest may be appealed to the district court of Lancaster County within thirty days after the issuance of the order.

Source: Laws 2005, LB 312, § 48; Laws 2008, LB895, § 17; Laws 2008, LB914, § 23; Laws 2009, LB164, § 7; Laws 2010, LB879, § 19; Laws 2012, LB1118, § 8.
Effective date March 8, 2012.

Cross References

Local Option Revenue Act, see section 77-27,148.
Nebraska Revenue Act of 1967, see section 77-2701.

77-5727 Recapture or disallowance of incentives.

(1)(a) If the taxpayer fails either to meet the required levels of employment or investment for the applicable project by the end of the fourth year after the end of the year the application was submitted for a tier 1, tier 3, or tier 6 project or by the end of the sixth year after the end of the year the application was submitted for a tier 2, tier 4, or tier 5 project or to utilize such project in a qualified business at employment and investment levels at or above those required in the agreement for the entire entitlement period, all or a portion of the incentives set forth in the Nebraska Advantage Act shall be recaptured or disallowed.

(b) In the case of a taxpayer who has failed to meet the required levels of investment or employment within the required time period, all reduction in the personal property tax because of the act shall be recaptured.

(2) In the case of a taxpayer who has failed to maintain the project at the required levels of employment or investment for the entire entitlement period, any reduction in the personal property tax, any refunds in tax allowed under subsection (2) of section 77-5725, and any refunds or reduction in tax allowed because of the use of a credit allowed under section 77-5725 shall be partially recaptured from either the taxpayer or the owner of the improvement to real estate and any carryovers of credits shall be partially disallowed. The amount of the recapture shall be a percentage equal to the number of years the taxpayer did not maintain the project at or above the required levels of investment and employment divided by the number of years of the project's entitlement period multiplied by the refunds allowed, reduction in personal property tax, the credits used, and the remaining carryovers. In addition, the last remaining year of personal property tax exemption shall be disallowed for each year the taxpayer did not maintain such project at or above the required levels of employment or investment.

(3) In the case of a taxpayer qualified under tier 5 who has failed to maintain the average number of equivalent employees at the project at the end of the six years following the year the taxpayer attained the required amount of investment, any refunds in tax allowed under subsection (2) of section 77-5725 or any reduction in the personal property tax under section 77-5725 shall be partially recaptured from the taxpayer. The amount of recapture shall be the total

amount of refunds and reductions in tax allowed for all years times the reduction in the average number of equivalent employees employed at the end of the entitlement period from the number of equivalent employees employed in the base year divided by the number of equivalent employees employed in the base year. For purposes of this subsection, the average number of equivalent employees shall be calculated at the end of the entitlement period by adding the number of equivalent employees in the year the taxpayer attains the required level of investment and each of the next following six years and dividing the result by seven.

(4) If the taxpayer receives any refunds or reduction in tax to which the taxpayer was not entitled or which were in excess of the amount to which the taxpayer was entitled, the refund or reduction in tax shall be recaptured separate from any other recapture otherwise required by this section. Any amount recaptured under this subsection shall be excluded from the amounts subject to recapture under other subsections of this section.

(5) Any refunds or reduction in tax due, to the extent required to be recaptured, shall be deemed to be an underpayment of the tax and shall be immediately due and payable. When tax benefits were received in more than one year, the tax benefits received in the most recent year shall be recovered first and then the benefits received in earlier years up to the extent of the required recapture.

(6)(a) Except as provided in subdivision (6)(b) of this section, any personal property tax that would have been due except for the exemption allowed under the Nebraska Advantage Act, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately due and payable to the county or counties in which the property was located when exempted.

(b) For a tier 2 large data center project, any personal property tax that would have been due except for the exemption under the Nebraska Advantage Act, together with interest at the rate provided in section 45-104.01 from the original delinquency date of the tax that would have been due until the date paid, to the extent it becomes due under this section, shall be considered delinquent and shall be immediately payable to the county or counties in which the property was located when exempted.

(c) All amounts received by a county under this section shall be allocated to each taxing unit levying taxes on tangible personal property in the county in the same proportion that the levy on tangible personal property of such taxing unit bears to the total levy of all of such taxing units.

(7) Notwithstanding any other limitations contained in the laws of this state, collection of any taxes deemed to be underpayments by this section shall be allowed for a period of three years after the end of the entitlement period.

(8) Any amounts due under this section shall be recaptured notwithstanding other allowable credits and shall not be subsequently refunded under any provision of the Nebraska Advantage Act unless the recapture was in error.

(9) The recapture required by this section shall not occur if the failure to maintain the required levels of employment or investment was caused by an act of God or national emergency.

Source: Laws 2005, LB 312, § 49; Laws 2006, LB 1003, § 15; Laws 2008, LB895, § 18; Laws 2009, LB164, § 8; Laws 2012, LB1118, § 9. Effective date March 8, 2012.

77-5731 Reports.

(1) The Tax Commissioner shall submit electronically an annual report to the Legislature no later than July 15 of each year.

(2) The report shall list (a) the agreements which have been signed during the previous calendar year, (b) the agreements which are still in effect, (c) the identity of each taxpayer who is party to an agreement, and (d) the location of each project.

(3) The report shall also state, for taxpayers who are parties to agreements, by industry group (a) the specific incentive options applied for under the Nebraska Advantage Act, (b) the refunds allowed on the investment, (c) the credits earned, (d) the credits used to reduce the corporate income tax and the credits used to reduce the individual income tax, (e) the credits used to obtain sales and use tax refunds, (f) the credits used against withholding liability, (g) the number of jobs created under the act, (h) the total number of employees employed in the state on the last day of the calendar quarter prior to the application date and the total number of employees employed in the state on subsequent reporting dates, (i) the expansion of capital investment, (j) the estimated wage levels of jobs created under the act subsequent to the application date, (k) the total number of qualified applicants, (l) the projected future state revenue gains and losses, (m) the sales tax refunds owed, (n) the credits outstanding under the act, (o) the value of personal property exempted by class in each county under the act, (p) the value of property for which payments equal to property taxes paid were allowed in each county, and (q) the total amount of the payments.

(4) In estimating the projected future state revenue gains and losses, the report shall detail the methodology utilized, state the economic multipliers and industry multipliers used to determine the amount of economic growth and positive tax revenue, describe the analysis used to determine the percentage of new jobs attributable to the Nebraska Advantage Act assumption, and identify limitations that are inherent in the analysis method.

(5) The report shall provide an explanation of the audit and review processes of the Department of Revenue in approving and rejecting applications or the grant of incentives and in enforcing incentive recapture. The report shall also specify the median period of time between the date of application and the date the agreement is executed for all agreements executed by December 31 of the prior year.

(6) The report shall provide information on project-specific total incentives used every two years for each approved project. The report shall disclose (a) the identity of the taxpayer, (b) the location of the project, and (c) the total credits used and refunds approved during the immediately preceding two years expressed as a single, aggregated total. The incentive information required to be reported under this subsection shall not be reported for the first year the taxpayer attains the required employment and investment thresholds. The information on first-year incentives used shall be combined with and reported as part of the second year. Thereafter, the information on incentives used for succeeding years shall be reported for each project every two years containing information on two years of credits used and refunds approved. The incentives used shall include incentives which have been approved by the department, but not necessarily received, during the previous two calendar years.

(7) The report shall include an executive summary which shows aggregate information for all projects for which the information on incentives used in subsection (6) of this section is reported as follows: (a) The total incentives used by all taxpayers for projects detailed in subsection (6) of this section during the previous two years; (b) the number of projects; (c) the total number of employees of these taxpayers employed in the state on the last day of the calendar quarter prior to the application date, the new jobs at the project for which credits have been granted, and the total number of employees employed in the state by these taxpayers on subsequent reporting dates; (d) the average compensation paid employees in the state in the year of application and for the new jobs at the project; and (e) the total investment for which incentives were granted. The executive summary shall summarize the number of states which grant investment tax credits, job tax credits, sales and use tax refunds for qualified investment, and personal property tax exemptions and the investment and employment requirements under which they may be granted.

(8) No information shall be provided in the report that is protected by state or federal confidentiality laws.

Source: Laws 2005, LB 312, § 53; Laws 2008, LB895, § 19; Laws 2012, LB782, § 146.
Operative date July 19, 2012.

77-5735 Changes to sections; when effective; applicability.

(1) The changes made in sections 77-5703, 77-5708, 77-5712, 77-5714, 77-5715, 77-5723, 77-5725, 77-5726, 77-5727, and 77-5731 by Laws 2008, LB895, and sections 77-5707.01, 77-5719.01, and 77-5719.02 apply to all applications filed on and after April 18, 2008. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(2) The changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the taxpayer may make a one-time election, within the time period prescribed by the Tax Commissioner, to have the changes made in sections 77-5725 and 77-5726 by Laws 2010, LB879, apply to such taxpayer's application, or in the absence of such an election, the provisions of the Nebraska Advantage Act as they existed immediately prior to July 15, 2010, apply to such application.

(3) The changes made in sections 77-5707, 77-5715, 77-5719, and 77-5725 by Laws 2010, LB918, apply to all applications filed on or after July 15, 2010. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

(4) The changes made in sections 77-5701, 77-5703, 77-5705, 77-5715, 77-5723, 77-5725, 77-5726, and 77-5727 by Laws 2012, LB1118, apply to all applications filed on or after March 8, 2012. For all applications filed prior to such date, the provisions of the Nebraska Advantage Act as they existed immediately prior to such date apply.

Source: Laws 2008, LB895, § 20; Laws 2010, LB879, § 20; Laws 2010, LB918, § 5; Laws 2012, LB1118, § 10.
Effective date March 8, 2012.

ARTICLE 58

NEBRASKA ADVANTAGE RESEARCH AND DEVELOPMENT ACT

Section
77-5803. Research tax credit; amount.

77-5803 Research tax credit; amount.

(1)(a) Except as provided in subdivision (1)(b) of this section, any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal fifteen percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the twenty tax years immediately following.

(b) Any business firm which makes expenditures in research and experimental activities as defined in section 174 of the Internal Revenue Code of 1986, as amended, on the campus of a college or university in this state or at a facility owned by a college or university in this state shall be allowed a research tax credit as provided in the Nebraska Advantage Research and Development Act. The credit amount under this subdivision shall equal thirty-five percent of the federal credit allowed under section 41 of the Internal Revenue Code of 1986, as amended, or as apportioned to this state under subsection (2) of this section. The credit shall be allowed for the first tax year it is claimed and for the twenty tax years immediately following.

(2) For any business firm doing business both within and without this state, the amount of the federal credit may be determined either by dividing the amount expended in research and experimental activities in this state in any tax year by the total amount expended in research and experimental activities or by apportioning the amount of the credit on the federal income tax return to the state based on the average of the property factor as determined in section 77-2734.12 and the payroll factor as determined in section 77-2734.13.

Source: Laws 2005, LB 312, § 61; Laws 2007, LB223, § 31; Laws 2008, LB915, § 7; Laws 2009, LB555, § 1; Laws 2012, LB983, § 1. Operative date January 1, 2012.

ARTICLE 62

NAMEPLATE CAPACITY TAX

Section
77-6201. Legislative findings and declarations.
77-6202. Terms, defined.
77-6203. Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.
77-6204. County treasurer; distribute revenue; calculation.

77-6201 Legislative findings and declarations.

The Legislature finds and declares:

(1) The purpose of the nameplate capacity tax levied under section 77-6203 is to replace property taxes currently imposed on wind infrastructure and depre-

ciated over a short period of time in a way that causes local budgeting challenges and increases upfront costs for wind developers;

(2) The nameplate capacity tax should be competitive with taxes imposed directly and indirectly on wind generation and development in other states;

(3) The nameplate capacity tax should be fair and nondiscriminatory when compared with other taxes imposed on other industries in the state; and

(4) The nameplate capacity tax should not be singled out as a source of General Fund revenue during times of economic hardship.

Source: Laws 2010, LB1048, § 12.

77-6202 Terms, defined.

For purposes of sections 77-6201 to 77-6204:

(1) Commissioned means the wind turbine of a wind generation facility has been in commercial operation for at least twenty-four hours. A wind turbine is not in commercial operation unless the wind energy generation facility is connected to the electrical grid;

(2) Nameplate capacity means the capacity of a wind turbine to generate electricity as measured in megawatts, including fractions of a megawatt; and

(3) Wind energy generation facility means a facility that generates electricity using wind as the fuel source.

Source: Laws 2010, LB1048, § 13.

77-6203 Nameplate capacity tax; annual payment; exemptions; Department of Revenue; duties; owner; file report; interest; penalties.

(1) The owner of a wind energy generation facility annually shall pay a nameplate capacity tax equal to the total nameplate capacity of the commissioned wind turbine of the wind energy generation facility multiplied by a tax rate of three thousand five hundred eighteen dollars per megawatt.

(2) No tax shall be imposed on a wind energy generation facility:

(a) Owned or operated by the federal government, the State of Nebraska, a public power district, a public power and irrigation district, an individual municipality, a registered group of municipalities, an electric membership association, or a cooperative; or

(b) That is a customer-generator as defined in section 70-2002.

(3) No tax levied pursuant to this section shall be construed to constitute restricted funds as defined in section 13-518 for the first five years after the wind energy generation facility is commissioned.

(4) The presence of one or more wind energy generation facilities or supporting infrastructure shall not be a factor in the assessment, determination of actual value, or classification under section 77-201 of the real property underlying or adjacent to such facilities or infrastructure.

(5)(a) The Department of Revenue shall collect the tax due under this section.

(b) The tax shall be imposed beginning the first calendar year the wind turbine is commissioned. A wind energy generation facility commissioned prior to July 15, 2010, shall be subject to the tax levied pursuant to sections 77-6201 to 77-6204 on and after January 1, 2010. The amount of property tax on depreciable tangible personal property previously paid on a wind energy

generation facility commissioned prior to July 15, 2010, which is greater than the amount that would have been paid pursuant to sections 77-6201 to 77-6204 from the date of commissioning until January 1, 2010, shall be credited against any tax due under Chapter 77, and any amount so credited that is unused in any tax year shall be carried over to subsequent tax years until fully utilized.

(c)(i) The tax for the first calendar year shall be prorated based upon the number of days remaining in the calendar year after the wind turbine is commissioned.

(ii) In the first year in which a wind energy generation facility is taxed or in any year in which additional commissioned nameplate capacity is added to a wind energy generation facility, the taxes on the initial or additional nameplate capacity shall be prorated for the number of days remaining in the calendar year.

(iii) When a wind turbine is decommissioned or made nonoperational by a change in law or decertification from its status as a certified renewable export facility during a tax year, the taxes shall be prorated for the number of days during which the wind turbine was not decommissioned or was operational.

(iv) When the capacity of a wind turbine to produce electricity is reduced but the wind turbine is not decommissioned, the nameplate capacity of the wind turbine is deemed to be unchanged.

(6)(a) On March 1 of each year, the owner of a wind energy generation facility shall file with the Department of Revenue a report on the nameplate capacity of the facility for the previous year from January 1 through December 31. All taxes shall be due on April 1 and shall be delinquent if not paid on a quarterly basis on April 1 and each quarter thereafter. Delinquent quarterly payments shall draw interest at the rate provided for in section 45-104.02, as such rate may from time to time be adjusted.

(b) The owner of a wind energy generation facility is liable for the taxes under this section with respect to the facility, whether or not the owner of the facility is the owner of the land on which the facility is situated.

(7) Failure to file a report required by subsection (6) of this section, filing such report late, failure to pay taxes due, or underpayment of such taxes shall result in a penalty of five percent of the amount due being imposed for each quarter the report is overdue or the payment is delinquent, except that the penalty shall not exceed ten thousand dollars.

(8) The Department of Revenue shall enforce the provisions of this section. The department shall adopt and promulgate rules and regulations necessary for the implementation and enforcement of this section.

(9) The Department of Revenue shall separately identify the proceeds from the tax imposed by this section and shall pay all such proceeds over to the county treasurer of the county where the wind energy generation facility is located within thirty days after receipt of such proceeds.

Source: Laws 2010, LB1048, § 14; Laws 2011, LB360, § 4.

77-6204 County treasurer; distribute revenue; calculation.

(1) The county treasurer shall distribute all revenue received from the Department of Revenue pursuant to section 77-6203 to local taxing entities which, but for such personal property tax exemption, would have received

distribution of personal property tax revenue from depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(2) A local taxing entity's status as eligible for distribution under subsection (1) of this section shall not be affected when and if the net book value of personal property used directly in the generation of electricity using wind as the fuel source becomes zero. A local taxing entity's status as eligible for distribution under such subsection shall be affected by the disposal of all of the exempt depreciable personal property used directly in the generation of electricity using wind as the fuel source.

(3) The distribution to each eligible local taxing entity shall be calculated by determining the amount of taxes that the eligible local taxing entity levied during the taxable year and dividing this amount by the total tax levied by all of the eligible local taxing entities during the year. Each eligible entity's resulting fraction shall then be multiplied by the revenue distributed to the county treasurer by the department to determine the portion of such revenue due each local taxing entity.

(4) The Department of Revenue shall not retain any revenue collected pursuant to sections 77-6201 to 77-6204 for distribution, use, transfer, pledge, or allocation to or from the General Fund.

Source: Laws 2010, LB1048, § 15.

ARTICLE 63

ANGEL INVESTMENT TAX CREDIT ACT

Section

77-6301 Act, how cited.

Sections 77-6301 to 77-6310 shall be known and may be cited as the Angel Investment Tax Credit Act.

Source: Laws 2011, LB389, § 1.

77-6302 Terms, defined.

For purposes of the Angel Investment Tax Credit Act:

(1) Director means the Director of Economic Development;

(2) Distressed area means a municipality, a county with a population of fewer than one hundred thousand inhabitants according to the most recent federal decennial census, an unincorporated area within a county, or a census tract in Nebraska that (a) has an unemployment rate which exceeds the statewide

average unemployment rate, (b) has a per capita income below the statewide average per capita income, or (c) had a population decrease between the two most recent federal decennial censuses;

(3) Family member means a family member within the meaning of section 267(c)(4) of the Internal Revenue Code of 1986, as amended;

(4) Pass-through entity means an organization that for the applicable taxable year is a subchapter S corporation, general partnership, limited partnership, limited liability partnership, trust, or limited liability company and that for the applicable taxable year is not taxed as a corporation;

(5) Qualified fund means a fund that has been certified by the director under section 77-6304;

(6) Qualified high-technology field includes, but is not limited to, aerospace, agricultural processing, renewable energy, energy efficiency and conservation, environmental engineering, food technology, cellulosic ethanol, information technology, materials science technology, nanotechnology, telecommunications, biosolutions, medical device products, pharmaceuticals, diagnostics, biologicals, chemistry, veterinary science, and similar fields;

(7) Qualified investment means a cash investment in a qualified small business made in exchange for common stock, a partnership or membership interest, preferred stock, debt with mandatory conversion to equity, or an equivalent ownership interest as determined by the director of a minimum of:

(a) Twenty-five thousand dollars in a calendar year by a qualified investor; or

(b) Fifty thousand dollars in a calendar year by a qualified fund;

(8) Qualified investor means an individual, trust, or pass-through entity which has been certified by the director under section 77-6305; and

(9) Qualified small business means a business that has been certified by the director under section 77-6303.

Source: Laws 2011, LB389, § 2.

77-6303 Qualified small business; certification; application; form; director; duties; qualification; eligibility for tax credits.

(1) A business may apply to the director for certification as a qualified small business. The application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the business as satisfying the conditions required of a qualified small business, request additional information, or deny the application. If the director requests additional information, the director shall certify the business or deny the application within thirty days after receiving the additional information. If the director neither certifies the business nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the business meets the qualifications in subsection (3) of this section. A business that applies for certification and is denied may reapply.

(3) To be certified, a business shall:

(a) Have its headquarters in Nebraska;

(b) Have at least fifty-one percent of its employees employed in Nebraska and have at least fifty-one percent of its total payroll paid or incurred in Nebraska;

(c) Be engaged in, or committed to engage in, innovation in Nebraska in one or more of the following activities as its primary business activity:

(i) Using proprietary technology to add value to a product, process, or service in a qualified high-technology field; or

(ii) Researching, developing, or producing a proprietary product, process, or service in a qualified high-technology field;

(d) Except for activities listed in subdivision (3)(c) of this section, not be engaged in political consulting, leisure, hospitality, or professional services provided by attorneys, accountants, physicians, or health care consultants; and

(e) Have twenty-five or fewer employees at the time the qualified investment is made.

(4) In order for a qualified investment in a qualified small business to be eligible for tax credits, the business shall have applied for and received certification for the calendar year in which the qualified investment was made prior to the date on which the qualified investment was made.

Source: Laws 2011, LB389, § 3.

77-6304 Pass-through entity; certification as qualified fund; application; form; director; duties; qualification; eligibility for tax credits.

(1) A pass-through entity may apply to the director for certification as a qualified fund for a calendar year. The application shall be in the form and be made under the procedures specified by the director.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the pass-through entity as satisfying the conditions required of a qualified fund, request additional information, or deny the application. If the director requests additional information, the director shall certify the pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the pass-through entity nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the pass-through entity meets the qualifications in subsection (3) of this section. A pass-through entity that applies for certification and is denied may reapply.

(3) To be certified, a pass-through entity shall:

(a) Invest or intend to invest in qualified small businesses; and

(b) Have at least three separate investors and all the investors satisfy the conditions in subsection (3) of section 77-6305.

(4) A qualified fund may consist of equity investments or notes that pay interest or other fixed amounts, or any combination of both.

(5) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified fund that makes the qualified investment shall have applied for and received certification for the calendar year in which the qualified investment was made prior to making the qualified investment.

Source: Laws 2011, LB389, § 4.

77-6305 Individual, trust, or pass-through entity; certification; application; form; director; duties; qualification; eligibility for tax credits.

(1) An individual, trust, or pass-through entity may apply to the director for certification as a qualified investor for a calendar year. The application shall be in the form and be made under the procedures specified by the director. The director shall not certify the following types of individuals, trusts, or pass-through entities as qualified investors:

(a) An individual who controls fifty percent or more of the qualified small business receiving the qualified investment;

(b) A venture capital company; or

(c) Any bank, savings and loan association, insurance company, or similar entity whose normal business activities include venture capital investments.

(2) Within thirty days after receiving an application for certification under this section, the director shall certify the individual, trust, or pass-through entity as satisfying the conditions required of a qualified investor, request additional information, or deny the application. If the director requests additional information, the director shall certify the individual, trust, or pass-through entity or deny the application within thirty days after receiving the additional information. If the director neither certifies the individual, trust, or pass-through entity nor denies the application within thirty days after receiving the original application or within thirty days after receiving the additional information requested, whichever is later, then the application is deemed approved if the individual, trust, or pass-through entity meets the qualifications in subsection (1) of this section. An individual, trust, or pass-through entity which applies for certification and is denied may reapply.

(3) In order for a qualified investment in a qualified small business to be eligible for tax credits, a qualified investor who makes the qualified investment shall have applied for and received certification for the calendar year in which the qualified investment was made prior to making the qualified investment, except that in the case of an investor who is an accredited investor within the meaning of Regulation D of the Securities and Exchange Commission, 17 C.F.R. 230.501(a), as such regulation existed on January 1, 2011, application for certification may be made within thirty days after making the qualified investment.

Source: Laws 2011, LB389, § 5.

77-6306 Tax credit; amount; director; allocation; limitation; reallocation; when; notice to director; tax credit certificates issued; holding period.

(1) For taxable years beginning or deemed to begin on or after January 1, 2011, under the Internal Revenue Code of 1986, as amended, a qualified investor or qualified fund is eligible for a refundable tax credit equal to thirty-five percent of its qualified investment in a qualified small business, except that if the qualified small business is located in a distressed area the qualified investor or qualified fund is eligible for a refundable tax credit equal to forty percent of its qualified investment in the qualified small business. The director shall not allocate more than three million dollars in tax credits to all qualified investors or qualified funds in a calendar year. If the director does not allocate the entire three million dollars of tax credits in a calendar year, the tax credits

that are not allocated shall not carry forward to subsequent years. The director shall not allocate any amount for tax credits for calendar years after 2017.

(2) The director shall not allocate more than a total maximum amount in tax credits for a calendar year to a qualified investor for the investor's cumulative qualified investments as an individual qualified investor and as an investor in a qualified fund as provided in this subsection. For married couples filing joint returns the maximum is three hundred fifty thousand dollars, and for all other filers the maximum is three hundred thousand dollars. The director shall not allocate more than a total of one million dollars in tax credits for qualified investments in any one qualified small business.

(3) The director shall not allocate a tax credit to a qualified investor either as an individual qualified investor or as an investor in a qualified fund if the investor receives more than forty-nine percent of the investor's gross annual income from the qualified small business in which the qualified investment is proposed. A family member of an individual disqualified by this subsection is not eligible for a tax credit under this section. For a married couple filing a joint return, the limitations in this subsection apply collectively to the investor and spouse. For purposes of determining the ownership interest of an investor under this subsection, the rules under section 267(c) and (e) of the Internal Revenue Code of 1986, as amended, apply.

(4) Tax credits shall be allocated to qualified investors or qualified funds in the order that the tax credit applications are filed with the director. Once tax credits have been approved and allocated by the director, the qualified investors and qualified funds shall implement the qualified investment specified within ninety days. If the qualified investment is not made within ninety days, the tax credit allocation is canceled and available for reallocation. A qualified investor or qualified fund that fails to invest as specified in the application within ninety days after allocation of the tax credits shall notify the director of the failure to invest within five business days after the expiration of the ninety-day investment period.

(5) All tax credit applications filed with the director on the same day shall be treated as having been filed contemporaneously. If two or more qualified investors or qualified funds file tax credit applications on the same day and the aggregate amount of tax credit allocation requests exceeds the aggregate limit of tax credits under this section or the lesser amount of tax credits that remain unallocated on that day, then the tax credits shall be allocated among the qualified investors or qualified funds who filed on that day on a pro rata basis with respect to the amounts requested. The pro rata allocation for any one qualified investor or qualified fund shall be the product obtained by multiplying a fraction, the numerator of which is the amount of the tax credit allocation request filed on behalf of a qualified investor or qualified fund and the denominator of which is the total of all tax credit allocation requests filed on behalf of all applicants on that day, by the amount of tax credits that remain unallocated on that day for the taxable year.

(6) A qualified investor or qualified fund, or a qualified small business acting on behalf of the investor or fund, shall notify the director when an investment for which tax credits were allocated has been made and the date the investment was made. A qualified fund shall also provide the director with a statement indicating the amount invested by each investor in the qualified fund based on each investor's share of the assets of the qualified fund at the time of the

qualified investment. After receiving notification that the qualified investment was made, the director shall issue tax credit certificates for the taxable year in which the qualified investment was made to the qualified investor or, for a qualified investment made by a qualified fund, to each qualified investor who is an investor in the fund. The certificate shall state that the tax credit is subject to revocation if the qualified investor or qualified fund does not hold the investment in the qualified small business for at least three years, consisting of the calendar year in which the investment was made and the two following calendar years. The three-year holding period does not apply if:

(a) The qualified investment by the qualified investor or qualified fund becomes worthless before the end of the three-year period;

(b) Eighty percent or more of the assets of the qualified small business are sold before the end of the three-year period;

(c) The qualified small business is sold or merges with another business before the end of the three-year period; or

(d) The qualified small business's common stock begins trading on a public exchange before the end of the three-year period.

(7) The director shall notify the Tax Commissioner that tax credit certificates have been issued, including the amount of tax credits and all other pertinent tax information.

Source: Laws 2011, LB389, § 6.

77-6307 Annual report; contents; failure to file; fine; final report; when required.

(1) Beginning July 1, 2012, each qualified small business, qualified investor, and qualified fund shall submit an annual report to the director by July 1 of each year identifying the amount of money that has been invested by or in it in the previous calendar year under the Angel Investment Tax Credit Act.

(2) The report shall certify that the business, investor, and fund satisfies the requirements of the act.

(3) A qualified small business that ceases all operations and becomes insolvent shall file a final report with the director in the form required by the director documenting its insolvency.

(4) To maintain the confidentiality of the qualified investor and qualified small business, the Department of Economic Development shall use a designated number to identify such persons or businesses.

(5) A qualified small business, qualified investor, or qualified fund that fails to file an annual report by July 1 shall be subject to a fine of two hundred dollars.

Source: Laws 2011, LB389, § 7.

77-6308 Tax credit recaptured; when; director; powers and duties.

(1) If, at any time within six years after the allocation of tax credits is made, the director determines that a qualified investor or qualified fund did not meet the three-year holding period required in section 77-6306, any tax credit allocated and certified to the investor or fund shall be recaptured. The director shall notify the Tax Commissioner of such determination, and the Tax Commissioner shall recapture the tax credits.

(2) The director shall, to the extent possible, assure that the allocation of such tax credits provides equitable access to the benefits provided by the Angel Investment Tax Credit Act by all geographic areas of the state.

(3) The director may engage in contractual relationships with a statewide public or private nonprofit organization which shall serve as the agent for the Department of Economic Development in order to effect the purposes and fulfill the requirements of the act.

Source: Laws 2011, LB389, § 8.

77-6309 Department of Economic Development; report; contents.

By November 15 of each odd-numbered year, the Department of Economic Development shall submit a report to the Legislature and the Governor that includes:

(1) The number and geographic location of qualified investors;

(2) The number, geographic location, and amount of qualified investment made into each qualified small business;

(3) A breakdown of the industry sectors in which qualified small businesses are involved;

(4) The number of actual tax credits issued by project under the Angel Investment Tax Credit Act on an annual basis; and

(5) The number of jobs created at each qualified small business.

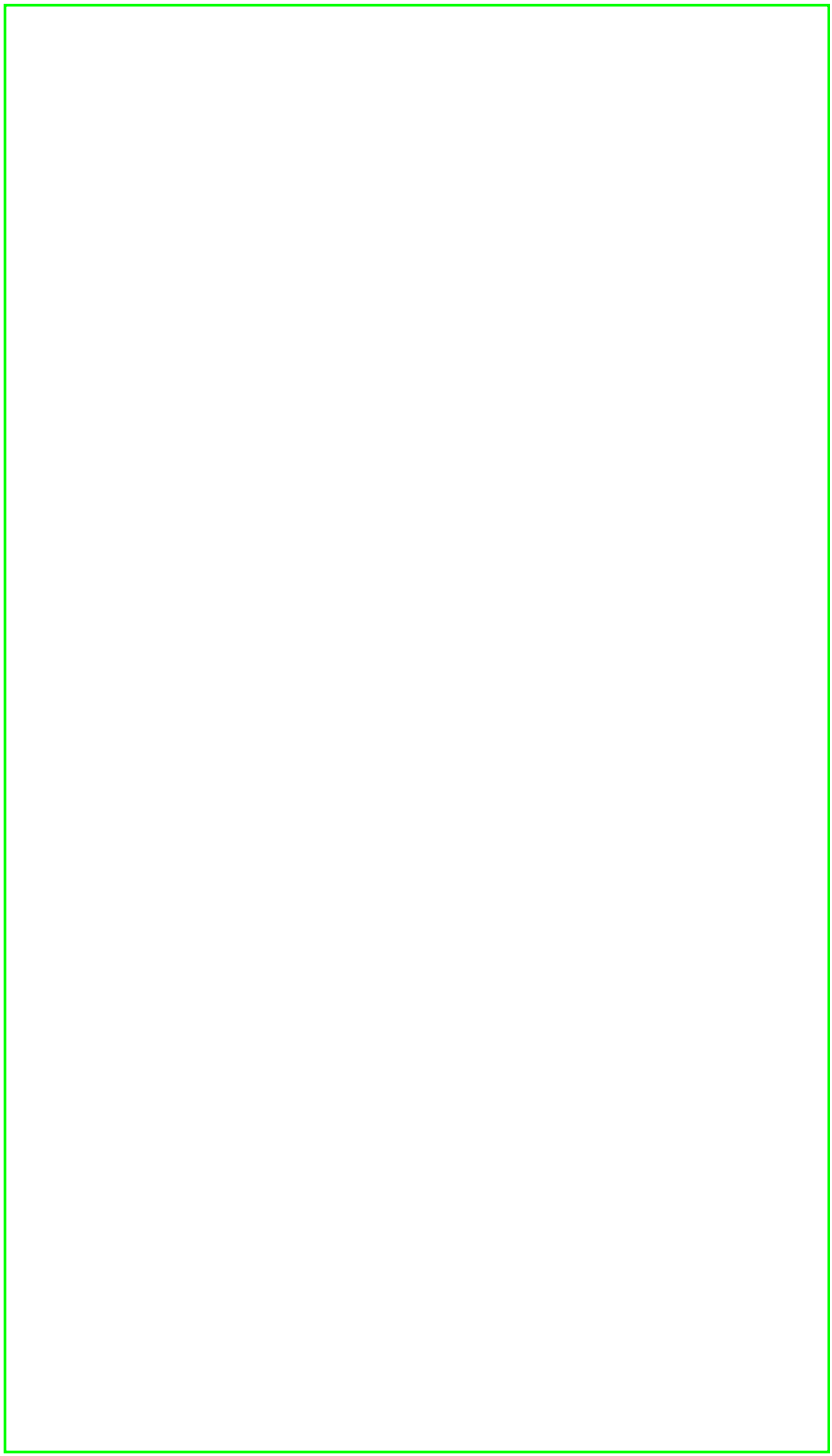
The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2011, LB389, § 9; Laws 2012, LB782, § 147.
Operative date July 19, 2012.

77-6310 Rules and regulations.

The Department of Economic Development and the Department of Revenue may adopt and promulgate rules and regulations to administer and enforce the Angel Investment Tax Credit Act.

Source: Laws 2011, LB389, § 10.



CHAPTER 79
SCHOOLS

Article.

Article.
Subpart (i)—Special Education Act. 79-1110 to 79-1178.
(d) Bridge Programs. 79-1189 to 79-1196.
(i) Seamless Delivery System Pilot Project. 79-11,136 to 79-11,141. Repealed.
(k) High-Needs Education Coordinator. 79-11,150. Repealed.
(l) Special Education Services Task Force. 79-11,151 to 79-11,154. Repealed.
12. Educational Service Units Act. 79-1204 to 79-1249.
13. Educational Technology and Telecommunications.
(b) Educational Telecommunications. 79-1316, 79-1320.
(c) Distance Education. 79-1331.
16. Private, Denominational, or Parochial Schools. 79-1601, 79-1606.
19. Nebraska Read, Educate, and Develop Youth Act. 79-1905.
21. Learning Community. 79-2104 to 79-2121.
22. Interstate Compact on Educational Opportunity for Military Children. 79-2201 to 79-2206.

ARTICLE 1
DEFINITIONS AND CLASSIFICATIONS

Section
79-101. Terms, defined.

79-101 Terms, defined.

For purposes of Chapter 79:

(1) School district means the territory under the jurisdiction of a single school board authorized by Chapter 79;

(2) School means a school under the jurisdiction of a school board authorized by Chapter 79;

(3) Legal voter means a registered voter as defined in section 32-115 who is domiciled in a precinct or ward in which he or she is registered to vote and which precinct or ward lies in whole or in part within the boundaries of a school district for which the registered voter chooses to exercise his or her right to vote at a school district election or at an annual or special meeting of a Class I school district;

(4) Prekindergarten programs means all early childhood programs provided for children who have not reached the age of five by the date provided in section 79-214 for kindergarten entrance;

(5) Elementary grades means grades kindergarten through eight, inclusive;

(6) High school grades means all grades above the eighth grade;

(7) School year means (a) for elementary grades other than kindergarten, the time equivalent to at least one thousand thirty-two instructional hours and (b) for high school grades, the time equivalent to at least one thousand eighty instructional hours;

(8) Instructional hour means a period of time, at least sixty minutes, which is actually used for the instruction of students;

(9) Teacher means any certified employee who is regularly employed for the instruction of pupils in the public schools;

(10) Administrator means any certified employee such as superintendent, assistant superintendent, principal, assistant principal, school nurse, or other supervisory or administrative personnel who do not have as a primary duty the instruction of pupils in the public schools;

(11) School board means the governing body of any school district. Board of education has the same meaning as school board;

(12) Teach means and includes, but is not limited to, the following responsibilities: (a) The organization and management of the classroom or the physical area in which the learning experiences of pupils take place; (b) the assessment and diagnosis of the individual educational needs of the pupils; (c) the planning, selecting, organizing, prescribing, and directing of the learning experiences of pupils; (d) the planning of teaching strategies and the selection of available materials and equipment to be used; and (e) the evaluation and reporting of student progress;

(13) Permanent school fund means the fund described in section 79-1035.01;

(14) Temporary school fund means the fund described in section 79-1035.02; and

(15) School lands means the lands described in section 79-1035.03. Educational lands has the same meaning as school lands.

The State Board of Education may adopt and promulgate rules and regulations to define school day and other appropriate units of the school calendar.

Source: Laws 1881, c. 78, subdivision I, § 1, p. 331; R.S.1913, § 6700; C.S.1922, § 6238; C.S.1929, § 79-101; R.S.1943, § 79-101; Laws 1949, c. 256, § 1, p. 690; Laws 1971, LB 802, § 1; Laws 1984, LB 994, § 3; Laws 1988, LB 1197, § 1; Laws 1993, LB 348, § 5; R.S.1943, (1994), § 79-101; Laws 1996, LB 900, § 1; Laws 1997, LB 345, § 5; Laws 1999, LB 813, § 5; Laws 2003, LB 67, § 2; Laws 2010, LB1006, § 1.

ARTICLE 2

PROVISIONS RELATING TO STUDENTS

(a) COMPULSORY EDUCATION

Section

(c) ADMISSION REQUIREMENTS

(e) ENROLLMENT OPTION PROGRAM

Section

(f) HEALTH INSPECTIONS

79-248. Pupils; health inspections; notice of defects; contagious or infectious disease; duty of school district.
79-249. Pupils; health inspections; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when.
79-250. Pupils; health inspections; when required.
79-252. Pupils; health inspections; employment of physicians authorized.

(g) STUDENT DISCIPLINE

79-267. Student conduct constituting grounds for long-term suspension, expulsion, or mandatory reassignment; enumerated; alternatives for truant or tardy students.

(i) STUDENT FILES

79-2,104. Access to school files or records; limitation; fees; disciplinary material; removed and destroyed; when.
79-2,105. School files or records; provided upon student's transfer.

(n) PART-TIME ENROLLMENT

79-2,136. Part-time enrollment; school board; duties; section, how construed.

(p) LINDSAY ANN BURKE ACT AND DATING VIOLENCE

79-2,138. Act, how cited.
79-2,139. Legislative findings and intent.
79-2,140. Terms, defined.
79-2,141. Model dating violence policy; department; school district; duties; publication; staff training; redress under other law.
79-2,142. School district; incorporate dating violence education.

(a) COMPULSORY EDUCATION

79-201 Compulsory education; attendance required; exceptions; reports required.

(1) For purposes of this section, a child is of mandatory attendance age if the child (a) will reach six years of age prior to January 1 of the then-current school year and (b) has not reached eighteen years of age.

(2) Except as provided in subsection (3) of this section, every person residing in a school district within the State of Nebraska who has legal or actual charge or control of any child who is of mandatory attendance age or is enrolled in a public school shall cause such child to enroll in, if such child is not enrolled, and attend regularly a public, private, denominational, or parochial day school which meets the requirements for legal operation prescribed in Chapter 79, or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements, each day that such school is open and in session, except when excused by school authorities or when illness or severe weather conditions make attendance impossible or impracticable.

(3) Subsection (2) of this section does not apply in the case of any child who:

(a) Has obtained a high school diploma by meeting the graduation requirements established in section 79-729;

(b) Has completed the program of instruction offered by a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements;

(c) Has reached sixteen years of age and has been withdrawn from school pursuant to section 79-202;

(d)(i) Will reach six years of age prior to January 1 of the then-current school year, but will not reach seven years of age prior to January 1 of such school year, (ii) such child's parent or guardian has signed an affidavit stating that the child is participating in an education program that the parent or guardian believes will prepare the child to enter grade one for the following school year, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides;

(e)(i) Will reach six years of age prior to January 1 of the then-current school year but has not reached seven years of age, (ii) such child's parent or guardian has signed an affidavit stating that the parent or guardian intends for the child to participate in a school which has elected or will elect pursuant to section 79-1601 not to meet accreditation or approval requirements and the parent or guardian intends to provide the Commissioner of Education with a statement pursuant to subsection (3) of section 79-1601 on or before the child's seventh birthday, and (iii) such affidavit has been filed by the parent or guardian with the school district in which the child resides; or

(f) Will not reach six years of age prior to January 1 of the then-current school year and such child was enrolled in a public school and has discontinued the enrollment according to the policy of the school board adopted pursuant to subsection (4) of this section.

(4) The board shall adopt policies allowing discontinuation of the enrollment of students who will not reach six years of age prior to January 1 of the then-current school year and specifying the procedures therefor.

(5) Each school district that is a member of a learning community shall report to the learning community coordinating council on or before September 1 of each year for the immediately preceding school year the following information:

(a) All reports of violations of this section made to the attendance officer of any school in the district pursuant to section 79-209;

(b) The results of all investigations conducted pursuant to section 79-209, including the attendance record that is the subject of the investigation and a list of services rendered in the case;

(c) The district's policy on excessive absenteeism; and

(d) Records of all notices served and reports filed pursuant to section 79-209 and the district's policy on habitual truancy.

Source: Laws 1901, c. 70, § 1, p. 454; Laws 1903, c. 95, § 1, p. 549; Laws 1905, c. 140, § 1, p. 575; Laws 1907, c. 131, § 1, p. 430; R.S.1913, § 6924; Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(a), p. 227; C.S.1922, § 6508a; Laws 1929, c. 87, § 1, p. 340; C.S.1929, § 79-1901; R.S.1943, § 79-1901; Laws 1949, c. 256, § 7, p. 692; Laws 1953, c. 291, § 1, p. 988; Laws 1959, c. 380, § 1, p. 1322; Laws 1971, LB 211, § 1; Laws 1971, LB 582, § 1; Laws 1984, LB 928, § 1; Laws 1984, LB 994, § 4; R.S.1943, (1994), § 79-201; Laws 1996, LB 900, § 5; Laws 1999, LB 152, § 1; Laws 2004, LB 868, § 1; Laws 2008, LB1154, § 6; Laws 2010, LB1071, § 2; Laws 2012, LB996, § 1.
Effective date July 19, 2012.

79-202 Compulsory attendance; withdrawal of child from school; exempt from mandatory attendance; exit interview; withdrawal form; validity; child at least sixteen years of age; other enrollment options; later enrollment; effect; Commissioner of Education; duties.

(1) A person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age may withdraw such child from school before graduation and be exempt from the mandatory attendance requirements of section 79-201 if an exit interview is conducted and the withdrawal form is signed as required by subsections (2) through (5) of this section for a child enrolled in a public, private, denominational, or parochial school or if a signed notarized release form is filed with the Commissioner of Education as required by subsection (6) of this section for a child enrolled in a school that elects pursuant to section 79-1601 not to meet accreditation or approval requirements.

(2) Upon the written request of any person who has legal or actual charge or control of a child who is at least sixteen years of age but less than eighteen years of age, the superintendent of a school district or the superintendent's designee shall conduct an exit interview if the child (a) is enrolled in a school operated by the school district or (b) resides in the school district and is enrolled in a private, denominational, or parochial school.

(3) The superintendent or the superintendent's designee shall set the time and place for the exit interview which shall be personally attended by: (a) The child, unless the withdrawal is being requested due to an illness of the child making attendance at the exit interview impossible or impracticable; (b) the person who has legal or actual charge or control of the child who requested the exit interview; (c) the superintendent or the superintendent's designee; (d) the child's principal or the principal's designee if the child at the time of the exit interview is enrolled in a school operated by the school district; and (e) any other person requested by any of the required parties who agrees to attend the exit interview and is available at the time designated for the exit interview which may include, but need not be limited to, other school district personnel or the child's principal or such principal's designee if the child is enrolled in a private, denominational, or parochial school.

(4) At the exit interview, the person making the written request pursuant to subsection (2) of this section shall present evidence that (a) the person has legal or actual charge or control of the child and (b) the child would be withdrawing due to either (i) financial hardships requiring the child to be employed to support the child's family or one or more dependents of the child or (ii) an illness of the child making attendance impossible or impracticable. The superintendent or superintendent's designee shall identify all known alternative educational opportunities, including vocational courses of study, that are available to the child in the school district and how withdrawing from school is likely to reduce potential future earnings for the child and increase the likelihood of the child being unemployed in the future. Any other relevant information may be presented and discussed by any of the parties in attendance.

(5)(a) At the conclusion of the exit interview, the person making the written request pursuant to subsection (2) of this section may sign the withdrawal form provided by the school district agreeing to the withdrawal of the child or may rescind the written request for the withdrawal.

(b) Any withdrawal form signed by the person making the written request pursuant to subsection (2) of this section shall be valid only if (i) the child signs the form unless the withdrawal is being requested due to an illness of the child making attendance at the exit interview impossible or impracticable and (ii) the superintendent or superintendent's designee signs the form acknowledging that the interview was held, the required information was provided and discussed at the interview, and, in the opinion of the superintendent or the superintendent's designee, the person making the written request pursuant to subsection (2) of this section does in fact have legal or actual charge or control of the child and the child is experiencing either (A) financial hardships requiring the child to be employed to support the child's family or one or more dependents of the child or (B) an illness making attendance impossible or impracticable.

(6) A person who has legal or actual charge or control of the child who is at least sixteen years of age but less than eighteen years of age may withdraw such a child before graduation and be exempt from the mandatory attendance requirements of section 79-201 if such child has been enrolled in a school that elects pursuant to section 79-1601 not to meet the accreditation or approval requirements by filing with the State Department of Education a signed notarized release on a form prescribed by the Commissioner of Education.

(7) A child who has been withdrawn from school pursuant to this section may enroll in a school district at a later date as provided in section 79-215 or may enroll in a private, denominational, or parochial school or a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Any such enrollment shall void the withdrawal form previously entered, and the provisions of sections 79-201 to 79-210 shall apply to the child.

(8) The Commissioner of Education shall prescribe the required form for withdrawals pursuant to this section and determine and direct either that (a) withdrawal forms of school districts for any child who is withdrawn from school pursuant to this section and subdivision (3)(c) of section 79-201 shall be provided annually to the State Department of Education or (b) data regarding such students shall be collected under subsection (2) of section 79-528.

Source: Laws 2012, LB996, § 2.
Effective date July 19, 2012.

79-209 Compulsory attendance; nonattendance; school district; duties; remedial services; enforcement.

(1) In all school districts in this state, any superintendent, principal, teacher, or member of the school board who knows of any violation of section 79-201 on the part of any child of school age, his or her parent, the person in actual or legal control of such child, or any other person shall within three days report such violation to the attendance officer of the school, who shall investigate the case. When of his or her personal knowledge, by report or complaint from any resident of the district, or by report or complaint as provided in this section, the attendance officer believes that any child is unlawfully absent from school, the attendance officer shall immediately investigate.

(2) All school districts shall have a written policy on excessive absenteeism developed in collaboration with the county attorney of the county in which the principal office of the school district is located. The policy shall include a provision indicating how the school district and the county attorney will handle cases in which excessive absences are due to documented illness that makes

attendance impossible or impracticable, and the policy shall state the number of absences or the hourly equivalent upon the occurrence of which the school shall render all services in its power to compel such child to attend some public, private, denominational, or parochial school, which the person having control of the child shall designate, in an attempt to address the problem of excessive absenteeism. The number of absences in the policy shall not exceed five days per quarter or the hourly equivalent. School districts may use excused and unexcused absences for purposes of the policy. Such services shall include, but need not be limited to:

(a) One or more meetings between a school attendance officer, school social worker or the school principal or a member of the school administrative staff designated by the school administration if such school does not have a school social worker, the child's parent or guardian, and the child, if necessary, to report and to attempt to solve the problem of excessive absenteeism;

(b) Educational counseling to determine whether curriculum changes, including, but not limited to, enrolling the child in an alternative education program that meets the specific educational and behavioral needs of the child, would help solve the problem of excessive absenteeism;

(c) Educational evaluation, which may include a psychological evaluation, to assist in determining the specific condition, if any, contributing to the problem of excessive absenteeism, supplemented by specific efforts by the school to help remedy any condition diagnosed; and

(d) Investigation of the problem of excessive absenteeism by the school social worker, or if such school does not have a school social worker, by the school principal or a member of the school administrative staff designated by the school administration, to identify conditions which may be contributing to the problem. If services for the child and his or her family are determined to be needed, the school social worker or the school principal or a member of the school administrative staff performing the investigation shall meet with the parent or guardian and the child to discuss any referral to appropriate community agencies for economic services, family or individual counseling, or other services required to remedy the conditions that are contributing to the problem of excessive absenteeism.

(3) If the child is absent more than twenty days per year or the hourly equivalent and all of the absences are due to documented illness that makes attendance impossible or impracticable or are otherwise excused by school authorities, the attendance officer may report such information to the county attorney of the county in which the person resides. If the child is absent more than twenty days per year or the hourly equivalent and any of such absences are not excused, the attendance officer shall file a report with the county attorney of the county in which the person resides on a form which includes the following two statements, one of which must be designated by the school representative signing the report: (a) The school representative requests additional time to work with the student prior to intervention by the county attorney; and (b) the school representative believes that the school has used all reasonable efforts to resolve the student's excessive absenteeism without success and recommends county attorney intervention. If further action is necessary to address the child's attendance, the initial meeting between the parent or guardian of the child, the school, and the county attorney or his or her designee shall be at a location determined by the school.

(4) Nothing in this section shall preclude a county attorney from being involved at any stage in the process to address excessive absenteeism.

Source: Laws 1901, c. 70, § 2, p. 456; Laws 1903, c. 95, § 2, p. 552; Laws 1905, c. 141, § 1, p. 578; Laws 1909, c. 130, § 1, p. 474; R.S.1913, § 6925; Laws 1919, c. 155, § 9, p. 350; Laws 1921, c. 53, § 2, p. 231; C.S.1922, § 6509; C.S.1929, § 79-1914; R.S.1943, § 79-1922; Laws 1949, c. 256, § 17, p. 696; Laws 1986, LB 528, § 8; Laws 1994, LB 1250, § 5; R.S.1943, (1994), § 79-211; Laws 1996, LB 900, § 13; Laws 1998, Spec. Sess., LB 1, § 6; Laws 1999, LB 272, § 28; Laws 2010, LB800, § 35; Laws 2011, LB463, § 19; Laws 2012, LB933, § 1.
Effective date July 19, 2012.

(c) ADMISSION REQUIREMENTS

79-214 Admission of children; kindergarten; age; evidence of physical examination; visual evaluation; when; exception.

(1) For school years before school year 2012-13:

(a) Except as provided in subdivision (1)(b) of this section, the school board of any school district shall not admit any child into the kindergarten of any school of such school district unless such child has reached the age of five years or will reach such age on or before October 15 of the current year; and

(b) The board may admit a child who will reach the age of five between October 16 and February 1 of the current school year if the parent or guardian requests such entrance and provides an affidavit stating that (i) the child attended kindergarten in another jurisdiction in the current school year, (ii) the family anticipates relocation to another jurisdiction that would allow admission within the current year, or (iii) the child has demonstrated through recognized assessment procedures approved by the board that he or she is capable of carrying the work of kindergarten.

(2) For school year 2012-13 and each school year thereafter:

(a) Except as provided in subdivision (2)(b) of this section, the school board of any school district shall not admit any child into the kindergarten of any school of such school district unless such child has reached the age of five years on or before July 31 of the calendar year in which the school year for which the child is seeking admission begins; and

(b) The board may admit a child who will reach the age of five years on or after August 1 and on or before October 15 of such school year if the parent or guardian requests such entrance and provides an affidavit stating that (i) the child attended kindergarten in another jurisdiction in the current school year, (ii) the family anticipates relocation to another jurisdiction that would allow admission within the current year, or (iii) the child has demonstrated through a recognized assessment procedure approved by the board that he or she is capable of carrying the work of kindergarten. On or before January 1, 2012, each school board shall, for purposes of this subdivision, approve and make available a recognized assessment procedure for determining if a child is capable of carrying the work of kindergarten. The school board shall update approved procedures as the board deems appropriate.

(3) The board shall comply with the requirements of subsection (2) of section 43-2007 and shall require evidence of: (a) A physical examination by a physi-

cian, a physician assistant, or an advanced practice registered nurse, practicing under and in accordance with his or her respective certification act, within six months prior to the entrance of a child into the beginner grade and the seventh grade or, in the case of a transfer from out of state, to any other grade of the local school; and (b) for school year 2006-07 and each school year thereafter, a visual evaluation by a physician, a physician assistant, an advanced practice registered nurse, or an optometrist within six months prior to the entrance of a child into the beginner grade or, in the case of a transfer from out of state, to any other grade of the local school, which consists of testing for amblyopia, strabismus, and internal and external eye health, with testing sufficient to determine visual acuity, except that no such physical examination or visual evaluation shall be required of any child whose parent or guardian objects in writing. The cost of such physical examination and visual evaluation shall be borne by the parent or guardian of each child who is examined.

Source: Laws 1931, c. 139, § 1, p. 385; C.S.Supp.,1941, § 79-412; R.S. 1943, § 79-414; Laws 1949, c. 258, § 1, p. 869; Laws 1949, c. 256, § 83, p. 720; Laws 1965, c. 519, § 1, p. 1644; Laws 1967, c. 532, § 1, p. 1766; Laws 1973, LB 403, § 20; Laws 1979, LB 59, § 1; Laws 1986, LB 68, § 2; Laws 1987, LB 367, § 66; Laws 1988, LB 1013, § 4; Laws 1991, LB 836, § 33; Laws 1993, LB 348, § 18; Laws 1995, LB 214, § 1; Laws 1995, LB 401, § 42; R.S.Supp.,1995, § 79-444; Laws 1996, LB 900, § 18; Laws 1998, LB 1229, § 2; Laws 2000, LB 1115, § 87; Laws 2001, LB 797, § 4; Laws 2005, LB 114, § 1; Laws 2005, LB 256, § 96; Laws 2010, LB1006, § 2.

79-215 Students; admission; tuition; persons exempt; department; duties.

(1) Except as otherwise provided in this section, a student is a resident of the school district where he or she resides and shall be admitted to any such school district upon request without charge.

(2) A school board shall admit a student upon request without charge if at least one of the student's parents resides in the school district.

(3) A school board shall admit any homeless student upon request without charge.

(4) A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year.

(5) A school board may admit nonresident students to the school district pursuant to a contract with the district where the student is a resident and shall collect tuition pursuant to the contract.

(6) A school board may admit nonresident students to the school district pursuant to the enrollment option program as authorized by sections 79-232 to 79-246, and such admission shall be without charge.

(7) A school board of any school district that is a member of a learning community shall admit nonresident students to the school district pursuant to the open enrollment provisions of a diversity plan in a learning community as authorized by section 79-2110, and such admission shall be without charge.

(8) A school board may admit a student who is a resident of another state to the school district and collect tuition in advance at a rate determined by the school board.

(9) When a student as a ward of the state or as a ward of any court (a) has been placed in a school district other than the district in which he or she resided at the time he or she became a ward and such ward does not reside in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 or (b) has been placed in any institution which maintains a special education program which has been approved by the State Department of Education and such institution is not owned or operated by the district in which he or she resided at the time he or she became a ward, the cost of his or her education and the required transportation costs associated with the student's education shall be paid by the state, but not in advance, to the receiving school district or approved institution under rules and regulations prescribed by the Department of Health and Human Services and the student shall remain a resident of the district in which he or she resided at the time he or she became a ward. Any student who is a ward of the state or a ward of any court who resides in a foster family home licensed or approved by the Department of Health and Human Services or a foster home maintained or used pursuant to section 83-108.04 shall be deemed a resident of the district in which he or she resided at the time he or she became a foster child, unless it is determined under section 43-1311 or 43-1312 that he or she will not attend such district in which case he or she shall be deemed a resident of the district in which the foster family home or foster home is located.

(10)(a) When a student is not a ward of the state or a ward of any court and is residing in a residential setting located in Nebraska for reasons other than to receive an education and the residential setting is operated by a service provider which is certified or licensed by the Department of Health and Human Services or is enrolled in the medical assistance program established pursuant to the Medical Assistance Act and Title XIX or XXI of the federal Social Security Act, as amended, the student shall remain a resident of the district in which he or she resided immediately prior to residing in such residential setting. The resident district for a student who is not a ward of the state or a ward of any court does not change when the student moves from one residential setting to another.

(b) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting does not maintain an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the resident school district shall contract with the district in which such residential setting is located for the provision of all educational services, including all special education services and support services as defined in section 79-1125.01, unless a parent or guardian and the resident school district agree that an appropriate education will be provided by the resident school district while the student is residing in such residential setting. If the resident school district is required to contract, the district in which such residential setting is located shall contract with the resident district and provide all educational services, including all special education services, to the student. If the two districts cannot agree on the amount of the contract, the State Department of Education shall determine the amount to be paid by the resident district to the district in which such residential setting is located based on the

needs of the student, approved special education rates, the department's general experience with special education budgets, and the cost per student in the district in which such residential setting is located. Once the contract has been entered into, all legal responsibility for special education and related services shall be transferred to the school district in which the residential setting is located.

(c) If a student is residing in a residential setting as described in subdivision (10)(a) of this section and such residential setting maintains an interim-program school as defined in section 79-1119.01 or an approved or accredited school, the department shall reimburse such residential setting for the provision of all educational services, including all special education services and support services, with the amount of payment for all educational services determined pursuant to the average per pupil cost of the service agency as defined in section 79-1116. The resident school district shall retain responsibility for such student's individualized education plan, if any. The educational services may be provided through (i) such interim-program school or approved or accredited school, (ii) a contract between the residential setting and the school district in which such residential setting is located, (iii) a contract between the residential setting and another service agency as defined in section 79-1124, or (iv) a combination of such educational service providers.

(d) If a school district pays a school district in which a residential setting is located for educational services provided pursuant to subdivision (10)(b) of this section and it is later determined that a different school district was the resident school district for such student at the time such educational services were provided, the school district that was later determined to be the resident school district shall reimburse the school district that initially paid for the educational services one hundred ten percent of the amount paid.

(e) A student residing in a residential setting described in this subsection shall be defined as a student with a handicap pursuant to Article VII, section 11, of the Constitution of Nebraska, and as such the state and any political subdivision may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide the educational services to the student if such educational services are nonsectarian in nature.

(11) In the case of any individual eighteen years of age or younger who is a ward of the state or any court and who is placed in a county detention home established under section 43-2,110, the cost of his or her education shall be paid by the state, regardless of the district in which he or she resided at the time he or she became a ward, to the agency or institution which: (a) Is selected by the county board with jurisdiction over such detention home; (b) has agreed or contracted with such county board to provide educational services; and (c) has been approved by the State Department of Education pursuant to rules and regulations prescribed by the State Board of Education.

(12) No tuition shall be charged for students who may be by law allowed to attend the school without charge.

(13) On a form prescribed by the State Department of Education, an adult with legal or actual charge or control of a student shall provide the name of the student, the name of the adult with legal or actual charge or control of the student, the address where the student is residing, and the telephone number and address where the adult may generally be reached during the school day. If the student is homeless or if the adult does not have a telephone number and

address where he or she may generally be reached during the school day, those parts of the form may be left blank and a box may be marked acknowledging that these are the reasons these parts of the form were left blank. The adult with legal or actual charge or control of the student shall also sign the form.

(14) The department may adopt and promulgate rules and regulations to carry out the department's responsibilities under this section.

Source: Laws 1881, c. 78, subdivision V, § 4, p. 352; Laws 1883, c. 72, § 11, p. 293; Laws 1901, c. 63, § 10, p. 440; R.S.1913, § 6784; Laws 1921, c. 64, § 1, p. 250; C.S.1922, § 6325; Laws 1927, c. 88, § 1, p. 257; C.S.1929, § 79-504; R.S.1943, § 79-504; Laws 1947, c. 273, § 1, p. 877; Laws 1949, c. 256, § 84, p. 720; Laws 1972, LB 1219, § 1; Laws 1974, LB 43, § 1; Laws 1979, LB 128, § 1; Laws 1980, LB 770, § 1; Laws 1980, LB 839, § 1; Laws 1982, LB 642, § 1; Laws 1984, LB 286, § 1; Laws 1984, LB 768, § 1; Laws 1985, LB 592, § 1; Laws 1985, LB 725, § 1; Laws 1991, LB 511, § 29; Laws 1992, LB 245, § 34; Laws 1992, Third Spec. Sess., LB 3, § 1; Laws 1994, LB 858, § 5; R.S.1943, (1994), § 79-445; Laws 1996, LB 900, § 19; Laws 1996, LB 1044, § 814; Laws 1997, LB 307, § 212; Laws 2000, LB 1243, § 2; Laws 2001, LB 797, § 5; Laws 2002, LB 1105, § 503; Laws 2006, LB 1248, § 87; Laws 2008, LB1014, § 68; Laws 2010, LB1071, § 3; Laws 2010, LB1087, § 1.

Cross References

Medical Assistance Act, see section 68-901.

79-217 School board and governing authority; student; immunization against certain contagious diseases; exception.

(1) Except as provided in sections 79-221 and 79-222, the school board or board of education of each school district and the governing authority of each private, denominational, or parochial school in this state shall require each student to be protected against measles, mumps, rubella, poliomyelitis, diphtheria, pertussis, and tetanus by immunization prior to enrollment. Any student who does not comply with this section shall not be permitted to continue in school until he or she so complies, except as provided by section 79-222. Each school district shall make diligent efforts to inform families prior to the date of school registration of the immunization requirements of this section.

(2) Except as provided in sections 79-221 and 79-222, on and after July 1, 2010, every student entering the seventh grade shall have a booster immunization containing diphtheria and tetanus toxoids and an acellular pertussis vaccine which meets the standards approved by the United States Public Health Service for such biological products, as such standards existed on January 1, 2009.

(3) Except as provided in the Childhood Vaccine Act, the cost of such immunizations shall be borne by the parent or guardian of each student who is immunized or by the Department of Health and Human Services for those students whose parent or guardian is financially unable to meet such cost.

Source: Laws 1973, LB 173, § 1; Laws 1973, LB 546, § 1; Laws 1979, LB 59, § 2; Laws 1992, LB 431, § 8; Laws 1993, LB 536, § 109;

Laws 1994, LB 1223, § 128; R.S.1943, (1994), § 79-444.01; Laws 1996, LB 900, § 21; Laws 1996, LB 1044, § 811; Laws 2005, LB 301, § 63; Laws 2007, LB296, § 707; Laws 2009, LB464, § 1.

Cross References

Childhood Vaccine Act, see section 71-526.

(e) ENROLLMENT OPTION PROGRAM

79-233 Terms, defined.

For purposes of sections 79-232 to 79-246:

(1) Enrollment option program means the program established in section 79-234;

(2) Option school district means the public school district that an option student chooses to attend instead of his or her resident school district;

(3) Option student means a student that has chosen to attend an option school district, including a student who resides in a learning community and began attendance as an option student in an option school district in such learning community prior to the end of the first full school year for which the option school district will be a member of such learning community, but not including a student who resides in a learning community and who attends pursuant to section 79-2110 another school district in such learning community;

(4) Resident school district means the public school district in which a student resides or the school district in which the student is admitted as a resident of the school district pursuant to section 79-215; and

(5) Siblings means all children residing in the same household on a permanent basis who have the same mother or father or who are stepbrother or stepsister to each other.

Source: Laws 1989, LB 183, § 2; Laws 1990, LB 843, § 3; Laws 1992, LB 1001, § 36; R.S.1943, (1994), § 79-3402; Laws 1996, LB 900, § 37; Laws 1997, LB 347, § 4; Laws 2006, LB 1024, § 18; Laws 2008, LB988, § 3; Laws 2009, LB62, § 1; Laws 2009, LB549, § 4.

79-234 Enrollment option program; established; limitations.

(1) An enrollment option program is hereby established to enable any kindergarten through twelfth grade Nebraska student to attend a school in a Nebraska public school district in which the student does not reside subject to the limitations prescribed in section 79-238. The option shall be available only once to each student prior to graduation unless (a) the student relocates to a different resident school district, (b) the option school district merges with another district, (c) the option school district is a Class I district, (d) the option would allow the student to continue current enrollment in a school district, or (e) the option would allow the student to enroll in a school district in which the student was previously enrolled as a resident student. In the case of an event described in subdivision (1)(a) or (b) of this section, the student's parent or guardian shall submit an application to the new option school district within thirty days after the date of relocation or the effective date of the merger. This subsection does not relieve a parent or guardian from the compulsory attend-

ance requirements in section 79-201 during the pendency of such application or approval.

(2) The program shall not apply to any student who resides in a district which has entered into an annexation agreement pursuant to section 79-473, except that such student may transfer to another district which accepts option students.

Source: Laws 1989, LB 183, § 3; Laws 1990, LB 843, § 4; Laws 1991, LB 207, § 3; Laws 1993, LB 348, § 64; R.S.1943, (1994), § 79-3403; Laws 1996, LB 900, § 38; Laws 2008, LB1154, § 7; Laws 2009, LB549, § 5.

79-237 Attendance; application; cancellation; forms.

(1) For a student to begin attendance as an option student in an option school district which is not in a learning community in which the student resides, the student's parent or legal guardian shall submit an application to the school board of the option school district between September 1 and March 15 for attendance during the following and subsequent school years. Applications submitted after March 15 shall contain a release approval from the resident school district on the application form prescribed and furnished by the State Department of Education pursuant to subsection (7) of this section. A district may not accept or approve any applications submitted after such date without such a release approval. The option school district shall provide the resident school district with the name of the applicant on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission. The option school district shall notify, in writing, the parent or legal guardian of the student, the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 1 or, in the case of an application submitted after March 15, within sixty days after submission.

(2) For a student who resides in a learning community to begin attendance in an option school district which is a member of such learning community, the student's parent or legal guardian shall submit an application to the school board of the option school district (a) for any learning community established prior to February 13, 2009, between February 13, 2009, and April 1, 2009, or (b) for any learning community established thereafter, between September 1 and March 15. Applications submitted after such deadlines shall be accompanied by a written release from the resident school district. Students who reside in a learning community shall only begin attendance in an option school district which is a member of such learning community prior to the end of the first full school year for which the option school district is a member of such learning community. The option school district shall provide the resident school district with the name of the applicant within five days after the applicable deadline. The option school district shall notify, in writing, the parent or legal guardian of the student, the resident school district, and the State Department of Education whether the application is accepted or rejected on or before April 10 for applications submitted for school year 2009-10 and on or before April 1 for applications submitted for any school year thereafter. A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of

subsection (4) of section 79-238. Nothing in this subsection requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of subsection (4) of section 79-238 shall be based on any verified information provided on the application. If no such information is provided, the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of subsection (4) of section 79-238.

(3) Applications for students who do not actually attend the option school district may be withdrawn in good standing upon mutual agreement by both the resident and option school districts.

(4) No option student shall attend an option school district for less than one school year unless the student relocates to a different resident school district, completes requirements for graduation prior to the end of his or her senior year, transfers to a private or parochial school, or upon mutual agreement of the resident and option school districts cancels the enrollment option and returns to the resident school district.

(5) Except as provided in subsection (4) of this section, the option student shall attend the option school district until graduation unless the student relocates in a different resident school district, transfers to a private or parochial school, or chooses to return to the resident school district.

(6) In each case of cancellation pursuant to subsections (4) and (5) of this section, the student's parent or legal guardian shall provide written notification to the school board of the option school district, the resident school district, and the department on forms prescribed and furnished by the department under subsection (7) of this section in advance of such cancellation.

(7) The application and cancellation forms shall be prescribed and furnished by the State Department of Education.

(8) An option student who subsequently chooses to attend a private or parochial school shall be automatically accepted to return to either the resident school district or option school district upon the completion of the grade levels offered at the private or parochial school. If such student chooses to return to the option school district, the student's parent or legal guardian shall submit another application to the school board of the option school district which shall be automatically accepted, and the deadlines prescribed in this section shall be waived.

Source: Laws 1989, LB 183, § 6; Laws 1990, LB 843, § 7; Laws 1993, LB 348, § 66; Laws 1993, LB 838, § 1; R.S.1943, (1994), § 79-3406; Laws 1996, LB 900, § 41; Laws 2001, LB 797, § 6; Laws 2006, LB 1024, § 19; Laws 2009, LB62, § 2; Laws 2009, LB549, § 6.

79-238 Application acceptance and rejection; standards; request for release; standards and conditions.

(1) Except as provided in section 79-240, the school board of the option school district shall adopt by resolution specific standards for acceptance and rejection of applications. Standards may include the capacity of a program, class, grade level, or school building or the availability of appropriate special education programs operated by the option school district. Capacity shall be determined by setting a maximum number of option students that a district will accept in any program, class, grade level, or school building, based upon

available staff, facilities, projected enrollment of resident students, projected number of students with which the option school district will contract based on existing contractual arrangements, and availability of appropriate special education programs. The school board of the option school district may by resolution declare a program, a class, or a school unavailable to option students due to lack of capacity. Standards shall not include previous academic achievement, athletic or other extracurricular ability, disabilities, proficiency in the English language, or previous disciplinary proceedings except as provided in section 79-266.01. False or substantively misleading information submitted by a parent or guardian on an application to an option school district may be cause for the option school district to reject a previously accepted application if the rejection occurs prior to the student's attendance as an option student.

(2) The school board of every school district shall also adopt standards and conditions for acceptance or rejection of a request for release of a resident student submitting an application to an option school district after March 15 under subsection (1) of section 79-237.

(3) Any option school district shall give first priority for enrollment to siblings of option students, except that the option school district shall not be required to accept the sibling of an option student if the district is at capacity except as provided in subsection (1) of section 79-240.

(4) Any option school district that is in a learning community shall give second priority for enrollment to students who reside in the learning community and who contribute to the socioeconomic diversity of enrollment as defined in section 79-2110 at the school building to which the student will be assigned pursuant to section 79-235.

Source: Laws 1989, LB 183, § 7; Laws 1990, LB 843, § 8; Laws 1991, LB 207, § 5; Laws 1992, LB 1001, § 37; Laws 1994, LB 930, § 2; R.S.1943, (1994), § 79-3407; Laws 1996, LB 900, § 42; Laws 1997, LB 346, § 2; Laws 2001, LB 797, § 7; Laws 2006, LB 1024, § 20; Laws 2009, LB62, § 3; Laws 2009, LB549, § 7.

79-239 Application; request for release; rejection; notice; appeal.

If an application is rejected by the option school district or if the resident school district rejects a request for release under subsection (1) of section 79-237, the rejecting school district shall provide written notification to the parent or guardian stating the reasons for the rejection and the process for appealing such rejection to the State Board of Education. Such notification shall be sent by certified mail. The parent or legal guardian may appeal a rejection to the State Board of Education by filing a written request, together with a copy of the rejection notice, with the State Board of Education. Such request and copy of the notice must be received by the board within thirty days after the date the notification of the rejection was received by the parent or legal guardian. Such hearing shall be held in accordance with the Administrative Procedure Act and shall determine whether the procedures of sections 79-234 to 79-241 have been followed.

Source: Laws 1989, LB 183, § 8; Laws 1992, LB 1001, § 38; Laws 1993, LB 348, § 67; R.S.1943, (1994), § 79-3408; Laws 1996, LB 900, § 43; Laws 2009, LB549, § 8.

Cross References

Administrative Procedure Act, see section 84-920.

79-240 Relocation; automatic acceptance; deadlines waived.

(1) The application of a student who relocates in a different school district but wants to continue attending his or her original resident school district and who has been enrolled in his or her original resident school district for the immediately preceding two years shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

(2) The application of an option student who relocates in a different school district but wants to continue attending the option school district shall be automatically accepted, and the deadlines prescribed in section 79-237 shall be waived.

Source: Laws 1989, LB 183, § 9; Laws 1990, LB 843, § 9; Laws 1991, LB 207, § 6; Laws 1992, LB 1001, § 39; Laws 1993, LB 348, § 68; R.S.1943, (1994), § 79-3409; Laws 1996, LB 900, § 44; Laws 1996, LB 1050, § 9; Laws 2009, LB549, § 9.

(f) HEALTH INSPECTIONS

79-248 Pupils; health inspections; notice of defects; contagious or infectious disease; duty of school district.

Every school district shall cause children under its jurisdiction to be separately and carefully inspected, except as otherwise provided in this section, to ascertain if a child is suffering from (1) defective sight or hearing, (2) dental defects, or (3) other conditions as prescribed by the Department of Health and Human Services. Such inspections shall be conducted on a schedule prescribed by the department and shall be based on current medical and public health practice. If such inspection determines that any child has such condition, the school shall notify the parent of the child in writing of such condition and explain to such parent the necessity of professional attendance for such child. Whenever a child apparently shows symptoms of any contagious or infectious disease, such child shall be sent home immediately or as soon as safe and proper conveyance can be found and the proper school authority, school board, or board of education shall be at once notified. Such student may be excluded from school as provided in section 79-264. A child shall not be required to submit to an inspection required by this section if his or her parent or guardian provides school authorities with a statement signed by a physician, a physician assistant, or an advanced practice registered nurse practicing under and in accordance with his or her respective credentialing act or other qualified provider as identified by the department in rules and regulations adopted pursuant to section 79-249, stating that such child has undergone such required inspection within the past six months. A child shall submit to any required inspection for which such a statement is not received.

Source: Laws 1919, c. 241, § 1, p. 1004; C.S.1922, § 6536; Laws 1923, c. 55, § 1, p. 176; C.S.1929, § 79-2113; R.S.1943, § 79-2122; Laws 1949, c. 256, § 171, p. 748; Laws 1967, c. 538, § 1, p. 1778; R.S.1943, (1994), § 79-4,133; Laws 1996, LB 900, § 52; Laws 1996, LB 1044, § 815; Laws 2007, LB296, § 710; Laws 2010, LB713, § 1.

Cross References

Immunization requirements, see sections 79-217 to 79-223.

79-249 Pupils; health inspections; rules; duties of Department of Health and Human Services; compliance with Medication Aide Act; when.

The Department of Health and Human Services shall adopt and promulgate rules and regulations for conducting school health inspections, the qualifications of the person or persons authorized to make such inspections, and the health conditions to be observed and remedied and shall furnish to school authorities the rules and regulations and other useful materials for carrying out the purposes of sections 79-248 to 79-253. The department may make available to schools methods for the gathering, analysis, and sharing of school health data that do not violate any privacy laws.

On and after July 1, 1999, no staff member of any school shall administer medication unless the school complies with the applicable requirements of the Medication Aide Act. Notwithstanding any other provision, 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 1919, c. 241, § 2, p. 1004; C.S.1922, § 6537; C.S.1929, § 79-2114; R.S.1943, § 79-2123; Laws 1949, c. 256, § 172, p. 749; Laws 1967, c. 538, § 2, p. 1778; R.S.1943, (1994), § 79-4,134; Laws 1996, LB 900, § 53; Laws 1996, LB 1044, § 816; Laws 1998, LB 1354, § 43; Laws 2007, LB296, § 711; Laws 2010, LB713, § 2.

Cross References

Medication Aide Act, see section 71-6718.

79-250 Pupils; health inspections; when required.

During each school year the school district shall provide the inspections required by section 79-248 for the children then in attendance. As children enter school during the year, such inspections shall be confirmed upon their entrance.

Source: Laws 1919, c. 241, § 3, p. 1004; C.S.1922, § 6538; C.S.1929, § 79-2115; R.S.1943, § 79-2124; Laws 1949, c. 256, § 173, p. 749; Laws 1967, c. 538, § 3, p. 1778; R.S.1943, (1994), § 79-4,135; Laws 1996, LB 900, § 54; Laws 2010, LB713, § 3.

79-252 Pupils; health inspections; employment of physicians authorized.

In lieu of conducting the inspections required by section 79-248, the board of education or school board of any school district may employ regularly licensed physicians to make such inspections.

Source: Laws 1919, c. 241, § 5, p. 1005; C.S.1922, § 6540; C.S.1929, § 79-2117; R.S.1943, § 79-2126; Laws 1949, c. 256, § 175, p. 749; Laws 1967, c. 538, § 4, p. 1779; R.S.1943, (1994), § 79-4,137; Laws 1996, LB 900, § 56; Laws 2010, LB713, § 4.

(g) STUDENT DISCIPLINE

79-267 Student conduct constituting grounds for long-term suspension, expulsion, or mandatory reassignment; enumerated; alternatives for truant or tardy students.

The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of the Student Discipline Act, when such activity occurs on school grounds, in a vehicle owned, leased, or contracted by a school being used for a school purpose or in a vehicle being driven for a school purpose by a school employee or by his or her designee, or at a school-sponsored activity or athletic event:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to property, stealing or attempting to steal property of substantial value, or repeated damage or theft involving property;

(3) Causing or attempting to cause personal injury to a school employee, to a school volunteer, or to any student. Personal injury caused by accident, self-defense, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of or with the intent of obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or an imitation controlled substance, as defined in section 28-401, a substance represented to be a controlled substance, or alcoholic liquor as defined in section 53-103.02 or being under the influence of a controlled substance or alcoholic liquor;

(7) Public indecency as defined in section 28-806, except that this subdivision shall apply only to students at least twelve years of age but less than nineteen years of age;

(8) Engaging in bullying as defined in section 79-2,137;

(9) Sexually assaulting or attempting to sexually assault any person if a complaint has been filed by a prosecutor in a court of competent jurisdiction alleging that the student has sexually assaulted or attempted to sexually assault any person, including sexual assaults or attempted sexual assaults which occur off school grounds not at a school function, activity, or event. For purposes of this subdivision, sexual assault means sexual assault in the first degree as defined in section 28-319, sexual assault in the second degree as defined in section 28-320, sexual assault of a child in the second or third degree as defined in section 28-320.01, or sexual assault of a child in the first degree as defined in section 28-319.01, as such sections now provide or may hereafter from time to time be amended;

(10) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school purposes; or

(11) A repeated violation of any rules and standards validly established pursuant to section 79-262 if such violations constitute a substantial interference with school purposes.

It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a student who is truant, tardy, or otherwise absent from required school activities.

Source: Laws 1976, LB 503, § 11; Laws 1983, LB 209, § 2; Laws 1988, LB 316, § 3; Laws 1994, LB 1250, § 17; Laws 1995, LB 658, § 3; R.S.Supp.,1995, § 79-4,180; Laws 1996, LB 900, § 71; Laws 1996, LB 1050, § 5; Laws 2006, LB 1199, § 83; Laws 2008, LB205, § 2; Laws 2010, LB861, § 83.

Cross References

Anabolic steroids, prohibited acts, see section 79-296.
Membership in secret school organization, grounds for expulsion, see section 79-2,101 et seq.

(i) STUDENT FILES

79-2,104 Access to school files or records; limitation; fees; disciplinary material; removed and destroyed; when.

(1) Any student in any public school or his or her parents, guardians, teachers, counselors, or school administrators shall have access to the school's files or records maintained concerning such student, including the right to inspect, review, and obtain copies of such files or records. No other person shall have access to such files or records except (a) when a parent, guardian, or student of majority age provides written consent or (b) as provided in subsection (3) of this section. The contents of such files or records shall not be divulged in any manner to any unauthorized person. All such files or records shall be maintained so as to separate academic and disciplinary matters, and all disciplinary material shall be removed and destroyed after a student's continuous absence from the school for a period of three years.

(2) Each public school may establish a schedule of fees representing a reasonable cost of reproduction for copies of a student's files or records for the parents or guardians of such student, except that the imposition of a fee shall not prevent parents of students from exercising their right to inspect and review the students' files or records and no fee shall be charged to search for or retrieve any student's files or records.

(3)(a) This section does not preclude authorized representatives of (i) auditing officials of the United States, (ii) auditing officials of this state, or (iii) state educational authorities from having access to student or other records which are necessary in connection with the audit and evaluation of federally supported or state-supported education programs or in connection with the enforcement of legal requirements which relate to such programs, except that, when collection of personally identifiable data is specifically authorized by law, any data collected by such officials with respect to individual students shall be protected in a manner which shall not permit the personal identification of students and their parents by other than the officials listed in this subsection. Personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of legal requirements.

(b) This section does not preclude or prohibit the disclosure of student records to any other person or entity which may be allowed to have access pursuant to the federal Family Educational Rights and Privacy Act of 1974, 20

U.S.C. 1232g, as such act existed on January 1, 2009, and regulations adopted thereunder.

Source: Laws 1973, LB 370, § 2; Laws 1979, LB 133, § 1; Laws 1986, LB 642, § 1; R.S.1943, (1994), § 79-4,157; Laws 1996, LB 900, § 108; Laws 2009, LB549, § 10.

79-2,105 School files or records; provided upon student's transfer.

A copy of a public or private school's files or records concerning a student, including academic material and any disciplinary material relating to any suspension or expulsion, shall be provided at no charge, upon request, to any public or private school to which the student transfers.

Source: Laws 1986, LB 642, § 2; R.S.1943, (1994), § 79-4,157.01; Laws 1996, LB 900, § 109; Laws 2009, LB549, § 11.

(n) PART-TIME ENROLLMENT

79-2,136 Part-time enrollment; school board; duties; section, how construed.

Each school board shall allow the part-time enrollment of students who are residents of the school district pursuant to subsections (1) and (2) of section 79-215 and who are also enrolled in a private, denominational, or parochial school or in a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements and shall establish policies and procedures for such part-time enrollment. Such policies and procedures may include provisions permitting the part-time enrollment of such students who are not residents of such school districts and may require part-time students to follow school policies that apply to other students at any time the part-time student is present on school grounds or at a school-sponsored activity or athletic event. Part-time enrollment shall not entitle a student to transportation or transportation reimbursements pursuant to section 79-611. Nothing in this section shall be construed to exempt any student from the compulsory attendance provisions of sections 79-201 to 79-207.

Source: Laws 2006, LB 821, § 1; Laws 2010, LB1071, § 4.

(p) LINDSAY ANN BURKE ACT AND DATING VIOLENCE

79-2,138 Act, how cited.

Sections 79-2,138 to 79-2,142 shall be known and may be cited as the Lindsay Ann Burke Act.

Source: Laws 2009, LB63, § 43.

79-2,139 Legislative findings and intent.

The Legislature finds and declares that all students have a right to work and study in a safe, supportive environment that is free from harassment, intimidation, and violence. The Legislature further finds that when a student is a victim of dating violence, his or her academic life suffers and his or her safety at school is jeopardized. The Legislature therefor finds and declares that a policy to create a better understanding and awareness of dating violence shall be adopted by each school district. It is the intent of the Legislature to require

each school district to establish a policy for educating staff and students about dating violence.

Source: Laws 2009, LB63, § 44.

79-2,140 Terms, defined.

For purposes of the Lindsay Ann Burke Act, unless the context otherwise requires:

(1) Dating partner means any person, regardless of gender, involved in an intimate relationship with another person primarily characterized by the expectation of affectionate involvement whether casual, serious, or long-term;

(2) Dating violence means a pattern of behavior where one person uses threats of, or actually uses, physical, sexual, verbal, or emotional abuse, to control his or her dating partner;

(3) Department means the State Department of Education; and

(4) School district has the same meaning as in section 79-101.

Source: Laws 2009, LB63, § 45.

79-2,141 Model dating violence policy; department; school district; duties; publication; staff training; redress under other law.

(1) On or before March 1, 2010, the department shall develop and adopt a model dating violence policy to assist school districts in developing policies for dating violence.

(2) On or before July 1, 2010, each school district shall develop and adopt a specific policy to address incidents of dating violence involving students at school, which shall be made a part of the requirements for accreditation in accordance with section 79-703. Such policy shall include a statement that dating violence will not be tolerated.

(3) To ensure notice of a school district's dating violence policy, the policy shall be published in any school district handbook, manual, or similar publication that sets forth the comprehensive rules, procedures, and standards of conduct for students at school.

(4) Each school district shall provide dating violence training to staff deemed appropriate by a school district's administration. The dating violence training shall include, but not be limited to, basic awareness of dating violence, warning signs of dating violence, and the school district's dating violence policy. The dating violence training may be provided by any school district or combination of school districts, an educational service unit, or any combination of educational service units.

(5) Each school district shall inform the students' parents or legal guardians of the school district's dating violence policy. If requested, the school district shall provide the parents or legal guardians a copy of the school district's dating violence policy and relevant information.

(6) This section does not prevent a victim of dating violence from seeking redress under any other available law, either civil or criminal, and does not create or alter any existing tort liability.

Source: Laws 2009, LB63, § 46.

79-2,142 School district; incorporate dating violence education.

Each school district shall incorporate dating violence education that is age-appropriate into the school program. Dating violence education shall include, but not be limited to, defining dating violence, recognizing dating violence warning signs, and identifying characteristics of healthy dating relationships.

Source: Laws 2009, LB63, § 47.

ARTICLE 3

STATE DEPARTMENT OF EDUCATION

(b) COMMISSIONER OF EDUCATION

(c) STATE BOARD OF EDUCATION

(b) COMMISSIONER OF EDUCATION

79-304 Commissioner of Education; qualifications.

The Commissioner of Education shall (1)(a) be a person of superior educational attainments, (b) have had many years of experience, (c) have demonstrated personal and professional leadership in the administration of public education, and (d) be eligible to qualify for the highest grade of school administrator certificate currently issued in the state or (2) possess a combination of education, skills, administrative experiences in public education, and other such qualifications as determined by the State Board of Education.

Source: Laws 1953, c. 320, § 11, p. 1059; R.S.1943, (1994), § 79-331; Laws 1996, LB 900, § 132; Laws 2009, LB549, § 12.

79-305 Commissioner of Education; office; powers; duties.

The Commissioner of Education as the executive officer of the State Board of Education shall: (1) Have an office in the city of Lincoln in which shall be housed the records of the State Board of Education and the State Department of Education, which records shall be subject at all times to examination by the Governor, the Auditor of Public Accounts, and committees of the Legislature; (2) keep the board currently informed and advised on the operation and status of all aspects of the educational program of the state under its jurisdiction; (3) prepare a budget for financing the activities of the board and the department, including the internal operation and maintenance of the department, and upon approval by the board administer the same in accordance with appropriations

by the Legislature; (4) voucher the expenses of the department according to the rules and regulations prescribed by the board; (5) be responsible for promoting the efficiency, welfare, and improvement in the school system in the state and for recommending to the board such policies, standards, rules, and regulations as may be necessary to attain these purposes; (6) promote educational improvement by (a) outlining and carrying out plans and conducting essential activities for the preparation of curriculum and other materials, (b) providing necessary supervisory and consultative services, (c) holding conferences of professional educators and other civic leaders, (d) conducting research, experimentation, and evaluation of school programs and activities, and (e) in other ways assisting in the development of effective education in the state; (7) issue teachers' certificates according to the provisions of law and the rules and regulations prescribed by the board; and (8) attend or, in case of necessity, designate a representative to attend all meetings of the board except when the order of business of the board is the selection of a Commissioner of Education. None of the duties prescribed in this section or in section 79-306 prevent the commissioner from exercising such other duties as in his or her judgment and with the approval of the board are necessary to the proper and legal exercise of his or her obligations.

Source: Laws 1953, c. 320, § 12, p. 1059; Laws 1979, LB 289, § 1; R.S.1943, (1994), § 79-332; Laws 1996, LB 900, § 133; Laws 2009, LB549, § 13.

Cross References

Constitutional provisions:
Appointment, see Article VII, section 4, Constitution of Nebraska.
Board of Trustees of the Nebraska State Colleges, ex officio member, see Article VII, section 13, Constitution of Nebraska.
State Board of Vocational Education, executive officer, see section 79-740.

79-306 Commissioner of Education; State Department of Education; administrative head; duties.

The Commissioner of Education shall be the administrative head of the State Department of Education and as such shall (1) have the authority to delegate administrative and supervisory functions to the members of the staff of the department, (2) establish and maintain an appropriate system of personnel administration for the department, (3) prescribe such administrative rules and regulations as are necessary for the proper execution of duties and responsibilities placed upon him or her, (4) perform all duties prescribed by the Legislature in accordance with the policies adopted by the State Board of Education, and (5) faithfully execute the policies and directives of the State Board of Education.

Source: Laws 1953, c. 320, § 13, p. 1060; R.S.1943, (1994), § 79-333; Laws 1996, LB 900, § 134; Laws 2009, LB549, § 14.

79-309.01 Teacher performance pay; local collective-bargaining agreements; data; Commissioner of Education; duties; school district; use of funds; return of funds.

(1)(a) Beginning in 2016, the Commissioner of Education shall annually collect data from each school district prior to February 25 and determine whether at least seventy-five percent of the school districts have included a system for distributing apportionment funds attributable to income from solar or wind agreements on school lands for teacher performance pay within such

districts' local collective-bargaining agreements for the ensuing school fiscal year.

(b)(i) If the seventy-five percent requirement has been met for the year, the Commissioner of Education shall use the separate accounting provided by the State Treasurer under subdivision (1)(b) of section 79-1035 to determine the amount of the apportionment to each school district under section 79-1035 that is attributable to income from solar or wind agreements on school lands. The commissioner shall notify each school district of such amount within five days after certification of the apportionment required pursuant to subsection (3) of section 79-1035. Each school district shall use the amount of apportionment funds specified in the notice provided by the commissioner for the purpose of teacher performance pay. Such amount shall be used as a supplement to the salary schedule as provided in local collective-bargaining agreements. For purposes of distribution of such funds only, the Legislature finds that teacher performance pay measurements, criteria, and payout amounts are mandatory topics of collective bargaining. If a school district has not included a system for distributing apportionment funds attributable to income from solar or wind agreements on school lands for teacher performance pay within its local collective-bargaining agreement, the amount of apportionment funds specified in the notice provided by the commissioner shall be returned to the State Treasurer within one month of receipt of such funds. The State Treasurer shall immediately credit any funds returned under this section to the temporary school fund. Any funds returned under this section shall be redistributed from the temporary school fund in the following year and shall no longer be designated as income attributable to solar or wind agreements on school lands.

(ii) If the seventy-five percent requirement has not been met for the year, then subdivision (1)(b)(i) of this section shall not apply for that year.

(2) If the seventy-five percent requirement has not been met in 2016, 2017, or 2018, then this section shall not apply in 2019 or any year thereafter.

(3) For purposes of this section:

(a) Agreement means any lease, easement, covenant, or other such contractual arrangement; and

(b) Teacher performance pay means a systematic process for measuring teachers' performance and linking the measurements to changes in teacher pay. Indicators of teacher performance may include improving professional skills and knowledge, classroom performance or instructional behavior, and instructional outcomes. Teacher performance pay may include predetermined bonus amounts and payout criteria.

Source: Laws 2010, LB1014, § 1; Laws 2012, LB828, § 19.
Effective date March 8, 2012.

(c) STATE BOARD OF EDUCATION

79-310 State Board of Education; members; election.

The State Board of Education shall be composed of eight members who shall be elected as provided in section 32-511. The Commissioner of Education shall not be a member of the State Board of Education.

Source: Laws 1953, c. 320, § 2, p. 1054; Laws 1967, c. 527, § 1, p. 1750; Laws 1991, LB 619, § 1; Laws 1994, LB 76, § 589; R.S.1943, (1994), § 79-322; Laws 1996, LB 900, § 138; Laws 2009, LB549, § 15.

Cross References

Constitutional provisions:
Creation, Article VII, section 3, Constitution of Nebraska.
Membership, requirements, Article VII, section 3, Constitution of Nebraska.
Filing fees, see section 32-608.
Nomination, nonpolitical, see section 32-609.

79-311 State Board of Education; districts; numbers; boundaries; established by maps; Clerk of Legislature; Secretary of State; duties.

(1) For the purpose of section 79-310, the state is divided into eight districts. Each district shall be entitled to one member on the board.

(2) The numbers and boundaries of the districts are designated and established by maps identified and labeled as maps ED11-1, ED11-2, ED11-3, ED11-4, ED11-5, ED11-5A, ED11-6, ED11-7, and ED11-8, filed with the Clerk of the Legislature, and incorporated by reference as part of Laws 2011, LB702.

(3)(a) The Clerk of the Legislature shall transfer possession of the maps referred to in subsection (2) of this section to the Secretary of State on May 27, 2011.

(b) When questions of interpretation of district boundaries arise, the maps referred to in subsection (2) of this section in possession of the Secretary of State shall serve as the indication of the legislative intent in drawing the district boundaries.

(c) Each election commissioner or county clerk shall obtain copies of the maps referred to in subsection (2) of this section for the election commissioner's or clerk's county from the Secretary of State.

(d) The Secretary of State shall also have available for viewing on his or her web site the maps referred to in subsection (2) of this section identifying the boundaries for the districts.

Source: Laws 1967, c. 527, § 2, p. 1751; Laws 1971, LB 735, § 1; Laws 1981, LB 554, § 1; Laws 1991, LB 619, § 2; R.S.1943, (1994), § 79-322.01; Laws 1996, LB 900, § 139; Laws 2001, LB 856, § 2; Laws 2011, LB702, § 1.

79-312 State Board of Education districts; population figures and maps; basis.

For purposes of section 79-311, the Legislature adopts the official population figures and maps from the 2010 Census Redistricting (Public Law 94-171) TIGER/Line Shapefiles published by the United States Department of Commerce, Bureau of the Census.

Source: Laws 1971, LB 735, § 2; Laws 1981, LB 554, § 2; Laws 1991, LB 619, § 3; R.S.1943, (1994), § 79-322.02; Laws 1996, LB 900, § 140; Laws 2001, LB 856, § 3; Laws 2011, LB702, § 2.

79-313 State Board of Education; members; qualifications.

No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of any state office or a member of a state board or commission unless the board or commission is limited to an advisory capacity, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six

months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

Source: Laws 1953, c. 320, § 3, p. 1054; Laws 1994, LB 76, § 590; R.S.1943, (1994), § 79-323; Laws 1996, LB 900, § 141; Laws 2001, LB 797, § 8; Laws 2009, LB549, § 16.

79-317 State Board of Education; meetings; open to public; exceptions; compensation and expenses.

(1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at least four times annually and at such other times and places as it may determine necessary for the proper and efficient conduct of its duties. All meetings shall be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

Source: Laws 1953, c. 320, § 7, p. 1055; Laws 1971, LB 421, § 2; Laws 1975, LB 325, § 7; Laws 1981, LB 204, § 153; R.S.1943, (1994), § 79-327; Laws 1996, LB 900, § 145; Laws 2004, LB 821, § 24; Laws 2009, LB549, § 17.

Cross References

Open Meetings Act, see section 84-1407.

79-318 State Board of Education; powers; duties.

The State Board of Education shall:

(1) Appoint and fix the compensation of the Commissioner of Education;

(2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;

(3) Upon recommendation of the commissioner, appoint and fix the compensation of a deputy commissioner and all professional employees of the board;

(4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;

(5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through

the commissioner: (a) Provide supervisory and consultation services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section; (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable; (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress; (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators; (h) approve certificated-employee evaluation policies and procedures developed by school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;

(6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Submit a biennial report to the Governor and the Clerk of the Legislature covering the actions of the board, the operations of the State Department of Education, and the progress and needs of the schools and recommend such

legislation as may be necessary to satisfy these needs. The report submitted to the Clerk of the Legislature shall be submitted electronically;

(8) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(9) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(10) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(11) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(12) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(13) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of public, private, denominational, or parochial school students; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of public, private, denominational, or parochial school students, when such vehicles are owned, operated, or owned and operated by any public, private, denominational, or parochial school or privately owned or operated under contract with any such school in this state, except for vehicles owned by individuals operating a school which elects pursuant to section 79-1601 not to meet accreditation or approval requirements. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(14) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so;

(15) Accept, in order to administer the Interstate Compact on Educational Opportunity for Military Children, any devise, donation, or bequest received by the State Department of Education pursuant to section 79-2206; and

(16) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

Each member of the Legislature shall receive an electronic copy of the report required by subdivision (7) of this section by making a request for it to the commissioner.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

Source: Laws 1953, c. 320, § 8, p. 1056; Laws 1955, c. 306, § 1, p. 947; Laws 1959, c. 383, § 1, p. 1328; Laws 1967, c. 528, § 2, p. 1753; Laws 1969, c. 707, § 2, p. 2712; Laws 1969, c. 708, § 1, p. 2716; Laws 1971, LB 292, § 5; Laws 1974, LB 863, § 8; Laws 1977, LB 205, § 1; Laws 1979, LB 322, § 37; Laws 1981, LB 316, § 1; Laws 1981, LB 545, § 27; Laws 1984, LB 928, § 2; Laws 1984, LB 994, § 6; Laws 1986, LB 1177, § 36; Laws 1987, LB 688, § 11; Laws 1989, LB 15, § 1; Laws 1989, LB 285, § 141; Laws 1990, LB 980, § 34; Laws 1994, LB 858, § 3; R.S.1943, (1994), § 79-328; Laws 1996, LB 900, § 146; Laws 1999, LB 813, § 6; Laws 2009, LB549, § 18; Laws 2010, LB1071, § 5; Laws 2011, LB575, § 8; Laws 2012, LB782, § 148.
Operative date July 19, 2012.

Cross References

Gifts, devises, and bequests, loans to needy students, see section 79-2,106.
Interstate Compact on Educational Opportunity for Military Children, see section 79-2201.
Private, denominational, or parochial schools, election not to meet approval or accreditation requirements, see section 79-1601.

79-319 State Board of Education; additional powers; enumerated.

The State Board of Education has the authority to (1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities, (2) act as the state's authority for the approval of all types of veterans educational programs and have jurisdiction over the administration and supervision of on-the-job and apprenticeship training, on-the-farm training, and flight training programs for veterans which are financially supported in whole or in part by the federal government, (3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges, (4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board, (5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants, (6) publish, from time to time, directories of schools and educators, pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of

such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. The board shall furnish eight copies of such publications to the Nebraska Publications Clearinghouse, and (7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol.

Source: Laws 1953, c. 320, § 9, p. 1058; Laws 1959, c. 384, § 1, p. 1332; Laws 1961, c. 395, § 1, p. 1202; Laws 1963, c. 469, § 5, p. 1504; Laws 1972, LB 1284, § 20; Laws 1974, LB 863, § 9; Laws 1975, LB 359, § 2; Laws 1976, LB 733, § 1; Laws 1985, LB 417, § 1; Laws 1986, LB 997, § 7; R.S.1943, (1994), § 79-329; Laws 1996, LB 900, § 147; Laws 2009, LB549, § 19.

ARTICLE 4

SCHOOL ORGANIZATION AND REORGANIZATION

(b) LEGAL STATUS, FORMATION, AND TERRITORY

(b) LEGAL STATUS, FORMATION, AND TERRITORY

79-408 Class IV school district; boundaries; body corporate; powers; retirement plans; restrictions.

The territory now or hereafter embraced within each incorporated city of the primary class in the State of Nebraska that is not in part within the boundaries of a learning community, such adjacent territory as now or hereafter may be included therewith for school purposes, and such territory not adjacent thereto as may have been added thereto by law shall constitute a Class IV school district, except that nothing in this section shall be construed to change the boundaries of any school district that is a member of a learning community. A Class IV school district shall be a body corporate and possess all the usual powers of a corporation for public purposes, may sue and be sued, and may purchase, hold, and sell such personal and real estate and contract such obligations as are authorized by law. The powers of a Class IV district include, but are not limited to, the power to adopt, administer, and amend from time to time such retirement, annuity, insurance, and other benefit plans for its present and future employees after their retirement, or any reasonable classification thereof, as may be deemed proper by the board of education. The board of education shall not establish a retirement system for new employees supplemental to the School Employees Retirement System of the State of Nebraska.

The title to all real or personal property owned by such school district shall, upon the organization of the school district, vest immediately in the school

district so created. The board of education shall have exclusive control of all property belonging to the school district.

In the discretion of the board of education, funds accumulated in connection with a retirement plan may be transferred to and administered by a trustee or trustees to be selected by the board of education, or if the retirement plan is in the form of annuity or insurance contracts, such funds, or any part thereof, may be paid to a duly licensed insurance carrier or carriers selected by the board of education. Funds accumulated in connection with any such retirement plan, and any other funds of the school district which are not immediately required for current needs or expenses, may be invested and reinvested by the board of education or by its authority in securities of a type permissible either for the investment of funds of a domestic legal reserve life insurance company or for the investment of trust funds, according to the laws of the State of Nebraska.

Source: Laws 1917, c. 225, § 1, p. 550; C.S.1922, § 6610; C.S.1929, § 79-2601; R.S.1943, § 79-2601; Laws 1947, c. 294, § 1(1), p. 907; Laws 1949, c. 256, § 244, p. 772; Laws 1963, c. 489, § 1, p. 1561; Laws 1971, LB 475, § 1; Laws 1988, LB 1142, § 7; R.S.1943, (1994), § 79-901; Laws 1996, LB 900, § 157; Laws 2005, LB 126, § 14; Laws 2006, LB 1024, § 22; Referendum 2006, No. 422; Laws 2011, LB509, § 15.

(c) PETITION PROCESS FOR REORGANIZATION

79-413 School districts; creation from other school districts; change of boundaries; affiliation; conditions; petition method; procedure.

(1) The State Committee for the Reorganization of School Districts created under section 79-435 may create a new school district from other districts, change the boundaries of any district that is not a member of a learning community, or affiliate a Class I district or portion thereof with one or more existing Class II, III, IV, or V districts upon receipt of petitions signed by sixty percent of the legal voters of each district affected. If the petitions contain signatures of at least sixty-five percent of the legal voters of each district affected, the state committee shall approve the petitions. When area is added to a Class VI district or when a Class I district which is entirely or partially within a Class VI district is taken from the Class VI district, the Class VI district shall be deemed to be an affected district.

Any petition of the legal voters of a Class I district in which no city or village is situated which is commenced after January 1, 1996, and proposes the dissolution of the Class I district and the attachment of a portion of it to two or more districts shall require signatures of more than fifty percent of the legal voters of such Class I district. If the state committee determines that such petition contains valid signatures of more than fifty percent of the legal voters of such Class I district, the state committee shall grant the petition.

(2)(a) Petitions proposing to change the boundaries of existing school districts that are not members of a learning community through the transfer of a parcel of land, not to exceed six hundred forty acres, shall be approved by the state committee when the petitions involve the transfer of land between Class I, II, III, or IV school districts or when there would be an exchange of parcels of land between Class I, II, III, or IV school districts and the petitions have the approval of at least sixty-five percent of the school board of each affected

district. If the transfer of the parcel of land is from a Class I school district to one or more Class II, III, IV, V, or VI school districts of which the parcel is not a part or with which the parcel is not affiliated, any Class II, III, IV, V, or VI school district of which the parcel is not a part or with which the parcel is affiliated shall be deemed an affected district.

(b) The state committee shall not approve a change of boundaries pursuant to this section relating to affiliation of school districts if twenty percent or more of any tract of land under common ownership which is proposing to affiliate is not contiguous to the high school district with which affiliation is proposed unless (i) one or more resident students of the tract of land under common ownership has attended the high school program of the high school district within the immediately preceding ten-year period or (ii) approval of the petition or plan would allow siblings of such resident students to attend the same school as the resident students attended.

(3)(a) Petitions proposing to create a new school district, to change the boundary lines of existing school districts that are not members of a learning community, to create an affiliated school system, or to affiliate a Class I district in part and to join such district in part with a Class VI district, any of which involves the transfer of more than six hundred forty acres, shall, when signed by at least sixty percent of the legal voters in each district affected, be submitted to the state committee. In the case of a petition for affiliation or a petition to affiliate in part and in part to join a Class VI district, the state committee shall review the proposed affiliation subject to sections 79-425 and 79-426. The state committee shall, within forty days after receipt of the petition, hold one or more public hearings and review and approve or disapprove such proposal.

(b) If there is a bond election to be held in conjunction with the petition, the state committee shall hold the petition until the bond election has been held, during which time names may be added to or withdrawn from the petitions. The results of the bond election shall be certified to the state committee.

(c) If the bond election held in conjunction with the petition is unsuccessful, no further action on the petition is required. If the bond election is successful, within fifteen days after receipt of the certification of the bond election results, the state committee shall approve the petition and notify the county clerk to effect the changes in district boundary lines as set forth in the petitions.

(4) Any person adversely affected by the changes made by the state committee may appeal to the district court of any county in which the real estate or any part thereof involved in the dispute is located. If the real estate is located in more than one county, the court in which an appeal is first perfected shall obtain jurisdiction to the exclusion of any subsequent appeal.

(5) A signing petitioner may withdraw his or her name from a petition and a legal voter may add his or her name to a petition at any time prior to the end of the period when the petition is held by the state committee. Additions and withdrawals of signatures shall be by notarized affidavit filed with the state committee.

Source: Laws 1881, c. 78, subdivision I, § 4, p. 332; Laws 1883, c. 72, § 1, p. 288; Laws 1885, c. 79, § 1, p. 319; Laws 1889, c. 78, § 1, p. 539; Laws 1895, c. 58, § 1, p. 221; Laws 1901, c. 59, § 1, p. 429; Laws 1909, c. 117, § 1, p. 451; R.S.1913, § 6703; C.S.1922, § 6241; Laws 1923, c. 63, § 1, p. 190; Laws 1925, c. 177, § 1, p. 461; C.S.1929, § 79-104; Laws 1931, c. 145, § 1, p. 396;

C.S.Supp.,1941, § 79-104; Laws 1943, c. 197, § 1(2), p. 659; R.S.1943, § 79-105; Laws 1949, c. 256, § 41, p. 706; Laws 1951, c. 276, § 2, p. 928; Laws 1953, c. 295, § 1, p. 999; Laws 1955, c. 315, § 3, p. 973; Laws 1957, c. 342, § 1, p. 1181; Laws 1959, c. 385, § 1, p. 1334; Laws 1963, c. 471, § 1, p. 1511; Laws 1963, c. 473, § 1, p. 1519; Laws 1963, c. 474, § 1, p. 1522; Laws 1963, c. 475, § 1, p. 1525; Laws 1963, c. 472, § 1, p. 1514; Laws 1967, c. 529, § 1, p. 1757; Laws 1971, LB 468, § 1; Laws 1984, LB 1098, § 1; Laws 1990, LB 259, § 5; Laws 1991, LB 511, § 11; Laws 1992, LB 245, § 16; Laws 1992, LB 719, § 1; Laws 1996, LB 604, § 4; R.S.1943, (1994), § 79-402; Laws 1996, LB 900, § 162; Laws 1996, LB 1050, § 2; Laws 1997, LB 806, § 6; Laws 1999, LB 272, § 30; Laws 2001, LB 302, § 1; Laws 2005, LB 126, § 17; Laws 2006, LB 1024, § 24; Referendum 2006, No. 422; Laws 2011, LB8, § 1; Laws 2011, LB235, § 2.

(l) UNIFIED SYSTEM

79-4,108 Unified system; interlocal agreement; contents; application; procedure; effect.

(1) Unified system means two or more Class II or III school districts participating in an interlocal agreement under the Interlocal Cooperation Act with approval from the State Committee for the Reorganization of School Districts. The interlocal agreement may include Class I districts if the entire valuation is included in the unified system. The interlocal agreement shall provide:

(a) For a minimum term of three school years;

(b) That all property tax and state aid resources shall be shared by the unified system;

(c) That a board composed of school board members, with at least one school board member from each district, shall determine the general fund levy, within the limitations placed on school districts and multiple-district school systems pursuant to section 77-3442, to be applied in all participating districts and shall determine the distribution of property tax and state aid resources within the unified system. For purposes of section 77-3442, the multiple-district school system shall include all of the Class I, II, and III districts participating in the unified system and the Class I districts or portions thereof affiliated with any of the participating Class II and III districts;

(d) That certificated staff will be employees of the unified system. For any certificated staff employed by the unified system, tenure and seniority as of the effective date of the interlocal agreement shall be transferred to the unified system and tenure and seniority provisions shall continue in the unified system except as provided in sections 79-850 to 79-858. If a district withdraws from the unified system or if the interlocal agreement expires and is not renewed, certificated staff employed by a participating district immediately prior to the unification shall be reemployed by the original district and tenure and seniority as of the effective date of the withdrawal or expiration shall be transferred to the original district. The certificated staff hired by the unified system but not employed by a participating district immediately prior to the unification shall be subject to the reduction-in-force policy of the unified system;

(e) That the participating districts shall pay obligations of the unified system pursuant to sections 79-850 to 79-858 on a pro rata basis based on the adjusted valuations if a district withdraws from the unified system or if the interlocal agreement expires and is not renewed; and

(f) The permissible method or methods for accomplishing the partial or complete termination of the interlocal agreement and for disposing of assets and liabilities upon such partial or complete termination.

Additional provisions in the interlocal agreement shall be determined by the participating districts and shall encourage cooperation within the unified system.

(2) Application for unification shall be made to the state committee. The application shall contain a copy of the interlocal agreement signed by the president of each participating school board. The state committee shall approve or disapprove applications for unification within forty days after receipt of the application. If the interlocal agreement complies with subsection (1) of this section and all school boards of the participating districts have approved the interlocal agreement, the state committee shall approve the application. Unification agreements shall be effective on June 1 following approval from the state committee for status as a unified system or on the date specified in the interlocal agreement, except that the date shall be on or after June 1 and on or before September 1 for a specified year. The board established in the interlocal agreement may begin meeting any time after the application has been approved by the state committee.

(3) Upon granting the application for unification, the State Department of Education shall recognize the unified system as a single Class II or III district for state aid, budgeting, accreditation, enrollment of students, state programs, and reporting. Except as otherwise required by the department, the unified system shall submit a single report document for each of the reports required of school districts pursuant to Chapter 79 and shall submit a single budget document pursuant to the Nebraska Budget Act and sections 13-518 to 13-522. The class of district shall be the same as the majority of participating districts, excluding Class I districts. If there are an equal number of Class II and Class III districts in the unified system, the unified system shall be recognized by the department as a Class III district.

(4) The school districts participating in a unified system shall retain their separate identities for all purposes except those specified in this section, and participation in a unified system shall not be considered a reorganization.

Source: Laws 1998, LB 1219, § 9; Laws 1999, LB 813, § 10; Laws 2001, LB 797, § 12; Laws 2005, LB 126, § 38; Referendum 2006, No. 422; Laws 2008, LB988, § 5; Laws 2010, LB711, § 1; Laws 2010, LB1071, § 6.

Cross References

Interlocal Cooperation Act, see section 13-801.
Nebraska Budget Act, see section 13-501.

ARTICLE 5
SCHOOL BOARDS

(b) SCHOOL BOARD DUTIES

(b) SCHOOL BOARD DUTIES

79-527 Dropouts; long-term suspension, expulsion, or excessive absenteeism; contact with law enforcement officials; report to Commissioner of Education; required; copy to learning community coordinating council.

(1) The superintendent or head administrator of a public school district or a nonpublic school system shall annually report to the Commissioner of Education in such detail and on such date as required by the commissioner the number of students who have dropped out of school. School districts that are members of learning communities shall also provide the learning community coordinating council with a copy of such report on or before the date the report is due to the commissioner.

(2) The superintendent or head administrator of a public school district or a nonpublic school system shall report on a monthly basis to the Commissioner of Education as directed by the commissioner regarding the number of and reason for any long-term suspension, expulsion, or excessive absenteeism of a student; referral of a student to the office of the county attorney for excessive absenteeism; or contacting of law enforcement officials, other than law enforcement officials employed by or contracted with the school district as school resource officers, by the district or system relative to a student enrolled in the district or system. A school district that is a member of a learning community shall also provide the learning community coordinating council with a copy of such report on or before the date the report is due to the commissioner.

Source: Laws 1965, c. 520, § 2, p. 1646; Laws 1989, LB 487, § 2; Laws 1991, LB 511, § 34; Laws 1992, LB 245, § 39; R.S.1943, (1994), § 79-449.01; Laws 1996, LB 900, § 280; Laws 2003, LB 67, § 5; Laws 2006, LB 1024, § 51; Laws 2010, LB800, § 36; Laws 2010, LB1070, § 5.

79-527.01 Truancy Intervention Task Force; created; members; duties; report.

(1) The Truancy Intervention Task Force is created. The task force shall consist of:

(a) The probation administrator or his or her designee;

(b) The Commissioner of Education or his or her designee; and

(c) The chief executive officer of the Department of Health and Human Services or his or her designee.

(2) The task force shall study and evaluate the data contained in the reports required by subsection (2) of section 79-527 and shall develop recommendations to reduce incidents of excessive absenteeism. The task force may contact a school district or a county attorney for additional information. The task force shall report electronically to the Legislature on or before July 1, 2011, and each July 1 thereafter.

Source: Laws 2010, LB800, § 37; Laws 2012, LB782, § 149.
Operative date July 19, 2012.

79-528 Reports; filing requirements; contents.

(1)(a) On or before July 20 in all school districts, the superintendent shall file with the State Department of Education a report showing the number of children from five through eighteen years of age belonging to the school district according to the census taken as provided in sections 79-524 and 79-578. On or before August 31, the department shall issue to each learning community coordinating council a report showing the number of children from five through eighteen years of age belonging to the learning community based on the member school districts according to the school district reports filed with the department.

(b) Each Class I school district which is part of a Class VI school district offering instruction (i) in grades kindergarten through five shall report children from five through ten years of age, (ii) in grades kindergarten through six shall report children from five through eleven years of age, and (iii) in grades kindergarten through eight shall report children from five through thirteen years of age.

(c) Each Class VI school district offering instruction (i) in grades six through twelve shall report children who are eleven through eighteen years of age, (ii) in grades seven through twelve shall report children who are twelve through eighteen years of age, and (iii) in grades nine through twelve children who are fourteen through eighteen years of age.

(d) Each Class I district which has affiliated in whole or in part shall report children from five through thirteen years of age.

(e) Each Class II, III, IV, or V district shall report children who are fourteen through eighteen years of age residing in Class I districts or portions thereof which have affiliated with such district.

(f) The board of any district neglecting to take and report the enumeration shall be liable to the school district for all school money which such district may lose by such neglect.

(2) On or before June 30 the superintendent of each school district shall file with the Commissioner of Education a report described as an end-of-the-school-

year annual statistical summary showing (a) the number of children attending school during the year under five years of age, (b) the length of time the school has been taught during the year by a qualified teacher, (c) the length of time taught by each substitute teacher, and (d) such other information as the Commissioner of Education directs. On or before July 31, the commissioner shall issue to each learning community coordinating council an end-of-the-school-year annual statistical summary for the learning community based on the member school districts according to the school district reports filed with the commissioner.

(3)(a) On or before November 1 the superintendent of each school district shall submit to the Commissioner of Education a report described as the annual financial report showing (i) the amount of money received from all sources during the year and the amount of money expended by the school district during the year, (ii) the amount of bonded indebtedness, (iii) such other information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114, and (iv) such other information as the Commissioner of Education directs.

(b) On or before December 15, the commissioner shall issue to each learning community coordinating council an annual financial report for the learning community based on the member school districts according to the annual financial reports filed with the commissioner, showing (i) the aggregate amount of money received from all sources during the year for all member school districts and the aggregate amount of money expended by member school districts during the year, (ii) the aggregate amount of bonded indebtedness for all member school districts, (iii) such other aggregate information as shall be necessary to fulfill the requirements of the Tax Equity and Educational Opportunities Support Act and section 79-1114 for all member school districts, and (iv) such other aggregate information as the Commissioner of Education directs for all member school districts.

(4)(a) On or before October 15 of each year, the superintendent of each school district shall file with the commissioner the fall school district membership report, which report shall include the number of children from birth through twenty years of age enrolled in the district on the last Friday in September of a given school year. The report shall enumerate (i) students by grade level, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs.

(b) On or before October 15 of each year, each learning community coordinating council shall issue to the department a report which enumerates the learning community levies pursuant to subdivisions (2)(b) and (g) of section 77-3442 and total assessed valuation for the current fiscal year.

(c) On or before November 15 of each year, the department shall issue to each learning community coordinating council the fall learning community membership report, which report shall include the aggregate number of children from birth through twenty years of age enrolled in the member school districts on the last Friday in September of a given school year for all member school districts. The report shall enumerate (i) the aggregate students by grade level for all member school districts, (ii) school district levies and total assessed valuation for the current fiscal year, and (iii) such other information as the Commissioner of Education directs for all member school districts.

(d) When any school district fails to submit its fall membership report by November 1, the commissioner shall, after notice to the district and an opportunity to be heard, direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the report is received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such report. The county treasurer shall withhold such money.

Source: Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1885, c. 79, § 1, p. 323; Laws 1889, c. 78, § 12, p. 547; R.S.1913, § 6779; C.S.1922, § 6320; C.S.1929, § 79-417; R.S.1943, § 79-419; Laws 1949, c. 256, § 90, p. 723; Laws 1959, c. 391, § 1, p. 1346; Laws 1969, c. 706, § 4, p. 2710; Laws 1977, LB 487, § 1; Laws 1978, LB 874, § 1; Laws 1979, LB 187, § 230; Laws 1985, LB 662, § 32; Referendum 1986, No. 400; Laws 1989, LB 487, § 3; Laws 1990, LB 1090, § 6; Laws 1990, LB 1059, § 36; Laws 1991, LB 511, § 35; Laws 1992, LB 245, § 40; Laws 1992, LB 1001, § 16; Laws 1994, LB 858, § 6; Laws 1994, LB 1310, § 3; R.S.1943, (1994), § 79-451; Laws 1996, LB 900, § 281; Laws 1997, LB 269, § 59; Laws 1997, LB 806, § 27; Laws 1998, Spec. Sess., LB 1, § 13; Laws 1999, LB 272, § 73; Laws 1999, LB 813, § 11; Laws 2001, LB 797, § 13; Laws 2003, LB 67, § 6; Laws 2003, LB 394, § 6; Laws 2006, LB 1024, § 52; Laws 2007, LB641, § 9; Laws 2009, LB549, § 20; Laws 2010, LB1070, § 6.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-536 Summer school; children in school system; unsatisfactory progress; summer school sessions; curricula.

(1) Summer school means educational opportunities that, except as otherwise provided in this section, are undertaken on a voluntary basis by students who will be entering any of grades one through twelve in the next school year and are offered during the period of time between two consecutive school years.

(2) Summer school may be offered by any school district.

(3) The board of education of any school district may require children between and including the ages of six and fifteen years, regularly enrolled within the system and deemed by the school administration to be making unsatisfactory progress, to attend summer school for up to one-half of a regular school day if in the opinion of the administration they would benefit from the experience. Chief emphasis in such summer classes shall be on reading, language arts, and arithmetic and those areas of personality development especially in need of development. Teachers shall be encouraged to design new and imaginative techniques and curricula not usually used during the regular school year which in the opinion of such teachers will offer new incentives towards learning, with special emphasis on those techniques that seek to develop the students' personalities in a wholesome manner, especially developing pride, self-confidence, and self-control. Teachers of such classes shall not be assigned more than fifteen students, or more than twenty-five students if assisted full time by an aide or paraprofessional. Such students shall be graded

at the end of the course upon their relative degree of striving to improve their skills, attitudes, and personalities.

Source: Laws 1969, c. 699, § 1, p. 2698; R.S.1943, (1994), § 79-1001.02; Laws 1996, LB 900, § 289; Laws 2006, LB 1024, § 54; Laws 2011, LB235, § 3.

(c) SCHOOL BOARD ELECTIONS AND MEMBERSHIP

79-544 School board members; contract to teach prohibited.

No member of a school board shall be engaged in a contract to teach pursuant to sections 79-817 to 79-821 with the school district which he or she serves as a board member.

Source: Laws 1881, c. 78, subdivision III, § 10, p. 345; Laws 1883, c. 72, § 5, p. 291; R.S.1913, § 6761; C.S.1922, § 6302; C.S.1929, § 79-310; R.S.1943, § 79-310; Laws 1949, c. 256, § 105, p. 727; Laws 1971, LB 214, § 1; R.S.1943, (1994), § 79-466; Laws 1996, LB 900, § 297; Laws 1999, LB 272, § 75; Laws 2001, LB 242, § 24; Laws 2009, LB163, § 1.

(e) SCHOOL BOARD OFFICERS

79-569 Class I, II, III, IV, or VI school district; president; powers and duties.

The president of the school board of a Class I, II, III, IV, or VI school district shall: (1) Preside at all meetings of the district; (2) countersign all orders upon the treasury for money to be disbursed by the district and all warrants of the secretary on the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer; (3) administer the oath to the secretary and treasurer of the district when such an oath is required by law in the transaction of the business of the district; and (4) perform such other duties as may be required by law of the president of the board. He or she is entitled to vote on any issue that may come before any meeting. If the president of the school board of a Class I school district is absent from any district meeting, the legal voters present may elect a suitable person to preside at the meeting.

Source: Laws 1881, c. 78, subdivision IV, § 1, p. 345; Laws 1901, c. 63, § 5, p. 439; Laws 1909, c. 120, § 1, p. 460; R.S.1913, § 6763; C.S.1922, § 6304; C.S.1929, § 79-401; R.S.1943, § 79-401; Laws 1949, c. 256, § 91, p. 723; R.S.1943, (1994), § 79-452; Laws 1996, LB 900, § 322; Laws 1997, LB 345, § 25; Laws 1999, LB 272, § 76; Laws 2009, LB549, § 21.

Cross References

For form of oath, see sections 11-101 and 11-101.01.

79-575 Secretary; disbursements; how made.

The secretary of a school district shall draw and sign all orders upon the treasurer for all money to be disbursed by the district and all warrants upon the county treasurer for money raised for district purposes or apportioned to the district by the county treasurer and shall present the same to the president to be countersigned. No warrant, check, or other instrument drawn upon bank depository funds of the district shall be issued until so countersigned. No

warrant, check, or other instrument drawn upon bank depository funds of the district shall be countersigned by the president until the amount for which it is drawn is written upon its face. Facsimile signatures of board members may be used, and a person or persons delegated by the board may sign and validate all warrants, checks, and other instruments drawn upon bank depository funds of the district.

Source: Laws 1881, c. 78, subdivision IV, § 16, p. 350; Laws 1883, c. 72, § 8, p. 292; R.S.1913, § 6778; C.S.1922, § 6319; C.S.1929, § 79-416; R.S.1943, § 79-418; Laws 1949, c. 256, § 89, p. 722; Laws 1955, c. 315, § 6, p. 976; Laws 1980, LB 734, § 1; R.S. 1943, (1994), § 79-450; Laws 1996, LB 900, § 328; Laws 1999, LB 272, § 77; Laws 2009, LB392, § 9.

79-592 Class V school district; treasurer; bond or insurance; duties.

The treasurer of a Class V school district shall receive all taxes of the school district from the county treasurer. The treasurer of the school district shall attend all meetings of the board of education of the Class V district when required to do so, shall prepare and submit in writing a monthly report of the state of the district's finances, and shall pay school money either upon a warrant signed by the president, or in the president's absence by the vice president, and countersigned by the secretary or upon a check or other instrument drawn upon bank depository funds of the school district. The treasurer shall also perform such other duties as designated by the board of education. Before entering into the discharge of his or her duties and during the entire time he or she so serves, the treasurer shall give bond or evidence of equivalent insurance coverage payable to the board in such amount as may be required by the board, but in no event less than two hundred thousand dollars, conditioned for the faithful discharge of his or her duties as treasurer of the school district, for the safekeeping and proper disbursement of all funds and money of the school district received by the treasurer. Such bond shall be signed by one or more surety companies of recognized responsibility, to be approved by the board. The cost of the bond or insurance shall be paid by the school district. Such bond or insurance coverage may be enlarged at any time the board may deem an enlargement or additional bond or insurance coverage to be necessary.

Source: Laws 1891, c. 45, § 12, p. 321; Laws 1903, c. 96, § 1, p. 553; R.S.1913, § 7020; C.S.1922, § 6651; C.S.1929, § 79-2714; R.S. 1943, § 79-2715; Laws 1947, c. 297, § 1, p. 912; Laws 1949, c. 256, § 260, p. 778; Laws 1996, LB 604, § 9; R.S.1943, (1994), § 79-1004.04; Laws 1996, LB 900, § 345; Laws 2005, LB 380, § 5; Laws 2009, LB392, § 10.

(f) PROVIDING EDUCATION OUTSIDE THE DISTRICT

79-598 Pupils; instruction in another district; contracts authorized; contents; cost per pupil; determination; transportation; attendance reports; noncompliance penalties; dissolution of district.

(1) The school board of any public school district in this state, when authorized by a majority of the votes cast at any annual or special meeting, shall (a) contract with the board of any neighboring public school district or

districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(2) The school board of any public school district may also, when petitioned to do so by at least two-thirds of the parents residing in the district having children of school age who will attend school under the contract plan, (a) contract with the board of any neighboring public school district or districts for the instruction of all or any part of the pupils residing in the first named district in the school or schools maintained by the neighboring public school district or districts for a period of time not to exceed two years and (b) make provision for the transportation of such pupils to the school or schools of the neighboring public school district or districts.

(3) The contract price for instruction referred to in subsections (1) and (2) of this section shall be the cost per pupil for the immediately preceding school year or the current year, whichever appears more practical as determined by the board of the district which accepts the pupils for instruction. The cost per pupil shall be determined by dividing the sum of the operational cost and debt service expense of the accepting district, except retirement of debt principal, plus three percent of the insurable or present value of the school plant and equipment of the accepting district, by the average daily membership of pupils in the accepting district. Payment of the contract price shall be made in equal installments at the beginning of the first and second semesters.

(4) All the contracts referred to in subsections (1) and (2) of this section shall be in writing, and copies of all such contracts shall be filed in the office of the superintendent of the primary high school district on or before August 15 of each year. School districts thus providing instruction for their children in neighboring districts shall be considered as maintaining a school as required by law. The teacher of the school providing the instruction shall keep a separate record of the attendance of all pupils from the first named district and make a separate report to the secretary of that district. The board of every sending district contracting under this section shall enter into contracts with school districts of the choice of the parents of the children to be educated under the contract plan. Any school district failing to comply with this section shall not be paid any funds from the state apportionment of school funds while such violation continues.

(5) The State Committee for the Reorganization of School Districts may dissolve any district (a) failing to comply with this section, (b) in which the votes cast at an annual or special election on the question of contracting with a neighboring district are evenly divided, or (c) in which the governing body of the district is evenly divided in its vote on the question of contracting pursuant to subsection (2) of this section. The state committee shall dissolve and attach to a neighboring district or districts any school district which, for two consecutive years, contracts for the instruction of its pupils, except that when such dissolution will create extreme hardships on the pupils or the district affected, the State Board of Education may, on application by the school board of the district, waive the requirements of this subsection. The dissolution of any school

district pursuant to this section shall be effected in the manner prescribed in section 79-498.

Source: Laws 1897, c. 64, § 1, p. 311; R.S.1913, § 6944; C.S.1922, § 6526; C.S.1929, § 79-2103; R.S.1943, § 79-2112; Laws 1945, c. 212, § 1, p. 625; Laws 1947, c. 287, § 1, p. 896; Laws 1949, c. 256, § 124, p. 733; Laws 1951, c. 280, § 1, p. 944; Laws 1953, c. 291, § 5, p. 990; Laws 1953, c. 298, § 2, p. 1006; Laws 1955, c. 313, § 1, p. 966; Laws 1955, c. 314, § 1, p. 968; Laws 1955, c. 315, § 8, p. 977; Laws 1959, c. 393, § 1, p. 1349; Laws 1959, c. 386, § 2, p. 1337; Laws 1961, c. 401, § 1, p. 1215; Laws 1965, c. 521, § 1, p. 1647; Laws 1967, c. 535, § 1, p. 1770; Laws 1967, c. 536, § 1, p. 1773; Laws 1969, c. 709, § 3, p. 2724; Laws 1971, LB 292, § 10; Laws 1989, LB 30, § 4; Laws 1989, LB 487, § 4; R.S.1943, (1994), § 79-486; Laws 1996, LB 900, § 351; Laws 1999, LB 272, § 82; Laws 2003, LB 67, § 9; Laws 2009, LB549, § 22.

Cross References

Contract for instruction relative to certain mergers and dissolutions, see section 79-470.
Depopulated districts, provisions for contracting, see section 79-499.
Expense of opposing dissolution order under this section, see section 79-471.

ARTICLE 6
SCHOOL TRANSPORTATION

Section
79-606. Sale of school bus; alteration required; violation; penalty.
79-608. Students; transportation; buses; operator; requirements; violation; penalty.
79-611. Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

79-606 Sale of school bus; alteration required; violation; penalty.

When any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for transportation of students is sold and used for any other purpose than for transportation of students, such vehicle shall be painted a distinct color other than that prescribed by the State Board of Education and the stop arms and system of alternately flashing warning signal lights on such vehicle shall be removed. It shall be the purchaser's responsibility to see that the modifications required by this section are made. Any person violating this section shall be guilty of a Class V misdemeanor and, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars.

Source: Laws 1963, c. 459, § 1, p. 1487; Laws 1971, LB 292, § 12; Laws 1974, LB 863, § 10; Laws 1981, LB 316, § 2; Laws 1988, LB 1142, § 5; R.S.1943, (1994), § 79-488.05; Laws 1996, LB 900, § 367; Laws 2009, LB549, § 23.

79-608 Students; transportation; buses; operator; requirements; violation; penalty.

(1) Any person, before operating a school bus, including any school bus which transports students by direct contract with the students or their parents and not owned by or under contract with the school district or nonpublic school, shall submit himself or herself to (a) an examination, to be conducted

by a driver's license examiner of the Department of Motor Vehicles, to determine his or her qualifications to operate such bus and (b) an examination by a licensed physician to determine whether or not he or she meets the physical and mental standards established pursuant to section 79-607 and shall furnish to the school board or board of education or the governing authority of a nonpublic school and to the Director of Motor Vehicles a written report of each such examination on standard forms prescribed by the State Department of Education, signed by the person conducting the same, showing that he or she is qualified to operate a school bus and that he or she meets the physical and mental standards. If the Director of Motor Vehicles determines that the person is so qualified and meets such standards, the director shall issue to the person a special school bus operator's permit, which shall expire each year on the date of birth of the holder, in such form as the director prescribes. No contract shall be entered into until such permit has been received and exhibited to the school board or the governing authority of a nonpublic school. The holder of such permit shall have it on his or her person at all times while operating a school bus.

(2) It shall be unlawful for any person operating a school bus to be or remain on duty for a longer period than sixteen consecutive hours. When any person operating a bus has been continuously on duty for sixteen hours, he or she shall be relieved and not be permitted or required to again go on duty without having at least ten consecutive hours' rest off duty, and no such operator, who has been on duty sixteen hours in the aggregate in any twenty-four-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

(3) Any person violating this section shall be guilty of a Class V misdemeanor. His or her contract with the school district shall be canceled as provided in section 79-607.

Source: Laws 1963, c. 460, § 1, p. 1488; Laws 1965, c. 523, § 3, p. 1653; Laws 1971, LB 292, § 13; Laws 1973, LB 358, § 2; Laws 1977, LB 39, § 251; Laws 1989, LB 285, § 142; Laws 1990, LB 980, § 35; R.S.1943, (1994), § 79-488.06; Laws 1996, LB 900, § 369; Laws 2009, LB549, § 24.

79-611 Students; transportation; transportation allowance; when authorized; limitations; board; authorize service.

(1) The school board of any school district shall provide free transportation, partially provide free transportation, or pay an allowance for transportation in lieu of free transportation as follows:

(a) When a student attends an elementary school in his or her own district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(b) When a student is required to attend an elementary school outside of his or her own district and lives more than four miles from such elementary school as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence;

(c) When a student attends a secondary school in his or her own Class II or Class III school district and lives more than four miles from the public schoolhouse as measured by the shortest route that must actually and necessar-

ily be traveled by motor vehicle to reach the student's residence. This subdivision does not apply when one or more Class I school districts merge with a Class VI school district to form a new Class II or III school district on or after January 1, 1997; and

(d) When a student, other than a student in grades ten through twelve in a Class V district, attends an elementary or junior high school in his or her own Class V district and lives more than four miles from the public schoolhouse in such district as measured by the shortest route that must actually and necessarily be traveled by motor vehicle to reach the student's residence.

(2)(a) The school board of any school district that is a member of a learning community shall provide free transportation for a student who resides in such learning community and attends school in such school district if (i) the student is transferring pursuant to the open enrollment provisions of section 79-2110, qualifies for free or reduced-price lunches, and lives more than one mile from the school to which he or she transfers, (ii) the student is transferring pursuant to such open enrollment provisions, is a student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends, and lives more than one mile from the school to which he or she transfers, (iii) the student is attending a focus school or program and lives more than one mile from the school building housing the focus school or program, or (iv) the student is attending a magnet school or program and lives more than one mile from the magnet school or the school housing the magnet program.

(b) For purposes of this subsection, student who contributes to the socioeconomic diversity of enrollment at the school building he or she attends has the definition found in section 79-2110. This subsection does not prohibit a school district that is a member of a learning community from providing transportation to any intradistrict student.

(3) The transportation allowance which may be paid to the parent, custodial parent, or guardian of students qualifying for free transportation pursuant to subsection (1) or (2) of this section shall equal two hundred eighty-five percent of the mileage rate provided in section 81-1176, multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the schoolhouse exceeds three miles.

(4) Whenever students from more than one family travel to school in the same vehicle, the transportation allowance prescribed in subsection (3) of this section shall be payable as follows:

(a) To the parent, custodial parent, or guardian providing transportation for students from other families, one hundred percent of the amount prescribed in subsection (3) of this section for the transportation of students of such parent's, custodial parent's, or guardian's own family and an additional five percent for students of each other family not to exceed a maximum of one hundred twenty-five percent of the amount determined pursuant to subsection (3) of this section; and

(b) To the parent, custodial parent, or guardian not providing transportation for students of other families, two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, from the residence of the student to the pick-up point at which students transfer to the vehicle of a parent, custodial parent, or guardian described in subdivision (a) of this subsection.

(5) When a student who qualifies under the mileage requirements of subsection (1) of this section lives more than three miles from the location where the student must be picked up and dropped off in order to access school-provided free transportation, as measured by the shortest route that must actually and necessarily be traveled by motor vehicle between his or her residence and such location, such school-provided transportation shall be deemed partially provided free transportation. School districts partially providing free transportation shall pay an allowance to the student's parent or guardian equal to two hundred eighty-five percent of the mileage rate provided in section 81-1176 multiplied by each mile actually and necessarily traveled, on each day of attendance, beyond which the one-way distance from the residence of the student to the location where the student must be picked up and dropped off exceeds three miles.

(6) The board may authorize school-provided transportation to any student who does not qualify under the mileage requirements of subsection (1) of this section and may charge a fee to the parent or guardian of the student for such service. An affiliated high school district may provide free transportation or pay the allowance described in this section for high school students residing in an affiliated Class I district. No transportation payments shall be made to a family for mileage not actually traveled by such family. The number of days the student has attended school shall be reported monthly by the teacher to the board of such public school district.

(7) No more than one allowance shall be made to a family irrespective of the number of students in a family being transported to school. If a family resides in a Class I district which is part of a Class VI district and has students enrolled in any of the grades offered by the Class I district and in any of the non-high-school grades offered by the Class VI district, such family shall receive not more than one allowance for the distance actually traveled when both districts are on the same direct travel route with one district being located a greater distance from the residence than the other. In such cases, the travel allowance shall be prorated among the school districts involved.

(8) No student shall be exempt from school attendance on account of distance from the public schoolhouse.

Source: Laws 1927, c. 84, § 1, p. 251; Laws 1929, c. 92, § 1, p. 348; C.S.1929, § 79-1902; Laws 1931, c. 149, § 1, p. 405; Laws 1941, c. 163, § 1, p. 650; C.S.Supp.,1941, § 79-1902; R.S.1943, § 79-1907; Laws 1949, c. 256, § 128, p. 735; Laws 1951, c. 276, § 6, p. 930; Laws 1955, c. 315, § 9, p. 979; Laws 1963, c. 483, § 1, p. 1553; Laws 1969, c. 717, § 1, p. 2743; Laws 1969, c. 718, § 1, p. 2744; Laws 1969, c. 719, § 1, p. 2746; Laws 1976, LB 852, § 1; Laws 1977, LB 117, § 1; Laws 1977, LB 33, § 10; Laws 1979, LB 425, § 1; Laws 1980, LB 867, § 2; Laws 1981, LB 204, § 156; Laws 1981, LB 316, § 3; Laws 1986, LB 419, § 1; Laws 1987, LB 200, § 1; Laws 1990, LB 259, § 22; Laws 1990, LB 1059, § 38; Laws 1993, LB 348, § 21; Laws 1994, LB 1311, § 1; R.S.1943, (1994), § 79-490; Laws 1996, LB 900, § 372; Laws 1997, LB 710, § 4; Laws 1997, LB 806, § 28; Laws 1999, LB 272, § 84; Laws 2003, LB 394, § 7; Laws 2005, LB 126, § 42; Laws 2006, LB 1024, § 56; Referendum 2006, No. 422; Laws 2007, LB641, § 10; Laws 2008, LB1154, § 8; Laws 2009, LB549, § 25.

Cross References

For definitions relating to affiliation of school districts, see section 79-4,101.

ARTICLE 7

ACCREDITATION, CURRICULUM, AND INSTRUCTION

(c) CURRICULUM AND INSTRUCTION REQUIREMENTS

(c) CURRICULUM AND INSTRUCTION REQUIREMENTS

79-720 Multicultural education program; incorporation into curriculum; department; duties.

(1) Each school district, in consultation with the State Department of Education, shall develop for incorporation into all phases of the curriculum of grades kindergarten through twelve a multicultural education program.

(2) The department shall create and distribute recommended multicultural education curriculum guidelines to all school districts. Each district shall create its own multicultural education program based on such recommended guidelines.

(3) The incorporation of the multicultural education program into the curriculum of each district shall not change (a) the number of instructional hours prescribed for elementary and high school students or (b) the number of instructional hours dedicated to the existing curriculum of each district.

Source: Laws 1992, LB 922, § 2; Laws 1993, LB 27, § 1; R.S.1943, (1994), § 79-4,230; Laws 1996, LB 900, § 394; Laws 2011, LB333, § 2.

79-722 Evaluation of multicultural education program; report.

In conjunction with the multicultural education program prescribed in section 79-720, the State Department of Education shall design a process for evaluating the implementation and effectiveness of each multicultural education program, including the collection of baseline data. The collection of baseline data for evaluating the implementation and effectiveness of each multicultural education program shall not include the testing, assessment, or evaluation of individual students' attitudes or beliefs. An evaluation of the implementation and effectiveness of each multicultural education program shall be conducted every five school years. On or before November 1, 2013, and on or before November 1 every five years thereafter, the department shall report the results of each evaluation to the Clerk of the Legislature, the Education Committee of the Legislature, and the State Board of Education and publish such report on a web site established by the department. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically.

Source: Laws 1992, LB 922, § 4; Laws 1993, LB 27, § 2; R.S.1943, (1994), § 79-4,232; Laws 1996, LB 900, § 396; Laws 2011, LB333, § 3; Laws 2012, LB782, § 150.
Operative date July 19, 2012.

79-724 American citizenship; committee on Americanism; created; duties; required instruction; patriotic exercises; duties of officers.

An informed, loyal, just, and patriotic citizenry is necessary to a strong, stable, just, and prosperous America. Such a citizenry necessitates that every member thereof be fully acquainted with the nation's history and that he or she be in full accord with our form of government and fully aware of the liberties, opportunities, and advantages of which we are possessed and the sacrifices and struggles of those through whose efforts these benefits were gained. Since youth is the time most susceptible to the acceptance of principles and doctrines that will influence men and women throughout their lives, it is one of the first duties of our educational system to conduct its activities, choose its textbooks, and arrange its curriculum in such a way that the love of liberty, justice, democracy, and America will be instilled in the hearts and minds of the youth of the state.

(1) Every school board shall, at the beginning of each school year, appoint from its members a committee of three, to be known as the committee on Americanism. The committee on Americanism shall:

(a) Carefully examine, inspect, and approve all textbooks used in the teaching of American history and civil government in the school. Such textbooks shall adequately stress the services of the men and women who achieved our national independence, established our constitutional government, and preserved our union and shall be so written to include contributions by ethnic groups as to develop a pride and respect for our institutions and not be a mere recital of events and dates;

(b) Assure themselves as to the character of all teachers employed and their knowledge and acceptance of the American form of government; and

(c) Take all such other steps as will assure the carrying out of the provisions of this section.

(2) All American history courses approved for grade levels as provided by this section shall include and adequately stress contributions of all ethnic groups (a) to the development and growth of America into a great nation, (b) to art, music, education, medicine, literature, science, politics, and government, and (c) to the war services in all wars of this nation.

(3) All grades of all public, private, denominational, and parochial schools, below the sixth grade, shall devote at least one hour per week to exercises or teaching periods for the following purpose:

(a) The recital of stories having to do with American history or the deeds and exploits of American heroes;

(b) The singing of patriotic songs and the insistence that every pupil memorize the Star-Spangled Banner and America; and

(c) The development of reverence for the flag and instruction as to proper conduct in its presentation.

(4) In at least two of the three grades from the fifth grade to the eighth grade in all public, private, denominational, and parochial schools, at least three periods per week shall be set aside to be devoted to the teaching of American history from approved textbooks, taught in such a way as to make the course interesting and attractive and to develop a love of country.

(5) In at least two grades of every high school, at least three periods per week shall be devoted to the teaching of civics, during which courses specific attention shall be given to the following matters:

(a) The United States Constitution and the Constitution of Nebraska;

(b) The benefits and advantages of our form of government and the dangers and fallacies of Nazism, Communism, and similar ideologies; and

(c) The duties of citizenship, including active participation in the improvement of a citizen's community, state, country, and world and the value and practice of civil discourse between opposing interests.

(6) Appropriate patriotic exercises suitable to the occasion shall be held under the direction of the superintendent in every public, private, denominational, and parochial school on Lincoln's birthday, Washington's birthday, Flag Day, Memorial Day, and Veterans Day, or on the day preceding or following such holiday, if the school is in session.

(7) Every school board, the State Board of Education, and the superintendent of each school district in the state shall be held directly responsible in the order named for carrying out this section, and neglect thereof by any employee or

appointed official shall be considered a dereliction of duty and cause for dismissal.

Source: Laws 1949, c. 256, § 19, p. 697; Laws 1969, c. 705, § 1, p. 2705; Laws 1971, LB 292, § 3; R.S.1943, (1994), § 79-213; Laws 1996, LB 900, § 398; Laws 1999, LB 272, § 86; Laws 2011, LB544, § 1.

Cross References

Flag display requirements, see section 79-707.
Violation, penalty, see section 79-727.

(i) QUALITY EDUCATION ACCOUNTABILITY ACT

79-757 Act, how cited.

Sections 79-757 to 79-762 shall be known and may be cited as the Quality Education Accountability Act.

Source: Laws 1998, LB 1228, § 1; Laws 2000, LB 812, § 1; Laws 2007, LB653, § 1; Laws 2011, LB637, § 25; Laws 2012, LB870, § 1. Effective date July 19, 2012.

79-759 Pilot project; standard college admission test; report.

Beginning with the 2011-12 school year, the State Department of Education may implement a three-year pilot project for the districtwide administration of a standard college admission test, selected by the State Board of Education, to students in the eleventh grade attending a public school in a participating school district to determine if such test (1) would improve the college-going rate and career readiness of Nebraska students and (2) could be utilized as the assessment for the one grade in high school as required under section 79-760.03. Participation by school districts in the pilot project shall be voluntary and shall be subject to the approval of the board. On or before September 1, 2012, and on or before September 1 each year thereafter through 2014, the department shall report to the Governor, the Clerk of the Legislature, and the chairperson of the Education Committee of the Legislature on the pilot project. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically. The project shall be paid for with funds from the Education Innovation Fund as provided in section 9-812.

Source: Laws 2011, LB637, § 26; Laws 2012, LB782, § 151. Operative date July 19, 2012.

79-760 Repealed. Laws 2012, LB 870, § 7.

79-760.03 Statewide assessment and reporting system for school year 2009-10 and subsequent years; State Board of Education; duties; technical advisory committee; terms; expenses.

(1) For school year 2009-10 and each school year thereafter, the State Board of Education shall implement a statewide system for the assessment of student learning and for reporting the performance of school districts and learning communities pursuant to this section. The assessment and reporting system shall measure student knowledge of subject matter materials covered by measurable academic content standards selected by the state board.

(2) The state board shall adopt a plan for an assessment and reporting system and implement and maintain the assessment and reporting system according to

such plan. The plan shall be submitted annually to the State Department of Education, the Governor, the chairperson of the Education Committee of the Legislature, and the Clerk of the Legislature. The plan submitted to the committee and the Clerk of the Legislature shall be submitted electronically. The state board shall select grade levels for assessment and reporting required pursuant to subsections (4) through (7) of this section. The purposes of the system are to:

(a) Determine how well public schools are performing in terms of achievement of public school students related to the state academic content standards;

(b) Report the performance of public schools based upon the results of state assessment instruments and national assessment instruments;

(c) Provide information for the public and policymakers on the performance of public schools; and

(d) Provide for the comparison among Nebraska public schools and the comparison of Nebraska public schools to public schools elsewhere.

(3) The Governor shall appoint a technical advisory committee to review the statewide assessment plan and state assessment instruments developed under the Quality Education Accountability Act. The technical advisory committee shall consist of three nationally recognized experts in educational assessment and measurement, one administrator from a school in Nebraska, and one teacher from a school in Nebraska. The members shall serve terms of three years, except that two of the members shall be appointed for initial terms of two years. Any vacancy shall be filled by the Governor for the remainder of the term. One of the members shall be designated as chairperson by the Governor. Members shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. The committee shall advise the Governor, the state board, and the State Department of Education on the development of statewide assessment instruments and the statewide assessment plan. The appointments to the committee shall be confirmed by the Legislature.

(4) The state board shall prescribe a statewide assessment of writing that relies on writing samples in each of three grades selected by the state board. Each year at least one of the three selected grades shall participate in the statewide writing assessment with each selected grade level participating at least once every three years.

(5) For school year 2009-10 and for each school year thereafter, the state board shall prescribe a statewide assessment of reading. The statewide assessment of reading shall include assessment instruments for each of the grade levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01.

(6) For no later than school year 2010-11 and for each school year thereafter, the state board shall prescribe a statewide assessment of mathematics. The statewide assessment of mathematics shall include assessment instruments for each of the grade levels three through eight and for one grade in high school and standards adopted by the state board pursuant to section 79-760.01. If no statewide assessment of mathematics is administered in school year 2009-10, school districts shall report mathematics assessment results in the same manner as such information was reported in school year 2008-09.

(7) For no later than school year 2011-12 and each school year thereafter, the state board shall prescribe a statewide assessment of science. The statewide

assessment of science shall include assessment instruments for each of the grade levels selected by the state board and standards adopted by the state board pursuant to section 79-760.01. The grade levels shall include at least one grade in elementary school, one grade in middle school or junior high school, and one grade in high school.

(8) The department shall conduct studies to verify the technical quality of assessment instruments and demonstrate the comparability of assessment instrument results required by the act. The department shall annually report such findings to the Governor, the Legislature, and the state board. The report submitted to the Legislature shall be submitted electronically.

(9) The state board shall recommend national assessment instruments for the purpose of national comparison. Each school district shall report individual student data for scores and sub-scores according to procedures established by the state board and the department pursuant to section 79-760.05.

(10) The aggregate results of assessment instruments and national assessment instruments shall be reported by the district on a building basis to the public in that district, to the learning community coordinating council if such district is a member of a learning community, and to the department. Each learning community shall also report the aggregate results of any assessment instruments and national assessment instruments to the public in that learning community and to the department. The department shall report the aggregate results of any assessment instruments and national assessment instruments on a learning community, district, and building basis as part of the statewide assessment and reporting system.

(11)(a) The assessment and reporting plan shall:

(i) Provide for the confidentiality of the results of individual students; and

(ii) Include all public schools and all public school students.

(b) The state board shall adopt criteria for the inclusion of students with disabilities, students entering the school for the first time, and students with limited English proficiency.

The department may determine appropriate accommodations for the assessment of students with disabilities or any student receiving special education programs and services pursuant to section 79-1139. Alternate academic achievement standards in reading, mathematics, and science and alternate assessment instruments aligned with the standards may be among the accommodations for students with severe cognitive disabilities.

(12) The state board may select additional grade levels and additional subject areas for statewide assessment instruments to comply with federal requirements.

(13) The state board shall not require school districts to administer assessments or assessment instruments other than as prescribed by the act.

(14) The state board shall appoint committees of teachers, from each appropriate subject area, and administrators to assist in the development of statewide assessment instruments required by the act.

Source: Laws 2007, LB653, § 4; Laws 2008, LB1157, § 4; Laws 2012, LB782, § 152.
Operative date July 19, 2012.

79-760.04 Repealed. Laws 2012, LB 870, § 7.

79-760.05 Statewide system for tracking individual student achievement; State Board of Education; duties; school districts; provide data; analysis and reports.

(1) The State Board of Education shall implement a statewide system for tracking individual student achievement, using the student identifier system of the State Department of Education, that can be aggregated to track student progress by demographic characteristics, including, but not limited to, race, poverty, high mobility, attendance, and limited English proficiency, on available measures of student achievement which include, but need not be limited to, national assessment instruments, state assessment instruments, and the indicators used in the accountability system required pursuant to section 79-760.06. Such a system shall be designed so as to aggregate student data by available educational input characteristics, which may include class size, teacher education, teacher experience, special education, early childhood programs, federal programs, and other targeted education programs. School districts shall provide the department with individual student achievement data from assessment instruments required pursuant to section 79-760.03 in order to implement the statewide system.

(2) The department shall annually analyze and report on student achievement for the state, each school district, each public school, and each learning community aggregated by the demographic characteristics described in subsection (1) of this section. The department shall report the findings to the Governor, the Legislature, school districts, educational service units, and each learning community. The report submitted to the Legislature shall be submitted electronically. Such analysis shall include aggregated data that would indicate differences in achievement due to available educational input characteristics described in subsection (1) of this section. Such analysis shall include indicators of progress toward state achievement goals for students in poverty, limited English proficient students, and highly mobile students.

Source: Laws 2007, LB653, § 8; Laws 2008, LB1157, § 5; Laws 2011, LB333, § 5; Laws 2012, LB782, § 153; Laws 2012, LB870, § 3.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB782, section 153, with LB870, section 3, to reflect all amendments.

Note: Changes made by LB870 became effective July 19, 2012. Changes made by LB782 became operative July 19, 2012.

79-760.06 Accountability system; combine multiple measures; State Department of Education; powers; duties.

On or before August 1, 2012, the State Board of Education shall establish an accountability system to be used to measure the performance of individual public schools and school districts. The accountability system shall combine multiple measures, including, but not limited to, graduation rates, student growth and student improvement on the assessment instruments provided in section 79-760.03, and other indicators of the performance of public schools and school districts as established by the board. The measures selected by the board for the accountability system may be combined into a school performance score and district performance score.

The board may establish levels of performance for the indicators used in the accountability system in order to classify the performance of public schools and school districts beginning with school year 2013-14. The State Department of

Education shall annually report any performance levels established by the board regarding the performance of individual public schools and school districts as part of the statewide assessment and reporting system.

Source: Laws 2012, LB870, § 2.
Effective date July 19, 2012.

(j) CAREER EDUCATION PARTNERSHIP ACT

79-763 Repealed. Laws 2009, LB 476, § 6.

79-764 Repealed. Laws 2009, LB 476, § 6.

79-765 Repealed. Laws 2009, LB 476, § 6.

79-766 Repealed. Laws 2009, LB 476, § 6.

79-767 Repealed. Laws 2009, LB 476, § 6.

79-768 Repealed. Laws 2009, LB 476, § 6.

(k) LEARNING COMMUNITY FOCUS SCHOOL OR PROGRAM

79-769 Focus programs; focus schools; magnet schools; authorized; requirements.

(1) Any one or more member school districts of a learning community may establish one or more focus programs, focus schools, or magnet schools. If included as part of the diversity plan of a learning community, the focus school or focus program shall be eligible for a focus school and program allowance pursuant to section 79-1007.05.

(2) Focus schools, focus programs, and magnet schools may be included in pathways across member school districts pursuant to the diversity plan developed by the learning community coordinating council pursuant to section 79-2104.

(3) If multiple member school districts collaborate on a focus program, focus school, or magnet school, the school districts shall form a joint entity pursuant to the Interlocal Cooperation Act for the purpose of creating, implementing, and operating such focus program, focus school, or magnet school. The agreement creating such joint entity shall address legal, financial, and academic responsibilities and the assignment to participating school districts of students enrolled in such focus program, focus school, or magnet school who reside in nonparticipating school districts.

(4) For purposes of this section:

(a) Focus program means a program that does not have an attendance area, whose enrollment is designed so that the socioeconomic diversity of the students attending the focus program reflects as nearly as possible the socioeconomic diversity of the student body of the learning community, which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum, which may be housed in a building with other public school programs, and which may consist of either the complete education program for participating students or part of the education program for participating students;

(b) Focus school means a school that does not have an attendance area, whose enrollment is designed so that the socioeconomic diversity of the students attending the focus school reflects as nearly as possible the socioeconomic diversity of the student body of the learning community, which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum, and which is housed in a building that does not contain another public school program;

(c) Magnet school means a school having a home attendance area but which reserves a portion of its capacity specifically for students from outside the attendance area who will contribute to the socioeconomic diversity of the student body of such school and which has a unique curriculum with specific learning goals or teaching techniques different from the standard curriculum; and

(d) Pathway means elementary, middle, and high school focus programs, focus schools, and magnet schools with coordinated curricula based on specific learning goals or teaching techniques.

Source: Laws 2006, LB 1024, § 57; Laws 2007, LB641, § 11; Laws 2008, LB1154, § 9; Laws 2011, LB558, § 1.

Cross References

Interlocal Cooperation Act, see section 13-801.

(m) NEBRASKA COMMUNITY COLLEGE DEGREE

79-771 Nebraska community college degrees; how treated.

For purposes of financial aid relating to postsecondary education and admission to postsecondary educational institutions, a student shall be deemed a high school graduate if he or she has obtained an associate of arts degree or an associate of science degree from a community college in Nebraska.

Source: Laws 2009, LB102, § 1.

(n) CENTER FOR STUDENT LEADERSHIP AND EXTENDED LEARNING ACT

79-772 Act, how cited.

Sections 79-772 to 79-775 shall be known and may be cited as the Center for Student Leadership and Extended Learning Act.

Source: Laws 2009, LB476, § 1.

79-773 Legislative findings.

(1) The Legislature finds that:

(a) Since 1928, Nebraska students have benefited from participation in career education student organizations such as Nebraska FFA, Family Career and Community Leaders of America (FCCLA), Future Business Leaders of America (FBLA), Skills USA, Nebraska DECA, and Health Occupations Students of America (HOSA);

(b) Research conducted in 2007 by the National Research Center for Career and Technical Education has documented a positive association between career education student organizations participation and academic motivation, aca-

demic engagement, grades, career self-efficacy, college aspirations, and employability skills;

(c) Long-term sustainability of the state associations of career education student organizations has a positive impact on Nebraska students and is in the best interests of the economic well-being of the State of Nebraska;

(d) Students in Nebraska schools should have opportunities to acquire academic, technical, and employability knowledge and skills needed to meet the demands of a global economy;

(e) Students benefit from the opportunities provided by career education student organizations to develop and demonstrate leadership skills that prepare them for civic, economic, and entrepreneurial leadership roles;

(f) Students benefit from engaging in extended-learning experiences outside their normal classrooms that allow them to apply their knowledge and skill in real-world situations;

(g) There is a need to establish and expand strategies and programs that enable young people to be college-ready and career-ready, build assets, and remain as productive citizens in their communities; and

(h) There is a need to establish a statewide structure that supports existing and emerging curriculum and program offerings with student leadership development opportunities and experiences.

(2) The Legislature recognizes that Nebraska must provide opportunities to educate young people with leadership and employability skills to (a) meet the needs of business and industry and remain economically viable, (b) educate and nurture future entrepreneurs for successful business ventures to diversify and strengthen our economic base, (c) foster rewarding personal development experiences that involve students in their communities and encourage them to return to their communities after completing postsecondary education, and (d) invest in and support the leadership development of our future state and community civic leaders.

Source: Laws 2009, LB476, § 2.

79-774 Terms, defined.

For purposes of the Center for Student Leadership and Extended Learning Act:

(1) Career and technical education means educational programs that support the development of knowledge and skill in the following areas: Agriculture, food, and natural resources; architecture and construction; arts, audiovisual, technology, and communication; business management and administration; education and training; finance; government and public administration; health science; hospitality and tourism; human services; information technology; law, public safety, and security; marketing; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics;

(2) Career education student organization means an organization for individuals enrolled in a career and technical education program that engages career and technical education activities as an integral part of the instructional program; and

(3) Extended learning means activities and programs that expand opportunities for students to participate in educational activities outside the normal classroom.

Source: Laws 2009, LB476, § 3.

79-775 Purpose of act; Center for Student Leadership and Extended Learning; duties.

The purpose of the Center for Student Leadership and Extended Learning Act is to provide state support for establishing and maintaining within the State Department of Education the Center for Student Leadership and Extended Learning. The center shall provide ongoing financial and administrative support for state leadership and administration of Nebraska career education student organizations, create and coordinate opportunities for students to participate in educational activities outside the normal classroom, and partner with state and local organizations to share research and identify best practices that can be disseminated to schools and community organizations.

Source: Laws 2009, LB476, § 4.

(o) POLICY TO SHARE STUDENT DATA

79-776 State Board of Education; policy to share student data; duties.

The State Board of Education shall enter into memoranda of understanding on or before September 1, 2010, with the Board of Regents of the University of Nebraska, the Board of Trustees of the Nebraska State Colleges, and the board of governors of each community college area to adopt a policy to share student data. At a minimum, the policy shall ensure that the exchange of information is conducted in conformance with the requirements of the federal Family Educational Rights and Privacy Act of 1974, as amended, 20 U.S.C. 1232g, and all federal regulations and applicable guidelines adopted in accordance with such act, as such act, regulations, and guidelines existed on January 1, 2010.

Source: Laws 2010, LB1071, § 7.

(p) CAREER ACADEMY

79-777 Career academy; establishment and operation; duties; funding; department; define standards and criteria.

(1) Any school district, with the approval of the State Department of Education, may establish and operate a career academy. The purpose of a career academy is to provide students with a career-based educational curriculum. A school district may partner with another school district, an educational service unit, a learning community, a postsecondary educational institution, or a private entity in the establishment and operation of a career academy.

(2) A career academy established pursuant to subsection (1) of this section shall:

(a) Recruit students who seek a career-based curriculum, which curriculum shall be based on criteria determined by the department;

(b) Recruit and hire instructors based on their expertise in career-based education; and

(c) Provide a rigorous academic curriculum with a transition component to prepare students for the workforce, including, but not limited to, internships, job training, and skills training.

(3) In addition to funding from the establishing school district or any of the district's partners, a career academy may also receive private donations for operating expenses.

(4) The department shall define standards and criteria for (a) the establishment, evaluation, and continuing approval of career academies, (b) career-based curriculum utilized by career academies, (c) the necessary data elements and collection of data pertaining to career academies, including, but not limited to, the number of students enrolled in a career academy and their grade levels, and (d) the establishment of advisory boards consisting of business and education representatives to provide guidance and direction for the operation of career academies.

(5) The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2012, LB870, § 4.
Effective date July 19, 2012.

ARTICLE 8

TEACHERS AND ADMINISTRATORS

(a) CERTIFICATES

(c) TENURE

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

(p) EXCELLENCE IN TEACHING ACT

(a) CERTIFICATES

79-808 Teachers and administrators; certificates and permits; requirements; board; duties; advisory committees.

(1) The board shall establish, adopt, and promulgate appropriate rules, regulations, and procedures governing the issuance, renewal, conversion, suspension, and revocation of certificates and permits to teach, provide special services, and administer based upon (a) earned college credit in humanities, social and natural sciences, mathematics, or career and technical education, (b) earned college credit, or its equivalent in professional education, for particular teaching, special services, or administrative assignments, (c) criminal history record information if the applicant has not been a continuous Nebraska resident for five years immediately preceding application for the first issuance of a certificate, (d) human relations training, (e) successful teaching, administration, or provision of special services, and (f) moral, mental, and physical fitness for teaching, all in accordance with sound educational practices. Such rules, regulations, and procedures shall also provide for endorsement requirements to indicate areas of specialization on such certificates and permits.

(2) The board may issue a temporary certificate, valid for a period not to exceed two years, to any applicant for certification who has not completed the human relations training requirement.

(3) Members of any advisory committee established by the board to assist the board in teacher education and certification matters shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177. Each school district which has an employee who serves as a member of such committee and which is required to hire a person to replace such member during the member's attendance at meetings or activities of the committee or any subcommittee thereof shall be reimbursed from the Certification Fund for the expense it incurs from hiring a replacement. School districts may excuse employees who serve on such advisory committees from certain duties which conflict with any advisory committee duties.

Source: Laws 1963, c. 491, § 3, p. 1569; Laws 1981, LB 427, § 1; Laws 1984, LB 994, § 9; Laws 1985, LB 633, § 7; Laws 1986, LB 997, § 14; Laws 1987, LB 529, § 6; Laws 1989, LB 250, § 2; Laws 1990, LB 1090, § 20; Laws 1991, LB 511, § 57; Laws 1992, LB 245, § 62; Laws 1995, LB 123, § 2; R.S.Supp.,1995, § 79-1247.05; Laws 1996, LB 900, § 438; Laws 2001, LB 314, § 1; Laws 2003, LB 685, § 8; Laws 2009, LB547, § 2.

79-810 Certificates or permits; issuance by Commissioner of Education; fee; disposition; contents of certificate or permit; endorsements; Certification Fund; Professional Practices Commission Fund; created; use; investment.

(1) Certificates and permits shall be issued by the commissioner upon application on forms prescribed and provided by him or her which shall include the applicant's social security number.

(2) Each certificate or permit issued by the commissioner shall indicate the area of authorization to teach, provide special services, or administer and any areas of endorsement for which the holder qualifies. During the term of any certificate or permit issued by the commissioner, additional endorsements may

be made on the certificate or permit if the holder submits an application, meets the requirements for issuance of the additional endorsements, and pays a nonrefundable fee of forty dollars.

(3) The Certification Fund is created. Any fee received by the department under sections 79-806 to 79-815 shall be remitted to the State Treasurer for credit to the fund. The fund shall be used by the department in paying the costs of certifying educators pursuant to such sections and to carry out subsection (3) of section 79-808. For issuance of a certificate or permit valid in all schools, the nonrefundable fee shall be fifty-five dollars, except that thirteen dollars of the fifty-five-dollar fee shall be credited to the Professional Practices Commission Fund which is created for use by the department to pay for the provisions of sections 79-859 to 79-871, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. For issuance of a certificate or permit valid only in nonpublic schools, the nonrefundable fee shall be forty dollars. Any money in the Certification Fund or the Professional Practices Commission 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. 491, § 5, p. 1571; Laws 1967, c. 549, § 8, p. 1814; Laws 1969, c. 728, § 1, p. 2763; Laws 1969, c. 729, § 1, p. 2764; Laws 1969, c. 584, § 79, p. 2393; Laws 1977, LB 540, § 1; Laws 1980, LB 771, § 1; Laws 1991, LB 855, § 1; Laws 1991, LB 511, § 58; Laws 1992, LB 245, § 63; Laws 1993, LB 348, § 29; Laws 1994, LB 1066, § 89; R.S.1943, (1994), § 79-1247.07; Laws 1996, LB 900, § 440; Laws 1997, LB 206, § 1; Laws 1997, LB 752, § 216; Laws 2002, Second Spec. Sess., LB 1, § 5; Laws 2003, LB 685, § 10; Laws 2007, LB150, § 2; Laws 2009, First Spec. Sess., LB3, § 59.

Cross References

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

(c) TENURE

79-828 Probationary certificated employee; probationary period; evaluation; contract amendment or nonrenewal; procedure.

(1) The contract of a probationary certificated employee shall be deemed renewed and remain in full force and effect unless amended or not renewed in accordance with sections 79-824 to 79-842.

(2) The purpose of the probationary period is to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

All probationary certificated employees employed by any class of school district shall, during each year of probationary employment, be evaluated at least once each semester, unless the probationary certificated employee is a superintendent, in accordance with the procedures outlined below:

The probationary certificated employee shall be observed and evaluation shall be based upon actual classroom observations for an entire instructional period. If deficiencies are noted in the work performance of any probationary certificated employee, the evaluator shall provide the probationary certificated em-

ployee at the time of the observation with a list of deficiencies and a list of suggestions for improvement and assistance in overcoming the deficiencies. The evaluator shall also provide the probationary certificated employee with follow-up evaluations and assistance when deficiencies remain.

If the probationary certificated employee is a superintendent, he or she shall be evaluated twice during the first year of employment and at least once annually thereafter.

Any certificated employee employed prior to September 1, 1982, by the school board of any Class I, II, III, or VI school district shall serve the probationary period required by law prior to such date and shall not be subject to any extension of probation.

(3) If the school board or the superintendent or superintendent's designee determines that it is appropriate to consider whether the contract of a probationary certificated employee or the superintendent should be amended or not renewed for the next school year, such certificated employee shall be given written notice that the school board will consider the amendment or nonrenewal of such certificated employee's contract for the ensuing school year. Upon request of the certificated employee, notice shall be provided which shall contain the written reasons for such proposed amendment or nonrenewal and shall be sufficiently specific so as to provide such employee the opportunity to prepare a response and the reasons set forth in the notice shall be employment related.

(4) The school board may elect to amend or not renew the contract of a probationary certificated employee for any reason it deems sufficient if such nonrenewal is not for constitutionally impermissible reasons, and such nonrenewal shall be in accordance with sections 79-824 to 79-842. Amendment or nonrenewal for reason of reduction in force shall be subject to sections 79-824 to 79-842 and 79-846 to 79-849.

(5) Within seven calendar days after receipt of the notice, the probationary certificated employee may make a written request to the secretary of the school board or to the superintendent or superintendent's designee for a hearing before the school board.

(6) Prior to scheduling of action or a hearing on the matter, if requested, the notice of possible amendment or nonrenewal and the reasons supporting possible amendment or nonrenewal shall be considered a confidential employment matter as provided in sections 79-539, 79-8,109, and 84-1410 and shall not be released to the public or any news media.

(7) At any time prior to the holding of a hearing or prior to final determination by the school board to amend or not renew the contract involved, the probationary certificated employee may submit a letter of resignation for the ensuing year, which resignation shall be accepted by the school board.

(8) The probationary certificated employee shall be afforded a hearing which shall not be required to meet the requirements of a formal due process hearing as set forth in section 79-832 but shall be subject to section 79-834.

Source: Laws 1982, LB 259, § 5; Laws 1986, LB 534, § 1; R.S.1943, (1994), § 79-12,111; Laws 1996, LB 900, § 458; Laws 2012, LB870, § 5.
Effective date July 19, 2012.

(e) UNIFIED SYSTEM OR REORGANIZED SCHOOL DISTRICTS

79-852 Collective-bargaining agreement; continued; effect.

The collective-bargaining agreement of the school district or districts forming the unified system or reorganized school district with the largest number of teacher employees shall continue in full force and effect and govern all teachers in the unified system or reorganized school district until replaced by a successor agreement, and the teachers employed by the unified system or reorganized school district and previously employed by the school districts involved in the formation of the unified system or reorganized school district shall automatically be included in that bargaining unit but no certificated public school employee shall be compelled to join any organization or association. If only one collective-bargaining agreement is in effect in the school districts which are a part of the unification or reorganization, that collective-bargaining agreement shall continue in full force and effect until replaced by a successor agreement and the teachers employed by the other school districts involved in the unification or reorganization shall automatically be included in that bargaining unit. For purposes of the Industrial Relations Act, the unified system shall be deemed a public employer as defined in section 48-801.

Source: Laws 1980, LB 844, § 3; R.S.1943, (1994), § 79-12,106; Laws 1996, LB 900, § 482; Laws 1998, LB 1219, § 3; Laws 2011, LB397, § 17.

Cross References

Industrial Relations Act, see section 48-801.01.

(p) EXCELLENCE IN TEACHING ACT

79-8,132 Act, how cited.

Sections 79-8,132 to 79-8,140 shall be known and may be cited as the Excellence in Teaching Act and shall include the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

Source: Laws 2000, LB 1399, § 15; Laws 2009, LB547, § 3.

79-8,133 Attracting Excellence to Teaching Program; created; terms, defined.

The Attracting Excellence to Teaching Program is created. For purposes of the Attracting Excellence to Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by the North Central Association of Colleges and Schools, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the program pursuant to rules and regulations;

(3) Eligible student means an individual who (a) is a full-time student, (b) is enrolled in an eligible institution in an undergraduate or a graduate teacher education program working toward his or her initial certificate to teach in Nebraska, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) for applicants applying for the first time on or

after April 23, 2009, is a student majoring in a shortage area, and (e) for applicants applying to receive a loan during fiscal year 2011-12 or 2012-13, is a student who previously received a loan pursuant to the Attracting Excellence to Teaching Program in the fiscal year immediately preceding the fiscal year in which the new loan would be received;

(4) Full-time student means, in the aggregate, the equivalent of a student who in a twelve-month period is enrolled in twenty-four semester credit hours for undergraduate students or eighteen semester credit hours for graduate students of classroom, laboratory, clinical, practicum, or independent study course work;

(5) Majoring in a shortage area means pursuing a degree which will allow an individual to be properly endorsed to teach in a shortage area;

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the program; and

(7) Teacher education program means a program of study approved by the State Board of Education pursuant to subdivision (5)(g) of section 79-318.

Source: Laws 2000, LB 1399, § 16; Laws 2003, LB 685, § 20; Laws 2009, LB547, § 4; Laws 2011, LB333, § 6.

79-8,134 Attracting Excellence to Teaching Program; purposes.

The purposes of the Attracting Excellence to Teaching Program are to:

(1) Attract outstanding students to major in shortage areas at the teacher education programs of Nebraska's postsecondary educational institutions;

(2) Retain resident students and graduates as teachers in the accredited or approved public and private schools of Nebraska; and

(3) Establish a loan contract that requires a borrower to obtain employment as a teacher in this state after graduation.

Source: Laws 2000, LB 1399, § 17; Laws 2009, LB547, § 5.

79-8,135 Attracting Excellence to Teaching Program; administration; eligible students.

(1) The department shall administer the Attracting Excellence to Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Graduate in the top quarter of his or her high school class or have a minimum cumulative grade-point average of 3.0 on a four-point scale in an eligible institution;

(b) Agree to complete a teacher education program at an eligible institution and, for applicants applying for the first time on or after April 23, 2009, to complete the major on which the applicant's eligibility is based; and

(c) Commit to teach in an accredited or approved public or private school in Nebraska upon (i) successful completion of the teacher education program for which the applicant is applying to the Attracting Excellence to Teaching Program and (ii) becoming certified pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than three thousand dollars per year. Loans awarded to individual

students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through an eligible institution. Loans shall be funded pursuant to section 79-8,137.05.

Source: Laws 2000, LB 1399, § 18; Laws 2003, LB 685, § 21; Laws 2009, LB547, § 6.

79-8,136 Transferred to section 79-8,137.05.

79-8,137 Attracting Excellence to Teaching Program; eligible student; contract requirements; loan payments; suspension; loan forgiveness; amount.

(1)(a) Prior to receiving any money from a loan pursuant to the Attracting Excellence to Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-510.

(b) For eligible students who applied for the first time prior to April 23, 2009, the contract shall require that if (i) the borrower is not employed as a teacher in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan must be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract, and an appropriate penalty as determined by the department may be assessed. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(c) For eligible students who apply for the first time on or after April 23, 2009, the contract shall require that if (i) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska and teaching at least a portion of the time in the shortage area for which the loan was received for a time period equal to the number of years required for loan forgiveness pursuant to subsection (3) of this section and is not enrolled as a full-time student in a graduate program within six months after obtaining an undergraduate degree for which a loan from the program was obtained or (ii) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to continue to be an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rule and regulation provide for exceptions to the conditions of repayment pursuant to this subdivision based upon mitigating circumstances.

(2) If the borrower applied for the first time prior to April 23, 2009, and (a) successfully completes the teacher education program and becomes certified pursuant to sections 79-806 to 79-815, (b) becomes employed as a teacher in

this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. For each year that the borrower teaches in Nebraska pursuant to the contract, payments shall be forgiven in an amount equal to the amount borrowed for one year, except that if the borrower teaches in a school district that is in a local system classified as very sparse as defined in section 79-1003 or teaches in a school district in which at least forty percent of the students are poverty students as defined in section 79-1003, payments shall be forgiven each year in an amount equal to the amount borrowed for two years.

(3) If the borrower applies for the first time on or after April 23, 2009, and (a) successfully completes the teacher education program and major for which the borrower is receiving a forgivable loan pursuant to the program and becomes certified pursuant to sections 79-806 to 79-815 with an endorsement in the shortage area for which the loan was received, (b) becomes employed as a full-time teacher teaching at least a portion of the time in the shortage area for which the loan was received in an approved or accredited school in this state within six months of becoming certified, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the formula students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

Source: Laws 2000, LB 1399, § 20; Laws 2003, LB 685, § 22; Laws 2008, LB988, § 7; Laws 2009, LB547, § 7; Laws 2012, LB858, § 14. Effective date July 19, 2012.

79-8,137.01 Enhancing Excellence in Teaching Program; created; terms, defined.

The Enhancing Excellence in Teaching Program is created. For purposes of the Enhancing Excellence in Teaching Program:

(1) Department means the State Department of Education;

(2) Eligible graduate program means a program of study offered by an eligible institution which results in obtaining a graduate degree;

(3) Eligible institution means a not-for-profit college or university which (a) is located in Nebraska, (b) is accredited by the North Central Association of Colleges and Schools, (c) has a teacher education program, and (d) if a privately funded college or university, has not opted out of the Enhancing Excellence in Teaching Program pursuant to rules and regulations;

(4) Eligible student means an individual who (a) is a certificated teacher employed to teach in an approved or accredited school in Nebraska, (b) is

enrolled in an eligible graduate program, (c) if enrolled at a state-funded eligible institution, is a resident student as described in section 85-502 or, if enrolled in a privately funded eligible institution, would be deemed a resident student if enrolled in a state-funded eligible institution, (d) is majoring in a shortage area, curriculum and instruction, a subject area in which the individual already holds a secular teaching endorsement, or a subject area that will result in an additional secular teaching endorsement which the superintendent of the school district or head administrator of the private, denominational, or parochial school employing the individual believes will be beneficial to the students of such school district or school as evidenced by a statement signed by the superintendent or head administrator, and (e) is applying for a loan pursuant to the Enhancing Excellence in Teaching Program to be received at a time other than during fiscal year 2011-12 or 2012-13;

(5) Majoring in a shortage area or subject area means pursuing a degree which will allow an individual to be properly endorsed to teach in such shortage area or subject area; and

(6) Shortage area means a secular field of teaching for which there is a shortage, as determined by the department, of properly endorsed teachers at the time the borrower first receives funds pursuant to the Enhancing Excellence in Teaching Program.

Source: Laws 2009, LB547, § 8; Laws 2010, LB1071, § 8; Laws 2011, LB333, § 7.

79-8,137.02 Enhancing Excellence in Teaching Program; purposes.

The purposes of the Enhancing Excellence in Teaching Program are to:

(1) Retain teachers in the accredited or approved public and private schools of Nebraska;

(2) Improve the skills of existing teachers in Nebraska through the graduate education programs of Nebraska's postsecondary educational institutions; and

(3) Establish a loan contract that requires a borrower to continue employment as a teacher in this state after graduation from an eligible graduate program.

Source: Laws 2009, LB547, § 9; Laws 2010, LB1071, § 9.

79-8,137.03 Enhancing Excellence in Teaching Program; administration; eligible student; loans.

(1) The department shall administer the Enhancing Excellence in Teaching Program either directly or by contracting with public or private entities.

(2) To be eligible for the program, an eligible student shall:

(a) Agree to complete an eligible graduate program at an eligible institution and to complete the major on which the applicant's eligibility is based as determined by the department; and

(b) Commit to teach in an accredited or approved public or private school in Nebraska upon successful completion of the eligible graduate program for which the applicant is applying to the Enhancing Excellence in Teaching Program and to maintaining certification pursuant to sections 79-806 to 79-815.

(3) Eligible students may apply on an annual basis for loans in an amount of not more than one hundred seventy-five dollars per credit hour. Loans awarded to individual students shall not exceed a cumulative period exceeding five consecutive years. Loans shall only be awarded through the department. Loans shall be funded pursuant to section 79-8,137.05.

Source: Laws 2009, LB547, § 10; Laws 2010, LB1071, § 10.

79-8,137.04 Enhancing Excellence in Teaching Program; contract requirements; loan payments; suspension; loan forgiveness; amount.

(1) Prior to receiving any money from a loan pursuant to the Enhancing Excellence in Teaching Program, an eligible student shall enter into a contract with the department. Such contract shall be exempt from the requirements of sections 73-501 to 73-510. The contract shall require that if (a) the borrower is not employed as a full-time teacher teaching in an approved or accredited school in Nebraska for a time period equal to the number of years required for loan forgiveness pursuant to subsection (2) of this section or (b) the borrower does not complete the requirements for graduation within five consecutive years after receiving the initial loan under the program, then the loan shall be repaid, with interest at the rate fixed pursuant to section 45-103 accruing as of the date the borrower signed the contract and actual collection costs as determined by the department. If a borrower fails to remain enrolled at an eligible institution or otherwise fails to meet the requirements of an eligible student, repayment of the loan shall commence within six months after such change in eligibility. The State Board of Education may by rules and regulations provide for exceptions to the conditions of repayment pursuant to this subsection based upon mitigating circumstances.

(2) If the borrower (a) successfully completes the eligible graduate program and major for which the borrower is receiving a forgivable loan pursuant to the Enhancing Excellence in Teaching Program and maintains certification pursuant to sections 79-806 to 79-815, (b) maintains employment as a teacher in an approved or accredited school in this state, and (c) otherwise meets the requirements of the contract, payments shall be suspended for the number of years that the borrower is required to remain employed as a teacher in this state under the contract. Beginning after the first two years of teaching full-time in Nebraska following graduation for the degree for which the loan was received, for each year that the borrower teaches full-time in Nebraska pursuant to the contract, the loan shall be forgiven in an amount equal to three thousand dollars, except that if the borrower teaches full-time in a school district that is in a local system classified as very sparse as defined in section 79-1003, teaches in a school building in which at least forty percent of the students are poverty students as defined in section 79-1003, or teaches in an accredited or approved private school in Nebraska in which at least forty percent of the enrolled students qualified for free lunches as determined by the most recent data available from the department, payments shall be forgiven each year in an amount equal to six thousand dollars.

Source: Laws 2009, LB547, § 11; Laws 2010, LB1071, § 11; Laws 2012, LB858, § 15.
Effective date July 19, 2012.

79-8,137.05 Excellence in Teaching Cash Fund; created; use; investment.

(1) The Excellence in Teaching Cash Fund is created. The fund shall consist of appropriations by the Legislature, transfers pursuant to section 9-812, and loan repayments, penalties, and interest payments received in the course of administering the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program.

(2) For all fiscal years except fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis up to four hundred thousand dollars in the aggregate of the funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions according to the distribution formula as determined by rule and regulation. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students. The remaining available funds shall be distributed by the department to eligible students for the Enhancing Excellence in Teaching Program.

(3) For fiscal years 2011-12 and 2012-13, the department shall allocate on an annual basis funds to be distributed for the Attracting Excellence to Teaching Program to all eligible institutions receiving applications from eligible students for loans to be received during such fiscal years. The distribution for each of fiscal years 2011-12 and 2012-13 shall be proportional based on the amounts applied for by eligible students at each institution, except that no more than one hundred percent of such amounts shall be distributed. The eligible institutions shall act as agents of the department in the distribution of the funds for the Attracting Excellence to Teaching Program to eligible students.

(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 2000, LB 1399, § 19; Laws 2001, Spec. Sess., LB 3, § 6; R.S.1943, (2008), § 79-8,136; Laws 2009, LB547, § 12; Laws 2011, LB333, § 8.

Cross References

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

79-8,138 Repayment tracking.

The department has the administrative responsibility to track borrowers and to develop repayment tracking and collection mechanisms for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program. The department may contract for such services. When a loan has been forgiven pursuant to section 79-8,137 or 79-8,137.04, the amount forgiven may be taxable income to the borrower and the department shall provide notification of the amount forgiven to the borrower, the Department of Revenue, and the United States Internal Revenue Service if required by the Internal Revenue Code.

Source: Laws 2000, LB 1399, § 21; Laws 2009, LB547, § 13.

79-8,139 Reports.

(1) Each eligible institution shall file an annual report with the department for the Attracting Excellence to Teaching Program and the Enhancing Excellence in Teaching Program for any fiscal year in which the eligible institution receives funding to distribute to students pursuant to either or both of such

programs containing such information as required by rule and regulation. On or before December 31 of each even-numbered year, the department shall submit a report to the Governor, the Clerk of the Legislature, and the Education Committee of the Legislature on the status of the programs, the status of the borrowers, and the impact of the programs on the number of teachers in shortage areas in Nebraska and on the number of teachers receiving graduate degrees in teaching endorsement areas in Nebraska. The report submitted to the Clerk of the Legislature and the committee shall be submitted electronically. Each report shall include information on an institution-by-institution basis, the status of borrowers, and a financial statement with a description of the activity of the Excellence in Teaching Cash Fund.

(2) Any report pursuant to this section which includes information about borrowers shall exclude confidential information or any other information which specifically identifies a borrower.

Source: Laws 2000, LB 1399, § 22; Laws 2009, LB547, § 14; Laws 2011, LB333, § 9; Laws 2012, LB782, § 154.
Operative date July 19, 2012.

79-8,140 Rules and regulations.

The State Board of Education may adopt and promulgate rules and regulations to determine teacher shortage areas and to carry out the Excellence in Teaching Act.

Source: Laws 2000, LB 1399, § 23; Laws 2009, LB547, § 15.

ARTICLE 9

SCHOOL EMPLOYEES RETIREMENT SYSTEMS

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

Section
79-901. Act, how cited.
79-902. Terms, defined.
79-903. Retirement system; established; purpose.
79-904. School retirement system; administration; retirement board; powers and duties; rules and regulations.
79-904.01. Board; power to adjust contributions and benefits.
79-906. Director; records; contents; employer education program.
79-909. Auditor of Public Accounts; annual audit; report.
79-910.01. Retirement system; participation.
79-915. Retirement system; membership; requirements.
79-916. Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.
79-920. State school official; department employee; retirement system options.
79-926. Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.
79-933.01. Direct rollover; terms, defined; distributee; powers; board; duties.
79-933.03. Contributing member; credit for service in other schools; limitation; procedure; payment.
79-933.05. Contributing member; credit for service in other schools; limitation; procedure; payment.
79-933.06. Contributing member; credit for leave of absence; limitation; procedure; payment.
79-940. Repealed. Laws 2011, LB 509, § 55.
79-941. Total monthly benefit, defined; how computed.
79-942. Supplemental retirement benefit; how computed.

(a) EMPLOYEES OF OTHER THAN CLASS V DISTRICT

79-901 Act, how cited.

Sections 79-901 to 79-977.03 shall be known and may be cited as the School Employees Retirement Act.

Source: Laws 1991, LB 549, § 23; Laws 1993, LB 292, § 1; Laws 1994, LB 833, § 29; Laws 1995, LB 501, § 4; Laws 1996, LB 700, § 6; Laws 1996, LB 847, § 28; R.S.Supp.,1995, § 79-1501.01; Laws 1996, LB 900, § 536; Laws 1996, LB 1076, § 14; Laws 1997, LB 724, § 2; Laws 1998, LB 532, § 5; Laws 1998, LB 1191, § 44; Laws 2002, LB 407, § 21; Laws 2011, LB509, § 16.

79-902 Terms, defined.

For purposes of the School Employees Retirement Act, unless the context otherwise requires:

(1) Accumulated contributions means the sum of all amounts deducted from the compensation of a member and credited to his or her individual account in the School Retirement Fund together with regular interest thereon, compounded monthly, quarterly, semiannually, or annually;

(2) Beneficiary means any person in receipt of a school retirement allowance or other benefit provided by the act;

(3) Member means any person who has an account in the School Retirement Fund;

(4) County school official means (a) until July 1, 2000, the county superintendent or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate and (b) on or after July 1, 2000, the county superintendent, county school administrator, or district superintendent and any person serving in his or her office who is required by law to have a teacher's certificate;

(5) Creditable service means prior service for which credit is granted under sections 79-926 to 79-929, service credit purchased under sections 79-933.03 to 79-933.06 and 79-933.08, and all service rendered while a contributing member of the retirement system. Creditable service includes working days, sick days, vacation days, holidays, and any other leave days for which the employee is paid regular wages as part of the employee's agreement with the employer. Creditable service does not include lump-sum payments to the employee upon termination or retirement in lieu of accrued benefits for such days, eligibility and vesting credit, nor service years for which member contributions are withdrawn and not repaid. Creditable service also does not include service rendered by a member for which the retirement board determines that the member was paid less in compensation than the minimum wage as provided in the Wage and Hour Act or service which the board determines was rendered with the intent to defraud the retirement system;

(6) Disability retirement allowance means the annuity paid to a person upon retirement for disability under section 79-952;

(7) Employer means the State of Nebraska or any subdivision thereof or agency of the state or subdivision authorized by law to hire school employees or to pay their compensation;

(8) Fiscal year means any year beginning July 1 and ending June 30 next following;

(9) Regular interest means interest fixed at a rate equal to the daily treasury yield curve for one-year treasury securities, as published by the Secretary of the Treasury of the United States, that applies on July 1 of each year, which may be credited monthly, quarterly, semiannually, or annually as the board may direct;

(10) School employee means a contributing member who earns service credit pursuant to section 79-927. For purposes of this section, contributing member means the following persons who receive compensation from a public school: (a) Regular employees; (b) regular employees having retired pursuant to the School Employees Retirement Act who subsequently provide compensated service on a regular basis in any capacity; and (c) regular employees hired by a public school on an ongoing basis to assume the duties of other regular employees who are temporarily absent. Substitute employees, temporary em-

ployees, and employees who have not attained the age of eighteen years shall not be considered school employees;

(11) Prior service means service rendered as a school employee in the public schools of the State of Nebraska prior to July 1, 1945;

(12) Public school means any and all schools offering instruction in elementary or high school grades, as defined in section 79-101, which schools are supported by public funds and are wholly under the control and management of the State of Nebraska or any subdivision thereof, including (a) schools or other entities established, maintained, and controlled by the school boards of local school districts, except Class V school districts, (b) any educational service unit, and (c) any other educational institution wholly supported by public funds, except schools under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or the community college boards of governors for any community college areas;

(13) Retirement means qualifying for and accepting a school or disability retirement allowance granted under the School Employees Retirement Act;

(14) Retirement board or board means the Public Employees Retirement Board;

(15) Retirement system means the School Employees Retirement System of the State of Nebraska;

(16) Required deposit means the deduction from a member's compensation as provided for in section 79-958 which shall be deposited in the School Retirement Fund;

(17) School year means one fiscal year which includes not less than one thousand instructional hours or, in the case of service in the State of Nebraska prior to July 1, 1945, not less than seventy-five percent of the then legal school year;

(18) Service means employment as a school employee and shall not be deemed interrupted by (a) termination at the end of the school year of the contract of employment of an employee in a public school if the employee enters into a contract of employment in any public school, except a school in a Class V school district, for the following school year, (b) temporary or seasonal suspension of service that does not terminate the employee's employment, (c) leave of absence authorized by the employer for a period not exceeding twelve months, (d) leave of absence because of disability, or (e) military service when properly authorized by the retirement board. Service does not include any period of disability for which disability retirement benefits are received under sections 79-951 to 79-953;

(19) School retirement allowance means the total of the savings annuity and the service annuity or formula annuity paid a person who has retired under sections 79-931 to 79-935. The monthly payments shall be payable at the end of each calendar month during the life of a retired member. The first payment shall include all amounts accrued since the effective date of the award of annuity. The last payment shall be at the end of the calendar month in which such member dies or in accordance with the payment option chosen by the member;

(20) Service annuity means payments for life, made in equal monthly installments, derived from appropriations made by the State of Nebraska to the retirement system;

(21) State deposit means the deposit by the state in the retirement system on behalf of any member;

(22) State school official means the Commissioner of Education and his or her professional staff who are required by law or by the State Department of Education to hold a certificate as such term is defined in section 79-807;

(23) Savings annuity means payments for life, made in equal monthly payments, derived from the accumulated contributions of a member;

(24) Emeritus member means a person (a) who has entered retirement under the provisions of the act, including those persons who have retired since July 1, 1945, under any other regularly established retirement or pension system as contemplated by section 79-916, (b) who has thereafter been reemployed in any capacity by a public school, a Class V school district, or a school under the control and management of the Board of Trustees of the Nebraska State Colleges, the Board of Regents of the University of Nebraska, or a community college board of governors or has become a state school official or county school official subsequent to such retirement, and (c) who has applied to the board for emeritus membership in the retirement system. The school district or agency shall certify to the retirement board on forms prescribed by the retirement board that the annuitant was reemployed, rendered a service, and was paid by the district or agency for such services;

(25) Actuarial equivalent means the equality in value of the aggregate amounts expected to be received under different forms of payment. The determinations shall be based on the 1994 Group Annuity Mortality Table reflecting sex-distinct factors blended using twenty-five percent of the male table and seventy-five percent of the female table. An interest rate of eight percent per annum shall be reflected in making these determinations except when a lump-sum settlement is made to an estate. If the lump-sum settlement is made to an estate, the interest rate will be determined by the Moody's Triple A Bond Index as of the prior June 30, rounded to the next lower quarter percent;

(26) Retirement date means (a) if the member has terminated employment, the first day of the month following the date upon which a member's request for retirement is received on a retirement application provided by the retirement system or (b) if the member has filed an application but has not yet terminated employment, the first day of the month following the date on which the member terminates employment. An application may be filed no more than ninety days prior to the effective date of the member's initial benefit;

(27) Disability retirement date means the first day of the month following the date upon which a member's request for disability retirement is received on a retirement application provided by the retirement system if the member has terminated employment in the school system and has complied with sections 79-951 to 79-954 as such sections refer to disability retirement;

(28) Retirement application means the form approved by the retirement system for acceptance of a member's request for either regular or disability retirement;

(29) Eligibility and vesting credit means credit for years, or a fraction of a year, of participation in a Nebraska government plan for purposes of determin-

ing eligibility for benefits under the School Employees Retirement Act. Such credit shall not be included as years of creditable service in the benefit calculation;

(30)(a) Final average compensation means the sum of the member's total compensation during the three twelve-month periods of service as a school employee in which such compensation was the greatest divided by thirty-six.

(b) If a member has such compensation for less than thirty-six months, his or her final average compensation shall be determined by dividing his or her total compensation in all months by the total number of months of his or her creditable service therefor.

(c) Payments under the Retirement Incentive Plan pursuant to section 79-855 and Staff Development Assistance pursuant to section 79-856 shall not be included in the determination of final average compensation;

(31) Plan year means the twelve-month period beginning on July 1 and ending on June 30 of the following year;

(32) Current benefit means the initial benefit increased by all adjustments made pursuant to the School Employees Retirement Act;

(33) Initial benefit means the retirement benefit calculated at the time of retirement;

(34) Surviving spouse means (a) the spouse married to the member on the date of the member's death or (b) the spouse or former spouse of the member if survivorship rights are provided under a qualified domestic relations order filed with the board pursuant to the Spousal Pension Rights Act. The spouse or former spouse shall supersede the spouse married to the member on the date of the member's death as provided under a qualified domestic relations order. If the benefits payable to the spouse or former spouse under a qualified domestic relations order are less than the value of benefits entitled to the surviving spouse, the spouse married to the member on the date of the member's death shall be the surviving spouse for the balance of the benefits;

(35)(a) Compensation means gross wages or salaries payable to the member for personal services performed during the plan year and includes (i) overtime pay, (ii) member retirement contributions, (iii) retroactive salary payments paid pursuant to court order, arbitration, or litigation and grievance settlements, and (iv) amounts contributed by the member to plans under sections 125, 403(b), and 457 of the Internal Revenue Code as defined in section 49-801.01 or any other section of the code which defers or excludes such amounts from income.

(b) Compensation does not include (i) fraudulently obtained amounts as determined by the retirement board, (ii) amounts for unused sick leave or unused vacation leave converted to cash payments, (iii) insurance premiums converted into cash payments, (iv) reimbursement for expenses incurred, (v) fringe benefits, (vi) per diems, (vii) bonuses for services not actually rendered, including, but not limited to, early retirement inducements, cash awards, and severance pay, or (viii) beginning on September 4, 2005, employer contributions made for the purposes of separation payments made at retirement and early retirement inducements as provided for in section 79-514.

(c) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as defined in section 49-801.01 shall be disregarded. For an employee who was a member of the retirement system before the first

plan year beginning after December 31, 1995, the limitation on compensation shall not be less than the amount which was allowed to be taken into account under the retirement system as in effect on July 1, 1993.

(d)(i) For purposes of section 79-934, in the determination of compensation for members on or after July 1, 2005, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than seven percent of the compensation base during the sixty months preceding the member's retirement shall be excluded unless (A) the member experienced a substantial change in employment position, (B) as verified by the school board, the excess compensation above seven percent occurred as the result of a collective-bargaining agreement between the employer and a recognized collective-bargaining unit or category of school employee, and the percentage increase in compensation above seven percent shall not be excluded for employees outside of a collective-bargaining unit or within the same category of school employee, or (C) the excess compensation occurred as the result of a districtwide permanent benefit change made by the employer for a category of school employee in accordance with subdivision (35)(a)(iv) of this section.

(ii) For purposes of subdivision (35)(d) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both;

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2005, or (II) for members newly hired or hired by a separate employer on or after July 1, 2005, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of seven percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year; and

(C) Recognized collective-bargaining unit means a group of employees similarly situated with a similar community of interest appropriate for bargaining recognized as such by a school board.

(e)(i) In the determination of compensation for members on or after July 1, 2012, until July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than nine percent of the compensation base during the sixty months preceding the member's retirement shall be excluded.

(ii) For purposes of subdivision (35)(e) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both; and

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2012, or (II) for members newly hired or hired by a separate employer on or after July 1, 2012, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of nine percent of the

member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year.

(f)(i) In the determination of compensation for members on or after July 1, 2013, that part of a member's compensation for the plan year which exceeds the member's compensation with the same employer for the preceding plan year by more than eight percent of the compensation base during the sixty months preceding the member's retirement shall be excluded.

(ii) For purposes of subdivision (35)(f) of this section:

(A) Category of school employee means either all employees of the employer who are administrators or certificated teachers, or all employees of the employer who are not administrators or certificated teachers, or both; and

(B) Compensation base means (I) for current members employed with the same employer, the member's compensation for the plan year ending June 30, 2013, or (II) for members newly hired or hired by a separate employer on or after July 1, 2013, the member's compensation for the first full plan year following the member's date of hiring. Thereafter, the member's compensation base shall be increased each plan year by the lesser of eight percent of the member's preceding plan year's compensation base or the member's actual annual compensation increase during the preceding plan year;

(36) Termination of employment occurs on the date on which the member experiences a bona fide separation from service of employment with the member's employer, the date of which separation is determined by the employer. The employer shall notify the board of the date on which such a termination has occurred. It is the responsibility of the employer that is involved in the termination of employment to notify the board of such change in employment and provide the board with such information as the board deems necessary. If the board determines that termination of employment has not occurred and a retirement benefit has been paid to a member of the retirement system pursuant to section 79-933, the board shall require the member who has received such benefit to repay the benefit to the retirement system. A member shall not be deemed to have terminated employment if the member subsequently provides service to any employer participating in the retirement system provided for in the School Employees Retirement Act within one hundred eighty calendar days after ceasing employment unless such service:

(a) Is bona fide unpaid voluntary service or substitute service, provided on an intermittent basis; or

(b) Is as provided in subsection (2) of section 79-920.

A member shall not be deemed to have terminated employment if the board determines that a purported termination was not a bona fide separation from service with the employer;

(37) Disability means an inability to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or be of a long and indefinite duration;

(38) Substitute employee means a person hired by a public school as a temporary employee to assume the duties of regular employees due to the temporary absence of the regular employees. Substitute employee does not mean a person hired as a regular employee on an ongoing basis to assume the duties of other regular employees who are temporarily absent;

(39) Participation means qualifying for and making required deposits to the retirement system during the course of a plan year;

(40) Regular employee means an employee hired by a public school or under contract in a regular full-time or part-time position who works a full-time or part-time schedule on an ongoing basis for fifteen or more hours per week. An employee hired as described in this subdivision to provide service for less than fifteen hours per week but who provides service for an average of fifteen hours or more per week in each calendar month of any three calendar months of a plan year shall immediately commence contributions and shall be deemed a regular employee; and

(41) Temporary employee means an employee hired by a public school who is not a regular employee and who is hired to provide service for a limited period of time to accomplish a specific purpose or task. When such specific purpose or task is complete, the employment of such temporary employee shall terminate and in no case shall the temporary employment period exceed one year in duration.

Source: Laws 1945, c. 219, § 1, p. 638; R.S.Supp.,1947, § 79-2901; Laws 1949, c. 256, § 435, p. 840; Laws 1953, c. 315, § 1, p. 1042; Laws 1961, c. 410, § 1, p. 1229; Laws 1963, c. 469, § 7, p. 1506; Laws 1963, c. 495, § 1, p. 1580; Laws 1965, c. 530, § 1, p. 1663; Laws 1965, c. 531, § 1, p. 1671; Laws 1967, c. 546, § 2, p. 1798; Laws 1969, c. 584, § 84, p. 2396; Laws 1969, c. 735, § 1, p. 2773; Laws 1971, LB 987, § 16; Laws 1975, LB 50, § 1; Laws 1984, LB 971, § 1; Laws 1985, LB 350, § 1; Laws 1986, LB 325, § 1; Laws 1986, LB 311, § 14; Laws 1987, LB 549, § 1; Laws 1988, LB 551, § 10; Laws 1988, LB 1170, § 1; Laws 1989, LB 506, § 9; Laws 1991, LB 549, § 24; Laws 1992, LB 1001, § 32; Laws 1994, LB 833, § 28; Laws 1996, LB 700, § 5; Laws 1996, LB 847, § 27; R.S.1943, (1994), § 79-1501; Laws 1996, LB 900, § 537; Laws 1996, LB 1076, § 13; Laws 1996, LB 1273, § 23; Laws 1997, LB 347, § 26; Laws 1997, LB 623, § 12; Laws 1997, LB 624, § 16; Laws 1997, LB 724, § 3; Laws 1998, LB 1191, § 45; Laws 1999, LB 272, § 91; Laws 1999, LB 538, § 1; Laws 1999, LB 674, § 3; Laws 2000, LB 1192, § 9; Laws 2001, LB 408, § 13; Laws 2002, LB 407, § 22; Laws 2003, LB 451, § 18; Laws 2005, LB 329, § 2; Laws 2005, LB 364, § 8; Laws 2005, LB 503, § 8; Laws 2006, LB 1019, § 8; Laws 2010, LB950, § 11; Laws 2011, LB509, § 17; Laws 2012, LB916, § 19.
Effective date April 7, 2012.

Cross References

Public Employees Retirement Board, see sections 84-1501 to 84-1513.
Spousal Pension Rights Act, see section 42-1101.
Wage and Hour Act, see section 48-1209.

79-903 Retirement system; established; purpose.

A school retirement system is hereby established for the purpose of providing retirement allowances or other benefits for the school employees of the State of Nebraska as provided in the School Employees Retirement Act. It shall have the powers and privileges of a corporation, insofar as may be necessary to carry out the act, shall be known as the School Employees Retirement System of the

State of Nebraska, and by such name shall transact all business as provided in the act.

Source: Laws 1945, c. 219, § 2, p. 640; R.S.Supp.,1947, § 79-2902; Laws 1949, c. 256, § 436, p. 842; Laws 1967, c. 486, § 41, p. 1530; Laws 1969, c. 584, § 85, p. 2400; Laws 1969, c. 735, § 2, p. 2777; Laws 1971, LB 987, § 17; Laws 1991, LB 549, § 25; R.S.1943, (1994), § 79-1502; Laws 1996, LB 900, § 538; Laws 2011, LB509, § 18.

Cross References

For retirement system for employees of Class V school districts, see the Class V School Employees Retirement Act, section 79-978.01.

79-904 School retirement system; administration; retirement board; powers and duties; rules and regulations.

The general administration of the retirement system, except the investment of funds, is hereby vested in the retirement board. The board shall, by a majority vote of its members, adopt bylaws and adopt and promulgate rules and regulations, from time to time, to carry out the School Employees Retirement Act. The board shall perform such other duties as may be required to execute the act.

Source: Laws 1945, c. 219, § 3, p. 640; R.S.Supp.,1947, § 79-2903; Laws 1949, c. 256, § 437, p. 842; Laws 1967, c. 486, § 42, p. 1530; Laws 1969, c. 584, § 86, p. 2400; Laws 1971, LB 987, § 18; Laws 1991, LB 549, § 26; Laws 1995, LB 369, § 5; Laws 1996, LB 847, § 29; R.S.Supp.,1995, § 79-1503; Laws 1996, LB 900, § 539; Laws 2011, LB509, § 19.

79-904.01 Board; power to adjust contributions and benefits.

(1) If the board determines that the retirement system has previously received contributions or distributed benefits which for any reason are not in accordance with the statutory provisions of the School Employees Retirement Act, the board shall refund contributions, require additional contributions, adjust benefits, or require repayment of benefits paid. In the event of an overpayment of a benefit, the board may, in addition to other remedies, offset future benefit payments by the amount of the prior overpayment, together with regular interest thereon. In the event of an underpayment of a benefit, the board shall immediately make payment equal to the deficit amount plus regular interest.

(2) The board shall adopt and promulgate rules and regulations implementing this section, which shall include, but not be limited to, the following: (a) The procedures for refunding contributions, adjusting future contributions or benefit payments, and requiring additional contributions or repayment of benefits; (b) the process for a member, member's beneficiary, employee, or employer to dispute an adjustment of contributions or benefits; and (c) notice provided to all affected persons. All notices shall be sent prior to an adjustment and shall describe the process for disputing an adjustment of contributions or benefits.

(3) The board shall not refund contributions made on compensation in excess of the limitations imposed by subdivision (35) of section 79-902.

Source: Laws 1996, LB 1076, § 30; Laws 2011, LB509, § 20.

79-906 Director; records; contents; employer education program.

(1) The director in charge of the retirement system shall keep a complete record of all members with respect to name, current address, age, contributions, and any other facts as may be necessary in the administration of the School Employees Retirement Act. The information in the records shall be provided by the employer in an accurate and verifiable form, as specified by the director. The director shall, from time to time, carry out testing procedures pursuant to section 84-1512 to verify the accuracy of such information. For the purpose of obtaining such facts and information, the director shall have access to the records of the various employers and state departments and agencies and the holder of the records shall comply with a request by the director for access by providing such facts and information to the director in a timely manner. A certified copy of a birth certificate or delayed birth certificate shall be prima facie evidence of the age of the person named in the certificate.

(2) The director shall develop and implement an employer education program using principles generally accepted by public employee retirement systems so that all employers have the knowledge and information necessary to prepare and file reports as the board requires.

Source: Laws 1991, LB 549, § 28; R.S.1943, (1994), § 79-1503.02; Laws 1996, LB 900, § 541; Laws 2000, LB 1192, § 11; Laws 2005, LB 364, § 9; Laws 2005, LB 503, § 9; Laws 2012, LB916, § 20. Effective date April 7, 2012.

79-909 Auditor of Public Accounts; annual audit; report.

The Auditor of Public Accounts shall make an annual audit of the retirement system and submit electronically an annual report to the Clerk of the Legislature of its condition. Each member of the Legislature shall receive an electronic copy of such report by making a request for it to the Auditor of Public Accounts. Expenses of the audit shall be paid from the Expense Fund.

Source: Laws 1945, c. 219, § 8, p. 641; R.S.Supp.,1947, § 79-2908; Laws 1949, c. 256, § 442, p. 843; Laws 1967, c. 546, § 4, p. 1802; Laws 1971, LB 987, § 20; Laws 1979, LB 322, § 38; R.S.1943, (1994), § 79-1508; Laws 1996, LB 900, § 544; Laws 2012, LB782, § 155. Operative date July 19, 2012.

79-910.01 Retirement system; participation.

(1) Each person employed by a public school who is a school employee and who is qualified to participate in the retirement system shall participate in the retirement system.

(2) Public schools shall ensure that all school employees who qualify for participation pursuant to this section shall begin annual participation on July 1 of each plan year or upon such person's date of hire, if later than July 1, and that all required deposits are made on behalf of such employees.

Source: Laws 2002, LB 407, § 26; Laws 2010, LB950, § 12.

79-915 Retirement system; membership; requirements.

(1) Persons residing outside of the United States and engaged temporarily as school employees in the State of Nebraska shall not become members of the retirement system.

(2) On and after July 1, 2010, no school employee shall be authorized to participate in the retirement system provided for in the School Employees Retirement Act unless the employee (a) is a United States citizen or (b) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 1945, c. 219, § 11, p. 642; R.S.Supp.,1947, § 79-2911; Laws 1949, c. 256, § 445, p. 845; R.S.1943, (1994), § 79-1511; Laws 1996, LB 900, § 550; Laws 2010, LB950, § 13.

79-916 Retirement system; membership; member of any other system; transfer of funds; when; Service Annuity Fund; created; use; investment.

(1)(a) On July 1, 2004, the board shall transfer from the School Retirement Fund to the Service Annuity Fund an amount equal to the funded ratio of the retirement system which is equal to the market value of the retirement system assets divided by the actuarial accrued liability of the retirement system, times the actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Such actuarial accrued liability shall be determined for each employee on a level dollar basis. On or before July 1 of each fiscal year thereafter, the state shall deposit into the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity, as determined pursuant to section 79-966.01, as of the end of the previous fiscal year of the employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Based on the fiscal year of the retirement system established pursuant to the Class V School Employees Retirement Act, the administrator of such system shall provide all membership information needed for the actuary engaged by the retirement board to determine the normal cost and the amortization payment of the unfunded actuarial accrued liability, as determined pursuant to section 79-966.01, to be paid by the state to the Service Annuity Fund each fiscal year as required by this subdivision.

(b) At the time of retirement of any employee who is a member of the retirement system established pursuant to the Class V School Employees Retirement Act, the retirement board shall, upon receipt of a certification of the administrator of such retirement system of the name, identification number, date of birth, retirement date, last date of employment, type of retirement, and number of years of service credited to such eligible employee at the date of retirement, transfer to such retirement system from the Service Annuity Fund the actuarial accrued liability of the service annuity to be paid by the state to the eligible employee for the years of service thus certified as provided for members of the School Employees Retirement System of the State of Nebraska under sections 79-933 and 79-952. Such transfer of the actuarial accrued liability to the retirement system established pursuant to the Class V School Employees Retirement Act shall be in lieu of the payment of the service annuity to which the employee would be entitled.

(c) The Service Annuity Fund is created. The fund shall consist of the amounts paid by the state and transferred from the School Retirement Fund pursuant to this section to pay the service annuity to be paid by the state to

employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act. Any money in the Service Annuity 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) In addition to the transfer of the actuarial accrued liability of the service annuity to be paid by the state, the state shall also transfer to the funds of the Class V school district's retirement system an amount determined by multiplying the compensation of all members of such retirement system by the percent specified in subsection (2) of section 79-966 for determining the amount of the state's payment to the School Retirement Fund. The transfer shall be made annually on or before July 1 of each fiscal year.

Source: Laws 1945, c. 219, § 12, p. 642; R.S.Supp.,1947, § 79-2912; Laws 1949, c. 256, § 446, p. 845; Laws 1951, c. 292, § 1, p. 970; Laws 1965, c. 530, § 2, p. 1667; Laws 1967, c. 547, § 2, p. 1810; Laws 1967, c. 546, § 5, p. 1802; Laws 1969, c. 735, § 3, p. 2777; Laws 1971, LB 987, § 21; Laws 1984, LB 457, § 1; Laws 1987, LB 549, § 3; Laws 1988, LB 1170, § 2; Laws 1991, LB 549, § 30; R.S. 1943, (1994), § 79-1512; Laws 1996, LB 900, § 551; Laws 1997, LB 623, § 14; Laws 1998, LB 1191, § 48; Laws 2002, LB 407, § 24; Laws 2004, LB 1097, § 23; Laws 2011, LB509, § 21.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.
Nebraska Capital Expansion Act, see section 72-1269.
Nebraska State Funds Investment Act, see section 72-1260.

79-920 State school official; department employee; retirement system options.

(1) An individual who was, prior to July 19, 1980, a state school official and did not become a member of the State Employees Retirement System of the State of Nebraska pursuant to the State Employees Retirement Act may, within sixty days after September 1, 1986, elect to become a member of such system. An individual so electing shall pay the contributions required by such system when the service and minimum age requirements have been met.

(2)(a) An individual (i) who is or was previously a school employee or who was employed in an out-of-state or a Class V school district, (ii) who becomes employed by the State Department of Education after July 1, 1989, and (iii) who is a state school official may file with the retirement board within thirty days after employment an election to become or remain a member of the School Employees Retirement System of the State of Nebraska. Employees electing not to participate in the School Employees Retirement System shall participate in the State Employees Retirement System of the State of Nebraska.

(b) An individual shall be required to participate in the State Employees Retirement System if (i) the individual terminated employment from a public school participating in the School Employees Retirement System and retired pursuant to the School Employees Retirement Act and (ii) the employment by the State Department of Education began or will begin within one hundred eighty days after terminating employment from the school.

(3) An employee electing not to be covered by the School Employees Retirement System of the State of Nebraska under this section shall not be subject to

section 79-957 but shall be allowed to retain his or her accumulated contribution in the system and continue to become vested in the state's accumulated contribution as well as the State Employees Retirement System of the State of Nebraska according to the following:

(a) The years of participation in the School Employees Retirement System of the State of Nebraska before an election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with the service requirements provided under section 79-931; and

(b) The years of participation in the School Employees Retirement System of the State of Nebraska before the election is made plus the years of participation in the State Employees Retirement System of the State of Nebraska after the election is made shall both be credited toward compliance with section 84-1321.

Source: Laws 1980, LB 818, § 2; Laws 1986, LB 325, § 13; Laws 1986, LB 311, § 22; Laws 1989, LB 506, § 12; R.S.1943, (1994), § 79-1565; Laws 1996, LB 900, § 555; Laws 1997, LB 623, § 15; Laws 2010, LB950, § 14; Laws 2011, LB509, § 22.

Cross References

State Employees Retirement Act, see section 84-1331.

79-926 Retirement system; members; statement of service record; requirements for prior service credit; exception; reemployment; military service; credit; effect.

(1) Under such rules and regulations as the retirement board adopts and promulgates, each person who was a school employee at any time prior to the establishment of the retirement system and who becomes a member of the retirement system shall, within two years after becoming a member, file a detailed statement of all service as a school employee rendered by him or her prior to the date of establishment of the retirement system. In order to qualify for prior service credit toward a service annuity, a school employee, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, must have completed four years of service on a part-time or full-time basis during the five calendar years immediately preceding July 1, 1945, or have completed eighteen years out of the last twenty-five years prior to July 1, 1945, full time or part time, and two years out of the five years immediately preceding July 1, 1945, full time or part time, or such school employee must complete, unless temporarily out of service for further professional education, for service in the armed forces, or for temporary disability, four years of service within the five calendar years immediately following July 1, 1945. In order to qualify for prior service credit toward a service annuity, a school employee who becomes a member of the retirement system on or before September 30, 1951, or from July 1, 1945, to the date of becoming a member shall have been continuously employed in a public school in Nebraska operating under any other regularly established retirement or pension system.

(2) Any person who, after having served or signing a contract to serve as a school employee, entered into and served or enters into and serves in the armed forces of the United States during a declared emergency or was drafted under a federal mandatory draft law into the armed forces of the United States during a

time of peace, as described and prescribed under such rules and regulations as the retirement board adopts and promulgates, and who, within three calendar years after honorable discharge or honorable separation from active duty or within one year from the date of completion of training provided in the federal Servicemen's Readjustment Act of 1944 or the federal Veterans' Readjustment Assistance Act of 1952, became or becomes a school employee shall be credited, in determining benefits due such member from the retirement system, for a maximum of five years of the time actually served in the armed forces as if such person had been a school employee throughout such time.

(3) Under such rules and regulations as the retirement board adopts and promulgates, any school employee who is reemployed on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., shall be treated as not having incurred a break in service by reason of his or her period of military service. Such military service shall be credited for purposes of determining the nonforfeitability of the member's accrued benefits and the accrual of benefits under the plan. The employer shall be liable for funding any obligation of the plan to provide benefits based upon such period of military service.

Source: Laws 1945, c. 219, § 15, p. 643; R.S.Supp.,1947, § 79-2915; Laws 1949, c. 256, § 449, p. 845; Laws 1951, c. 291, § 2, p. 965; Laws 1953, c. 316, § 1, p. 1048; Laws 1975, LB 236, § 1; Laws 1992, LB 1001, § 33; Laws 1996, LB 847, § 30; R.S.1943, (1994), § 79-1515; Laws 1996, LB 900, § 561; Laws 1998, LB 1191, § 50; Laws 2011, LB509, § 23.

79-933.01 Direct rollover; terms, defined; distributee; powers; board; duties.

(1) For purposes of this section and section 79-933.02:

(a) Distributee means the member, the member's surviving spouse, or the member's former spouse who is an alternate payee under a qualified domestic relations order as defined in section 414(p) of the Internal Revenue Code;

(b) Direct rollover means a payment by the retirement system to the eligible retirement plan or plans specified by the distributee;

(c) Eligible retirement plan means (i) an individual retirement account described in section 408(a) of the Internal Revenue Code, (ii) an individual retirement annuity described in section 408(b) of the code, except for an endowment contract, (iii) a qualified plan described in section 401(a) of the code, (iv) an annuity plan described in section 403(a) or 403(b) of the code, (v) except for purposes of section 79-933.02, an individual retirement plan described in section 408A of the code, and (vi) a plan described in section 457(b) of the code and maintained by a governmental employer. For eligible rollover distributions to a surviving spouse, an eligible retirement plan means subdivisions (1)(c)(i) through (vi) of this section; and

(d) Eligible rollover distribution means any distribution to a distributee of all or any portion of the balance to the credit of the distributee in the plan, except such term shall not include any distribution which is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life of the distributee or joint lives of the distributee and the distributee's beneficiary or for the specified period of ten years or more and shall not include any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code.

(2) For distributions made to a distributee on or after January 1, 1993, a distributee may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee.

(3) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after July 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the retirement system may, in accordance with such rules, regulations, and limitations as may be established by the board, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(5) The board shall adopt and promulgate rules and regulations for direct rollover procedures which are consistent with section 401(a)(31) of the Internal Revenue Code and which include, but are not limited to, the form and time of direct rollover distributions.

Source: Laws 1996, LB 847, § 31; Laws 2002, LB 407, § 28; Laws 2012, LB916, § 21.
Effective date April 7, 2012.

79-933.03 Contributing member; credit for service in other schools; limitation; procedure; payment.

(1) Under such rules and regulations as the board shall adopt and promulgate, a contributing member under contract or employed on July 19, 1996, may receive credit for not to exceed ten years of creditable teaching service rendered in public schools in another state or schools in this state covered by a school retirement system established pursuant to section 79-979, if such member files an application for service credit within three years of membership or reinstatement in the School Employees Retirement System of the State of Nebraska and makes payment into the retirement system of an amount equal to the required deposits he or she would have paid had he or she been employed in this state by a school covered by the retirement system, plus the interest which would have accrued on such amount. Payment must be completed within five years of membership or reinstatement in the retirement system, or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made

pursuant to subsection (1) of this section to the extent that the member does not receive credit for such service.

(3) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

Source: Laws 1996, LB 1076, § 22; Laws 1997, LB 623, § 18; Laws 1998, LB 1191, § 51; Laws 1999, LB 703, § 10; Laws 2011, LB509, § 24.

79-933.05 Contributing member; credit for service in other schools; limitation; procedure; payment.

(1) A contributing member may purchase service credit for not to exceed ten years of creditable service rendered in public schools in another state or schools in this state covered by the school retirement system established pursuant to section 79-979. The amount to be paid by the member for such service credit shall equal the actuarial cost to the School Employees Retirement System of the State of Nebraska for allowing such additional service credit to the employee. Payment shall be completed within five years after making the election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) A member who retires as a school employee of this state shall not receive credit for time in service outside of this state or in a school in this state covered by the school retirement system established pursuant to section 79-979 in excess of the time he or she has been in service as a school employee in this state of a school covered by the School Employees Retirement System of the State of Nebraska. The board shall refund to the member the payments made pursuant to this section to the extent that the member does not receive credit for such service.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

(4) A member who purchases service credit pursuant to this section shall provide such documentation as the board may require to prove that the member has forfeited the receipt of any benefits from the retirement system of the public school in another state or a school in this state covered by a retirement system established pursuant to section 79-979 for the creditable service rendered in such school.

Source: Laws 1996, LB 1076, § 24; Laws 1997, LB 623, § 20; Laws 1998, LB 1191, § 52; Laws 1999, LB 703, § 12; Laws 2001, LB 408, § 15; Laws 2011, LB509, § 25.

79-933.06 Contributing member; credit for leave of absence; limitation; procedure; payment.

(1) Any contributing member may purchase service credit for time he or she was on a leave of absence authorized by the school board or board of education of the school district by which he or she was employed at the time of such leave

of absence or pursuant to any contractual agreement entered into by such school district. Such credit shall increase the benefits provided by the retirement system and shall be included in creditable service when determining eligibility for death, disability, termination of employment, and retirement benefits. The amount to be paid by the member for such service credit shall equal the actuarial cost to the retirement system for allowing such additional service credit to the employee. Payment shall be completed within five years after such member's election to purchase service credit or prior to termination of employment, whichever occurs first, and may be made through direct payment, installment payments, or an irrevocable payroll deduction authorization.

(2) Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. Such leave shall not exceed four years in length, and in order to receive credit for the leave of absence the member must return to employment with a school district, other than a Class V school district, in the state within one year after termination of the leave of absence.

(3) Compensation for the period of service purchased shall not be included in determining the member's final average compensation.

Source: Laws 1996, LB 1076, § 25; Laws 1997, LB 623, § 21; Laws 1999, LB 703, § 13; Laws 2001, LB 408, § 16; Laws 2002, LB 407, § 30; Laws 2011, LB509, § 26.

79-940 Repealed. Laws 2011, LB 509, § 55.

79-941 Total monthly benefit, defined; how computed.

For purposes of sections 79-941 to 79-946, unless the context otherwise requires, total monthly benefit means the benefit that would have been received under a monthly life annuity with no refund or death benefit option even though a different option, as provided in section 79-938, has been selected. The total monthly benefit shall be computed as if the person had retired at age sixty-five or at the actual age of retirement, whichever is later.

Source: Laws 1980, LB 228, § 2; R.S.1943, (1994), § 79-1559; Laws 1996, LB 900, § 576; Laws 2011, LB509, § 27.

79-942 Supplemental retirement benefit; how computed.

For each person who qualifies under sections 79-941 to 79-946, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V districts as provided by the Class V School Employees Retirement Act. From one hundred fifty-five dollars, the retirement board shall subtract the total monthly benefit. Such difference, if positive, shall be the supplemental benefit and shall be paid to the retired person each month from the School Retirement Fund, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person.

Source: Laws 1980, LB 228, § 3; Laws 1981, LB 141, § 2; R.S.1943, (1994), § 79-1560; Laws 1996, LB 900, § 577; Laws 1998, LB 497, § 3; Laws 2004, LB 1097, § 25; Laws 2011, LB509, § 28.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

79-944 Supplemental retirement benefit; receipt by beneficiary.

If a beneficiary is receiving the annuity provided through the School Employees Retirement System of the State of Nebraska or through the retirement system for Class V districts as provided by the Class V School Employees Retirement Act, the supplemental benefit shall be the benefit that would be computed under section 79-942 had the deceased retired person still been alive. The beneficiary will continue to receive the supplemental benefit until the expiration of the annuity option selected by the member.

Source: Laws 1980, LB 228, § 5; Laws 1981, LB 141, § 4; R.S.1943, (1994), § 79-1562; Laws 1996, LB 900, § 579; Laws 1998, LB 497, § 4; Laws 2011, LB509, § 29.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

79-947 Adjusted supplemental retirement benefit; determination; computation; payment; funding.

(1) Commencing October 1, 1988, the retirement board shall determine an adjusted supplemental retirement benefit to reflect changes in the cost of living and wage levels that have occurred subsequent to the date of retirement for each person who is retired from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act with twenty-five or more years of creditable service as of October 1, 1988.

(2) For each person who qualifies under subsection (1) of this section, the retirement board shall determine the value of the total monthly benefit being received from the School Employees Retirement System of the State of Nebraska or from the retirement system for Class V school districts as provided by the Class V School Employees Retirement Act and the supplemental benefit provided by section 79-942 if applicable. From two hundred fifty dollars, the board shall subtract the total monthly benefit. Such difference, if positive, shall be the adjusted supplemental retirement benefit and shall be paid to the retired person each month, except that if this difference is less than five dollars, a minimum payment of five dollars per month shall be made to such person. The adjusted supplemental retirement benefit shall be paid to a retired person during his or her life.

(3) The retirement board may buy a paid-up annuity for a retired person which guarantees the adjusted supplemental retirement benefit provided under this section.

(4) The adjusted supplemental retirement benefit provided under this section shall be funded from the Contingent Account but only from such income that is attributable to employer and employee contributions.

Source: Laws 1988, LB 1170, § 21; R.S.1943, (1994), § 79-1566; Laws 1996, LB 900, § 582; Laws 1998, LB 497, § 5; Laws 2002, LB 407, § 33; Laws 2011, LB509, § 30.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

79-947.01 Repealed. Laws 2011, LB 509, § 55.

79-947.03 Repealed. Laws 2011, LB 509, § 55.

79-947.04 Repealed. Laws 2011, LB 509, § 55.

79-947.05 Repealed. Laws 2011, LB 509, § 55.

79-947.06 Annual benefit adjustment; cost-of-living adjustment calculation method.

(1) Beginning July 1, 2011, and each July 1 thereafter, the board shall determine the number of retired members or beneficiaries described in subdivision (4)(b) of this section in the retirement system and an annual benefit adjustment shall be made by the board for each retired member or beneficiary under one of the cost-of-living adjustment calculation methods found in subsection (2), (3), or (4) of this section. Each retired member or beneficiary, if eligible, shall receive an annual benefit adjustment under the cost-of-living adjustment calculation method that provides the retired member or beneficiary the greatest annual benefit adjustment increase. No retired member or beneficiary shall receive an annual benefit adjustment under more than one of the cost-of-living adjustment calculation methods provided in this section.

(2) The current benefit paid to a retired member or beneficiary under this subsection shall be adjusted so that the purchasing power of the benefit being paid is not less than seventy-five percent of the purchasing power of the initial benefit. The purchasing power of the initial benefit in any year following the year in which the initial benefit commenced shall be calculated by dividing the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the current year by the Consumer Price Index for Urban Wage Earners and Clerical Workers factor on June 30 of the year in which the benefit commenced. The result shall be multiplied by the product that results when the amount of the initial benefit is multiplied by seventy-five percent. In any year in which applying the adjustment provided in subsection (3) of this section results in a benefit which would be less than seventy-five percent of the purchasing power of the initial benefit as calculated in this subsection, the adjustment shall instead be equal to the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers factor from the prior year to the current year.

(3) The current benefit paid to a retired member or beneficiary under this subsection shall be increased annually by the lesser of (a) the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year or (b) two and one-half percent.

(4)(a) The current benefit paid to a retired member or beneficiary under this subsection shall be calculated by multiplying the retired member's or beneficiary's total monthly benefit by the lesser of (i) the cumulative change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the total monthly benefit of each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated or (ii) an amount equal to three percent per annum compounded for the period from the last adjustment of the total monthly benefit of

each retired member or beneficiary through June 30 of the year for which the annual benefit adjustment is being calculated.

(b) In order for a retired member or beneficiary to receive the cost-of-living adjustment calculation method provided in this subsection, the retired member or beneficiary shall be (i) a retired member or beneficiary who has been receiving a retirement benefit for at least five years if the member had at least twenty-five years of creditable service, (ii) a member who has been receiving a disability retirement benefit for at least five years pursuant to section 79-952, or (iii) a beneficiary who has been receiving a death benefit pursuant to section 79-956 for at least five years, if the member's or beneficiary's monthly accrual rate is less than or equal to the minimum accrual rate as determined by this subsection.

(c) The monthly accrual rate under this subsection is the retired member's or beneficiary's total monthly benefit divided by the number of years of creditable service earned by the retired or deceased member.

(d) The total monthly benefit under this subsection is the total benefit received by a retired member or beneficiary pursuant to the School Employees Retirement Act and previous adjustments made pursuant to this section or any other provision of the act that grants a benefit or cost-of-living increase, but the total monthly benefit shall not include sums received by an eligible retired member or eligible beneficiary from federal sources.

(e) The minimum accrual rate under this subsection is twenty-three dollars and thirty-two cents until adjusted pursuant to this subsection. Beginning July 1, 2011, the board shall annually adjust the minimum accrual rate to reflect the cumulative percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the last adjustment of the minimum accrual rate.

(5) Beginning July 1, 2011, and each July 1 thereafter, each retired member or beneficiary shall receive the sum of the annual benefit adjustment and such retiree's total monthly benefit less withholding, which sum shall be the retired member's or beneficiary's adjusted total monthly benefit. Each retired member or beneficiary shall receive the adjusted total monthly benefit until the expiration of the annuity option selected by the member or until the retired member or beneficiary again qualifies for the annual benefit adjustment, whichever occurs first.

(6) The annual benefit adjustment pursuant to this section shall not cause a current benefit to be reduced, and a retired member or beneficiary shall never receive less than the adjusted total monthly benefit until the annuity option selected by the member expires.

(7) The board shall adjust the annual benefit adjustment provided in this section so that the cost-of-living adjustment provided to the retired member or beneficiary at the time of the annual benefit adjustment does not exceed the change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the period between June 30 of the prior year to June 30 of the present year. If the consumer price index used in this section is discontinued or replaced, a substitute index published by the United States Department of Labor shall be selected by the board which shall be a reasonable representative measurement of the cost-of-living for retired employees.

(8) The state shall contribute to the Annuity Reserve Fund an annual level dollar payment certified by the board. For the 2011-12 fiscal year through the

2012-13 fiscal year, the annual level dollar payment certified by the board shall equal 81.7873 percent of six million eight hundred ninety-five thousand dollars.

Source: Laws 2011, LB509, § 32.

79-948 Retirement benefits; exemption from taxation and legal process; exception; payment for civil damages; conditions.

(1) Except as provided in subsection (2) of this section, the right of a person to an annuity, an allowance, or any optional benefit under the School Employees Retirement Act, any other right accrued or accruing to any person or persons under such act, the various funds and account created thereby, and all the money, investments, and income thereof shall be exempt from any state, county, municipal, or other local tax, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall not be assignable except to the extent that such annuity, allowance, or benefit is subject to a qualified domestic relations order under the Spousal Pension Rights Act. The payment of any annuity, allowance, or benefit subject to such order shall take priority over any payment made pursuant to subsection (2) of this section.

(2) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuity, allowance, or optional benefit from the retirement system, the court may order the payment of such annuity, allowance, or optional benefit under the retirement system for such civil damages, except that the annuities, allowances, or optional benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities, allowances, or optional benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities, allowances, or optional benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

Source: Laws 1945, c. 219, § 53, p. 655; R.S.Supp.,1947, § 79-2953; Laws 1949, c. 256, § 486, p. 857; Laws 1969, c. 735, § 15, p. 2783; Laws 1971, LB 987, § 30; Laws 1986, LB 311, § 20; Laws 1988, LB 1170, § 19; Laws 1989, LB 506, § 11; Laws 1991, LB 549, § 44; R.S.1943, (1994), § 79-1552; Laws 1996, LB 900, § 583; Laws 1996, LB 1273, § 26; Laws 2002, LB 407, § 34; Laws 2012, LB916, § 22.
Effective date April 7, 2012.

Cross References

Spousal Pension Rights Act, see section 42-1101.

79-951 Retirement; disability; conditions; application.

(1) A member shall be retired on account of disability, either upon his or her own application or the application of his or her employer or a person acting in his or her behalf, if a medical examination, made at the expense of the

retirement system and conducted by a competent disinterested physician legally authorized to practice medicine under the laws of the state in which he or she practices, selected by the retirement board, shows and the physician certifies to the retirement board that the member is unable to engage in a substantially gainful activity by reason of any medically determinable physical or mental impairment which began while the member was a participant in the plan and which can be expected to result in death or be of a long and indefinite duration. The medical examination may be waived if, in the judgment of the retirement board, extraordinary circumstances exist which preclude substantial gainful activity by the member. Such circumstances shall include hospice placement or similar confinement for a terminal illness or injury.

(2) The member shall have five years from the date he or she terminates employment in a public school located in Nebraska in which to make application for disability retirement benefits if the disability is related to employment in a public school located in Nebraska. If the disability is not related to a public school located in Nebraska, the member shall have one year from the date he or she terminates employment in which to make application for disability retirement benefits. Any application for retirement on account of disability shall be made on a retirement application provided by the retirement system. Upon approval by the board, benefits shall begin on the disability retirement date.

Source: Laws 1945, c. 219, § 24, p. 646; R.S.Supp.,1947, § 79-2924; Laws 1949, c. 256, § 457, p. 848; Laws 1963, c. 495, § 3, p. 1584; Laws 1975, LB 50, § 3; Laws 1987, LB 549, § 9; Laws 1991, LB 549, § 37; R.S.1943, (1994), § 79-1523; Laws 1996, LB 900, § 586; Laws 1996, LB 1076, § 27; Laws 1997, LB 623, § 25; Laws 1998, LB 1191, § 55; Laws 1999, LB 538, § 2; Laws 2000, LB 1192, § 15; Laws 2004, LB 1097, § 28; Laws 2010, LB950, § 16.

79-954 Retirement; disability beneficiary; restoration to active service; effect; retention of allowance; when.

(1) Except as provided in subsection (2) of this section, if a disability beneficiary under the age of sixty-five years is restored to active service as a school employee or if the examining physician certifies that the person is no longer disabled for service as a school employee, the school or disability retirement allowance shall cease. If the beneficiary again becomes a school employee, he or she shall become a member of the retirement system. Any prior service certificate, on the basis of which his or her creditable service was computed at the time of his or her retirement for disability, shall be restored to full force and effect upon his or her again becoming a member of such retirement system.

(2) If a disability beneficiary under the age of sixty-five years obtains employment as a school employee and the examining physician certifies that the beneficiary has a permanent disability, the beneficiary shall retain his or her disability retirement allowance if the beneficiary works fewer than fifteen hours per week.

Source: Laws 1945, c. 219, § 27, p. 647; R.S.Supp.,1947, § 79-2927; Laws 1949, c. 256, § 460, p. 849; R.S.1943, (1994), § 79-1526; Laws 1996, LB 900, § 589; Laws 2009, LB449, § 1.

79-955 Termination of membership; accumulated contributions; return.

Upon termination of employment for any cause other than death or retirement, the retirement board shall, upon the member's demand, terminate his or her membership in the retirement system and cause to be paid to such member the accumulated contributions standing to the credit of his or her individual account in the School Retirement Fund. Any member who attains or has attained membership in another Nebraska state or school retirement system authorized by the Legislature and who elects not to be or remain a member of the School Employees Retirement System of the State of Nebraska shall have his or her accumulated contributions returned to him or her forthwith.

Source: Laws 1945, c. 219, § 28, p. 647; R.S.Supp.,1947, § 79-2928; Laws 1949, c. 256, § 461, p. 849; Laws 1965, c. 532, § 1, p. 1676; Laws 1967, c. 555, § 1, p. 1825; Laws 1969, c. 735, § 7, p. 2780; Laws 1976, LB 30, § 3; Laws 1988, LB 1170, § 4; R.S.1943, (1994), § 79-1527; Laws 1996, LB 900, § 590; Laws 1997, LB 624, § 20; Laws 1998, LB 1191, § 56; Laws 2011, LB509, § 31.

79-956 Death of member before retirement; contributions; how treated; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.

(1) If a member dies before retirement, his or her accumulated contributions shall be paid to his or her estate, to an alternate payee pursuant to a qualified domestic relations order as provided in section 42-1107, or to the person he or she has nominated by designation duly executed and filed with the retirement board. Except for payment to an alternative payee pursuant to a qualified domestic relations order, if no legal representative or beneficiary applies for such accumulated contributions within five years following the date of the deceased member's death, the contributions shall be distributed in accordance with the Uniform Disposition of Unclaimed Property Act.

(2) When the deceased member has twenty years or more of creditable service regardless of age or dies on or after his or her sixty-fifth birthday and leaves a surviving spouse who has been designated as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance, including interest, plus an additional one hundred one percent of the member's contribution account balance, including interest, or (b) an annuity which shall be equal to the amount that would have accrued to the member had he or she elected to have the retirement annuity paid as a one-hundred-percent joint and survivor annuity payable as long as either the member or the member's spouse should survive and had the member retired (i) on the date of death if his or her age at death is sixty-five years or more or (ii) at age sixty-five years if his or her age at death is less than sixty-five years.

(3) When the deceased member who was a school employee on or after May 1, 2001, has not less than five years of creditable service and less than twenty years of creditable service and dies before his or her sixty-fifth birthday and leaves a surviving spouse who has been designated in writing as beneficiary and who, as of the date of the member's death, is the sole surviving primary beneficiary, such beneficiary may elect, within twelve months after the death of the member, to receive (a) a refund of the member's contribution account balance with interest plus an additional one hundred one percent of the

member's contribution account balance with interest or (b) an annuity payable monthly for the surviving spouse's lifetime which shall be equal to the benefit amount that had accrued to the member at the date of the member's death, commencing when the member would have reached age sixty, or the member's age at death if greater, reduced by three percent for each year payments commence before the member would have reached age sixty-five, and adjusted for payment in the form of a one-hundred-percent joint and survivor annuity.

(4) If the requirements of subsection (2) or (3) of this section are not met, then the beneficiary or the estate, if the member has not filed a statement with the board naming a beneficiary, shall be paid a lump sum equal to all contributions to the fund made by such member plus regular interest, except that commencing on January 1, 2006, an application for benefits under subsection (2) or (3) of this section shall be deemed to have been timely filed if the application is received by the retirement system within twelve months after the date of the death of the member.

(5) Benefits to which a surviving spouse, beneficiary, or estate of a member shall be entitled pursuant to this section shall commence immediately upon the death of such member.

(6) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(7) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the employer and such employment had terminated on the date of the member's death.

Source: Laws 1945, c. 219, § 29, p. 648; R.S.Supp.,1947, § 79-2929; Laws 1949, c. 256, § 462, p. 850; Laws 1951, c. 293, § 3, p. 972; Laws 1969, c. 735, § 8, p. 2781; Laws 1975, LB 50, § 5; Laws 1976, LB 645, § 1; Laws 1981, LB 128, § 1; Laws 1986, LB 325, § 9; Laws 1987, LB 549, § 10; Laws 1988, LB 1170, § 5; Laws 1990, LB 903, § 1; Laws 1994, LB 833, § 32; R.S.1943, (1994), § 79-1528; Laws 1996, LB 900, § 591; Laws 1996, LB 1273, § 25; Laws 2000, LB 1192, § 16; Laws 2001, LB 711, § 4; Laws 2003, LB 451, § 20; Laws 2007, LB508, § 2; Laws 2012, LB916, § 23. Effective date April 7, 2012.

Cross References

Uniform Disposition of Unclaimed Property Act, see section 69-1329.

79-958 Employee; employer; required deposits and contributions.

(1) Beginning on September 1, 2009, and ending August 31, 2011, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund eight and twenty-eight hundredths percent of compensation. Beginning on September 1, 2011, and ending August 31, 2012, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School

Retirement Fund eight and eighty-eight hundredths percent of compensation. Beginning on September 1, 2012, and ending August 31, 2017, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund nine and seventy-eight hundredths percent of compensation. Beginning on September 1, 2017, for the purpose of providing the funds to pay for formula annuities, every employee shall be required to deposit in the School Retirement Fund seven and twenty-eight hundredths percent of compensation. Such deposits shall be transmitted at the same time and in the same manner as required employer contributions.

(2) For the purpose of providing the funds to pay for formula annuities, every employer shall be required to deposit in the School Retirement Fund one hundred one percent of the required contributions of the school employees of each employer. Such deposits shall be transmitted to the retirement board at the same time and in the same manner as such required employee contributions.

(3) The employer shall pick up the member contributions required by this section for all compensation paid on or after January 1, 1986, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code as defined in section 49-801.01, except that the employer shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the code, these contributions shall not be included as gross income of the member until such time as they are distributed or made available. The employer shall pay these member contributions from the same source of funds which is used in paying earnings to the member. The employer shall pick up these contributions by a compensation deduction through a reduction in the cash compensation of the member. Member contributions picked up shall be treated for all purposes of the School Employees Retirement Act in the same manner and to the same extent as member contributions made prior to the date picked up.

(4) The employer shall pick up the member contributions made through irrevocable payroll deduction authorizations pursuant to sections 79-921, 79-933.03 to 79-933.06, and 79-933.08, and the contributions so picked up shall be treated as employer contributions in the same manner as contributions picked up under subsection (3) of this section.

Source: Laws 1945, c. 219, § 32, p. 649; R.S.Supp.,1947, § 79-2932; Laws 1949, c. 256, § 465, p. 851; Laws 1951, c. 291, § 6, p. 968; Laws 1959, c. 414, § 2, p. 1388; Laws 1967, c. 546, § 9, p. 1806; Laws 1971, LB 987, § 24; Laws 1984, LB 457, § 3; Laws 1985, LB 353, § 3; Laws 1986, LB 325, § 11; Laws 1988, LB 160, § 4; Laws 1988, LB 1170, § 6; Laws 1991, LB 549, § 39; Laws 1994, LB 833, § 33; Laws 1995, LB 574, § 80; Laws 1996, LB 700, § 10; R.S.Supp.,1995, § 79-1531; Laws 1996, LB 900, § 593; Laws 1997, LB 623, § 27; Laws 1998, LB 1191, § 57; Laws 2001, LB 408, § 17; Laws 2002, LB 407, § 35; Laws 2005, LB 503, § 10; Laws 2007, LB596, § 2; Laws 2009, LB187, § 1; Laws 2011, LB382, § 1.

79-966 School Retirement Fund; state deposits; amount; determination.

(1) On the basis of all data in the possession of the retirement board, including such mortality and other tables as are recommended by the actuary engaged by the retirement board and adopted by the retirement board, the retirement board shall annually, on or before July 1, determine the state deposit to be made by the state in the School Retirement Fund for that fiscal year. The amount of such state deposit shall be determined pursuant to section 79-966.01. The retirement board shall thereupon certify the amount of such state deposit, and on the warrant of the Director of Administrative Services, the State Treasurer shall, as of July 1 of such year, transfer from funds appropriated by the state for that purpose to the School Retirement Fund the amount of such state deposit.

(2) In addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system for each fiscal year on or after July 1, 1984, until July 1, 2009. For each fiscal year beginning July 1, 2009, until July 1, 2017, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to one percent of the compensation of all members of the retirement system. For each fiscal year beginning July 1, 2017, in addition to the state deposits required by subsections (1) and (3) of this section, the state shall deposit in the School Retirement Fund an amount equal to seven-tenths of one percent of the compensation of all members of the retirement system.

(3) In addition to the state deposits required by subsections (1) and (2) of this section, beginning on July 1, 2005, and each fiscal year thereafter, the state shall deposit in the Service Annuity Fund such amounts as may be necessary to pay the normal cost and amortize the unfunded actuarial accrued liability of the service annuity benefit established pursuant to sections 79-933 and 79-952 as accrued through the end of the previous fiscal year of the school employees who are members of the retirement system established pursuant to the Class V School Employees Retirement Act.

Source: Laws 1945, c. 219, § 41, p. 651; R.S.Supp.,1947, § 79-2941; Laws 1949, c. 256, § 474, p. 853; Laws 1965, c. 530, § 4, p. 1668; Laws 1969, c. 735, § 12, p. 2782; Laws 1971, LB 987, § 25; Laws 1981, LB 248, § 3; Laws 1984, LB 457, § 5; Laws 1988, LB 1170, § 10; R.S.1943, (1994), § 79-1540; Laws 1996, LB 900, § 601; Laws 2002, LB 407, § 39; Laws 2004, LB 1097, § 29; Laws 2009, LB187, § 2; Laws 2011, LB382, § 2.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

79-976 Investment services; charges; report; state investment officer; duty.

Any funds of the retirement system available for investment shall be invested by the Nebraska Investment Council pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act. Payment for investment services by the council shall be charged directly against the gross investment returns of the funds. Charges so incurred shall not be a part of the retirement board's annual budget request. The amounts of payment for such services, as of December 31 of each year, shall be reported not later than March 31 of the following year to the council, the retirement board, and the Nebraska Retire-

ment Systems Committee of the Legislature. The report submitted to the committee shall be submitted electronically. All money received by the State Treasurer and the retirement board for the retirement system shall be invested by the state investment officer within thirty-one days after receipt.

Source: Laws 1967, c. 546, § 17, p. 1809; Laws 1969, c. 584, § 89, p. 2401; Laws 1986, LB 311, § 21; Laws 1988, LB 1170, § 20; Laws 1991, LB 549, § 46; Laws 1994, LB 1066, § 91; R.S.1943, (1994), § 79-1556; Laws 1996, LB 900, § 611; Laws 2002, LB 407, § 45; Laws 2012, LB782, § 156.
Operative date July 19, 2012.

Cross References

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

(b) EMPLOYEES RETIREMENT SYSTEM IN CLASS V DISTRICTS

79-978 Terms, defined.

For purposes of the Class V School Employees Retirement Act, unless the context otherwise requires:

(1) Retirement system or system means the School Employees' Retirement System of (corporate name of the school district as described in section 79-405) as provided for by the act;

(2) Board means the board of education of the school district;

(3) Trustee means a trustee provided for in section 79-980;

(4) Employee means the following enumerated persons receiving compensation from the school district: (a) Regular teachers and administrators employed on a written contract basis; and (b) regular employees, not included in subdivision (4)(a) of this section, hired upon a full-time basis, which basis shall contemplate a workweek of not less than thirty hours;

(5) Member means any employee included in the membership of the retirement system or any former employee who has made contributions to the system and has not received a refund;

(6) Annuitant means any member receiving an allowance;

(7) Beneficiary means any person entitled to receive or receiving a benefit by reason of the death of a member;

(8) Membership service means service on or after September 1, 1951, as an employee of the school district and a member of the system for which compensation is paid by the school district. Credit for more than one year of membership service shall not be allowed for service rendered in any fiscal year. Beginning September 1, 2005, a member shall be credited with a year of membership service for each fiscal year in which the member performs one thousand or more hours of compensated service as an employee of the school district. An hour of compensated service shall include any hour for which the member is compensated by the school district during periods where no service is performed due to vacation or approved leave. If a member performs less than one thousand hours of compensated service during a fiscal year, one-tenth of a year of membership service shall be credited for each one hundred hours of compensated service by the member in such fiscal year. In determining a member's total membership service, all periods of membership service, includ-

ing fractional years of membership service in one-tenth-year increments, shall be aggregated;

(9) Prior service means service rendered prior to September 1, 1951, for which credit is allowed under section 79-999, service rendered by retired employees receiving benefits under preexisting systems, and service for which credit is allowed under sections 79-990, 79-991, 79-994, 79-995, and 79-997;

(10) Creditable service means the sum of the membership service and the prior service, measured in one-tenth-year increments;

(11) Compensation means salary or wages payable by the school district before reduction for contributions picked up under section 414(h) of the Internal Revenue Code, elective contributions made pursuant to section 125 or 403(b) of the code, or amounts not currently includible in income by reason of section 132(f)(4) of the code, subject to the applicable limitations of section 401(a)(17) of the code;

(12) Military service means service in the uniformed services as defined in 38 U.S.C. 4301 et seq., as such provision existed on March 27, 1997;

(13) Accumulated contributions means the sum of amounts contributed by a member of the system together with regular interest credited thereon;

(14) Regular interest means interest (a) on the total contributions of the member prior to the close of the last preceding fiscal year, (b) compounded annually, and (c) at rates to be determined annually by the board, which shall have the sole, absolute, and final discretionary authority to make such determination, except that the rate for any given year in no event shall exceed the actual percentage of net earnings of the system during the last preceding fiscal year;

(15) Retirement date means the date of retirement of a member for service or disability as fixed by the board;

(16) Normal retirement date means the end of the month during which the member attains age sixty-five and has completed at least five years of membership service;

(17) Early retirement date means that month and year selected by a member having at least ten years of creditable service which includes a minimum of five years of membership service and who has attained age fifty-five;

(18) Retirement allowance means the total annual retirement benefit payable to a member for service or disability;

(19) Annuity means annual payments, for both prior service and membership service, for life as provided in the Class V School Employees Retirement Act;

(20) Actuarial tables means:

(a) For determining the actuarial equivalent of any annuities other than joint and survivorship annuities, a unisex mortality table using twenty-five percent of the male mortality and seventy-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually; and

(b) For joint and survivorship annuities, a unisex retiree mortality table using sixty-five percent of the male mortality and thirty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually and a unisex joint annuitant mortality table using thirty-five percent of the male

mortality and sixty-five percent of the female mortality from the 1994 Group Annuity Mortality Table with a One Year Setback and using an interest rate of eight percent compounded annually;

(21) Actuarial equivalent means the equality in value of the retirement allowance for early retirement or the retirement allowance for an optional form of annuity, or both, with the normal form of the annuity to be paid, as determined by the application of the appropriate actuarial table, except that use of such actuarial tables shall not effect a reduction in benefits accrued prior to September 1, 1985, as determined by the actuarial tables in use prior to such date;

(22) Fiscal year means the period beginning September 1 in any year and ending on August 31 of the next succeeding year;

(23) Primary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of a member; and

(24) Secondary beneficiary means the person or persons entitled to receive or receiving a benefit by reason of the death of all primary beneficiaries prior to the death of the member. If no primary beneficiary survives the member, secondary beneficiaries shall be treated in the same manner as primary beneficiaries.

Source: Laws 1951, c. 274, § 1, p. 910; Laws 1953, c. 308, § 1, p. 1025; Laws 1967, c. 544, § 1, p. 1786; Laws 1976, LB 994, § 1; Laws 1982, LB 131, § 1; Laws 1985, LB 215, § 1; Laws 1987, LB 298, § 5; Laws 1988, LB 1142, § 9; Laws 1988, LB 551, § 2; Laws 1989, LB 237, § 1; Laws 1991, LB 350, § 1; Laws 1992, LB 1001, § 20; Laws 1993, LB 107, § 1; Laws 1995, LB 505, § 1; R.S.Supp.,1995, § 79-1032; Laws 1996, LB 900, § 613; Laws 1997, LB 347, § 28; Laws 1997, LB 623, § 28; Laws 1998, LB 497, § 6; Laws 2000, LB 155, § 1; Laws 2005, LB 364, § 11; Laws 2010, LB950, § 17.

Cross References

For supplemental retirement benefits, see sections 79-940 to 79-947.

79-978.01 Act, how cited.

Sections 79-978 to 79-9,118 shall be known and may be cited as the Class V School Employees Retirement Act.

Source: Laws 1998, LB 497, § 7; Laws 2011, LB509, § 33.

79-980 Employees retirement system; administration; trustees; Class V Retirement System Board.

(1) At any time that the retirement system consists of only one Class V school district, the general administration of the retirement system is hereby vested in the board of education. The board shall appoint, by a majority of all its members, ten trustees to serve as executive officers to administer the Class V School Employees Retirement Act. Such trustees shall consist of (a) the superintendent of schools, as ex officio trustee, (b) four members of the retirement system, two from the certificated staff, one from the classified staff, and one from the annuitants, (c) three members of the board of education, and (d) two trustees who are business persons qualified in financial affairs and who are not members of the retirement system. The trustees shall serve without compensa-

tion, but they shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that trustees who are members of the retirement system or members of the board of education shall be disqualified as trustees immediately upon ceasing to be a member of the retirement system or of the board of education. Each trustee shall be entitled to one vote on the board of trustees, and six trustees shall constitute a quorum for the transaction of any business. The trustees who are appointed from the board of education and the membership shall be appointed for each fiscal year. The two trustees who are not members of the board of education or of the retirement system shall be appointed for three fiscal years each. The trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01.

(2) At any time that the retirement system consists of more than one Class V school district, the general administration of the retirement system is hereby vested in a Class V Retirement System Board composed of three members of the school board for each participating Class V school district. The board shall appoint, by a majority of all its members, trustees to serve as executive officers to administer the Class V School Employees Retirement Act. Such trustees shall consist of (a) the superintendent of each participating Class V school district, as ex officio trustees, (b) four members of the retirement system, two from the certificated staff, one from the classified staff, and one from the annuitants, (c) three members of the board, and (d) two trustees who are business persons qualified in financial affairs and who are not members of the retirement system. The trustees who are appointed from the board and the membership shall, to the extent feasible, be appointed equally from each participating Class V school district. The trustees shall serve without compensation, but they shall be reimbursed from the funds of the retirement system for expenses that they may incur through service on the board of trustees as provided in sections 81-1174 to 81-1177. A trustee shall serve until a successor qualifies, except that trustees who are members of the retirement system or members of the board shall be disqualified as trustees immediately upon ceasing to be a member of the retirement system or of the board. Each trustee shall be entitled to one vote on the board of trustees, and six trustees shall constitute a quorum for the transaction of any business. The trustees who are appointed from the board and the membership shall be appointed for each fiscal year. The two trustees who are not members of the board or of the retirement system shall be appointed for three fiscal years each. The trustees and the administrator of the retirement system shall administer the retirement system in compliance with the tax-qualification requirements applicable to government retirement plans under section 401(a) of the Internal Revenue Code, as defined in section 49-801.01, including: Section 401(a)(9) of the Internal Revenue Code relating to the time and manner in which benefits are required to be distributed, including the incidental death benefit distribution requirement of section 401(a)(9)(G) of the Internal Revenue Code; section 401(a)(16) of the Internal Revenue Code relating to the specification of actuarial assumptions; section 401(a)(31) of the Internal Revenue Code relating to direct rollover distributions from eligible retirement plans; and section 401(a)(37) of the Internal Revenue Code relating

to the death benefit of a member whose death occurs while performing qualified military service.

Source: Laws 1951, c. 274, § 3, p. 913; Laws 1963, c. 490, § 1, p. 1564; Laws 1979, LB 135, § 1; Laws 1981, LB 204, § 157; Laws 1993, LB 107, § 2; Laws 1995, LB 505, § 2; R.S.Supp.,1995, § 79-1034; Laws 1996, LB 900, § 615; Laws 1998, LB 497, § 9; Laws 2001, LB 711, § 5; Laws 2006, LB 1024, § 61; Laws 2012, LB916, § 24. Effective date April 7, 2012.

79-987 Employees retirement system; audit; cost; report.

(1) An annual audit of the affairs of the retirement system shall be conducted. At the option of the board, such audit may be conducted by a certified public accountant or the Auditor of Public Accounts. The costs of such audit shall be paid from funds of the retirement system. A copy of such audit shall be filed with the Auditor of Public Accounts.

(2) Beginning March 31, 2012, and each March 31 thereafter, if such retirement plan is a defined benefit plan, the trustees of a retirement system established pursuant to section 79-979 shall cause to be prepared an annual report and the administrator 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 submitted to the committee shall be submitted electronically. The report shall consist of a full actuarial analysis of each such retirement plan established pursuant to section 79-979. 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 1951, c. 274, § 19, p. 921; Laws 1973, LB 215, § 1; R.S.1943, (1994), § 79-1050; Laws 1996, LB 900, § 622; Laws 1998, LB 1191, § 61; Laws 1999, LB 795, § 13; Laws 2001, LB 711, § 9; Laws 2006, LB 1019, § 10; Laws 2011, LB509, § 34; Laws 2012, LB782, § 157.
Operative date July 19, 2012.

79-988.01 Transfer of funds by the state.

Through the 2013-14 fiscal year, in addition to the transfers pursuant to section 79-916, the state shall transfer to the funds of each retirement system provided for in the Class V School Employees Retirement Act an amount equal to 14.11604 percent of six million eight hundred ninety-five thousand dollars.

Source: Laws 1996, LB 700, § 4; Laws 1998, LB 497, § 14; Laws 2011, LB382, § 3.

79-990 Employees retirement system; time served in armed forces or on leave of absence; resignation for maternity purposes; effect.

(1) Any member who is eligible for reemployment on or after December 12, 1994, pursuant to 38 U.S.C. 4301 et seq., as adopted under section 55-161, or who is eligible for reemployment under section 55-160 may pay to the retirement system after the date of his or her return from active military service, and

within the period required by law, not to exceed five years, an amount equal to the sum of all deductions which would have been made from the salary which he or she would have received during the period of military service for which creditable service is desired. If such payment is made, the member shall be entitled to credit for membership service in determining his or her annuity for the period for which contributions have been made and the board shall be responsible for any funding necessary to provide for the benefit which is attributable to this increase in the member's creditable service. The member's payments shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary.

(2) Under such rules and regulations as the board may prescribe, any member who was away from his or her position while on a leave of absence from such position authorized by the board of education of the school district by which he or she was employed at the time of such leave of absence or pursuant to any contractual agreement entered into by such school district may receive credit for any or all time he or she was on leave of absence. Such time shall be included in creditable service when determining eligibility for death, disability, termination, and retirement benefits. The member who receives the credit shall earn benefits during the leave based on salary at the level received immediately prior to the leave of absence. Such credit shall be received if such member pays into the retirement system (a) an amount equal to the sum of the deductions from his or her salary for the portion of the leave for which creditable service is desired, (b) any contribution which the school district would have been required to make for the portion of the leave for which creditable service is desired had he or she continued to receive salary at the level received immediately prior to the leave of absence, and (c) regular interest on these combined payments from the date such deductions would have been made to the date of repayment. Such amounts shall be paid as the trustees may direct, through direct payments to the retirement system or on an installment basis pursuant to a binding irrevocable payroll deduction authorization between the member and the school district over a period not to exceed five years from the date of the termination of his or her leave of absence. Interest on any delayed payment shall be at the rate of regular interest. Creditable service may be purchased only in one-tenth-year increments, starting with the most recent years' salary, and if payments are made on an installment basis, creditable service will be credited only as payment has been made to the retirement system to purchase each additional one-tenth-year increment. Leave of absence shall be construed to include, but not be limited to, sabbaticals, maternity leave, exchange teaching programs, full-time leave as an elected official of a professional association or collective-bargaining unit, or leave of absence to pursue further education or study. A leave of absence granted pursuant to this section shall not exceed four years in length, and in order to receive credit for the leave of absence, the member must have returned to employment with the school district within one year after termination of the leave of absence.

(3) Until one year after May 2, 2001, any member currently employed by the school district who resigned from full-time employment with the school district for maternity purposes prior to September 1, 1979, and was reemployed as a full-time employee by the school district before the end of the school year

following the school year of such member's resignation may have such absence treated as though the absence was a leave of absence described in subsection (2) of this section. The period of such absence for maternity purposes shall be included in creditable service when determining the member's eligibility for death, disability, termination, and retirement benefits if the member submits satisfactory proof to the board that the prior resignation was for maternity purposes and the member complies with the payment provisions of subsection (2) of this section before the one-year anniversary of May 2, 2001.

Source: Laws 1951, c. 274, § 12, p. 917; Laws 1981, LB 369, § 1; Laws 1982, LB 131, § 3; Laws 1988, LB 551, § 3; Laws 1991, LB 350, § 4; Laws 1992, LB 1001, § 21; Laws 1993, LB 107, § 4; Laws 1995, LB 505, § 4; Laws 1996, LB 847, § 26; R.S.Supp.,1995, § 79-1043; Laws 1996, LB 900, § 625; Laws 1996, LB 1076, § 12; Laws 2001, LB 711, § 10; Laws 2002, LB 722, § 7; Laws 2005, LB 364, § 12; Laws 2010, LB950, § 18.

79-998 Additional service credits; accept payments and rollovers; limitations; how treated; tax consequences; direct transfer to retirement plan.

(1) The retirement system may accept as payment for additional service credit that is purchased pursuant to sections 79-990 to 79-992 an eligible rollover distribution from or on behalf of the member who is making payments for such service credit if the eligible rollover distribution does not exceed the amount of payment required for the service credit being purchased by the member. The eligible rollover distribution may be contributed to the retirement system by the member or directly transferred from the plan that is making the eligible rollover distribution on behalf of the member. Contribution by a member pursuant to this section may only be made in the form of a cash contribution. For purposes of this section, an eligible rollover distribution means all or any portion of an amount that qualifies as an eligible rollover distribution under the Internal Revenue Code from:

(a) A plan of another employer which is qualified under section 401(a) or 403(a) of the Internal Revenue Code;

(b) An annuity contract or custodial account described in section 403(b) of the Internal Revenue Code;

(c) An eligible deferred compensation plan under section 457(b) of the Internal Revenue Code which is maintained by a governmental employer described in section 457(e)(1)(A) of the Internal Revenue Code; or

(d) An individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is eligible to be rolled over to an employer plan under the Internal Revenue Code.

(2) The retirement system may accept as payment for service credit that is purchased pursuant to sections 79-990 to 79-992 a direct trustee-to-trustee transfer from an eligible deferred compensation plan as described in section 457(e)(17) of the Internal Revenue Code on behalf of a member who is making payments for such service credit if the amount transferred from the eligible deferred compensation plan does not exceed the amount of payment required for the service credit being purchased and the purchase of such service credit qualifies as the purchase of permissive service credit by the member as defined in section 415(n)(3) of the Internal Revenue Code.

(3) The trustees may establish rules, regulations, and limitations on the eligible rollover distributions and direct trustee-to-trustee transfers that may be accepted by the retirement system pursuant to this section, including restrictions on the type of assets that may be transferred to the retirement system.

(4) Cash and other properties contributed or transferred to the system pursuant to this section shall be deposited and held as a commingled asset of the system and shall not be separately accounted for or invested for the member's benefit. Contributions or direct transfers made by or on behalf of any member pursuant to this section shall be treated as qualifying payments under sections 79-990 to 79-992 and as employee contributions for all other purposes of the Class V School Employees Retirement Act except in determining federal and state tax treatment of distributions from the system.

(5) The system, the board, the trustees, and their respective members, officers, and employees shall have no responsibility or liability with respect to the federal and state income tax consequences of any contribution or transfer to the system pursuant to this section, and the trustees may require as a condition to the system's acceptance of any rollover contribution or transfer satisfactory evidence that the proposed contribution or transfer is a qualifying rollover contribution or trustee-to-trustee transfer under the Internal Revenue Code and reasonable releases or indemnifications from the member against any and all liabilities which may in any way be connected with such contribution or transfer.

(6) Effective January 1, 1993, any member who is to receive an eligible rollover distribution, as defined in the Internal Revenue Code, from the system may, in accordance with such rules, regulations, and limitations as may be established by the trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code. Any such election shall be made in the form and within the time periods established by the trustees.

(7) A member's surviving spouse or former spouse who is an alternate payee under a qualified domestic relations order and, on or after September 1, 2010, any designated beneficiary of a member who is not a surviving spouse or former spouse who is entitled to receive an eligible rollover distribution from the system may, in accordance with such rules, regulations, and limitations as may be established by the trustees, elect to have such distribution made in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(8) An eligible rollover distribution on behalf of a designated beneficiary of a member who is not a surviving spouse or former spouse of the member may be transferred to an individual retirement account or annuity described in section 408(a) or section 408(b) of the Internal Revenue Code that is established for the purpose of receiving the distribution on behalf of the designated beneficiary and that will be treated as an inherited individual retirement account or individual retirement annuity described in section 408(d)(3)(C) of the Internal Revenue Code.

(9) All distributions from the system shall be subject to all withholdings required by federal or state tax laws.

Source: Laws 1992, LB 1001, § 27; Laws 1993, LB 107, § 10; Laws 1995, LB 574, § 76; R.S.Supp.,1995, § 79-1049.06; Laws 1996, LB 900,

§ 633; Laws 1998, LB 497, § 20; Laws 2001, LB 711, § 12; Laws 2002, LB 407, § 47; Laws 2012, LB916, § 25.
Effective date April 7, 2012.

79-9,104 Employees retirement system; annuities; benefits; exempt from claims of creditors; exceptions; payment for civil damages; conditions.

(1) Except as provided in subsection (4) of this section, all annuities and other benefits payable under the Class V School Employees Retirement Act and all accumulated credits of members of the retirement system shall not be assignable or subject to execution, garnishment, or attachment except to the extent that such annuity or benefit is subject to a qualified domestic relations order as such term is defined in and which meets the requirements of section 414(p) of the Internal Revenue Code. The payment of any annuity or benefit subject to such order shall take priority over any payment made pursuant to subsection (4) of this section. Payments under such a qualified domestic relations order shall be made only after the administrator of the retirement system receives written notice of such order and such additional information and documentation as the administrator may require.

(2) In lieu of the assignment of a member's future annuity or benefit to the member's spouse or former spouse, the retirement system shall permit the spouse or former spouse of a member to receive, pursuant to a qualified domestic relations order, a single sum payment of a specified percentage of the member's accumulated contributions on the condition that upon the payment of such amount the spouse or former spouse shall have no further interest in the retirement system or in the remaining benefit of the member under the retirement system.

(3) A member's interest and benefits under the retirement system shall be reduced, either at termination of employment, retirement, disability, or death, by the actuarial value of the benefit assigned or paid to the member's spouse, former spouse, or other dependents under a qualified domestic relations order, as determined by the plan actuary on the basis of the actuarial assumptions then recommended by the actuary pursuant to section 79-984.

(4) If a member of the retirement system is convicted of or pleads no contest to a felony that is defined as assault, sexual assault, kidnapping, child abuse, false imprisonment, or theft by embezzlement and is found liable for civil damages as a result of such felony, following distribution of the member's annuities or benefits from the retirement system, the court may order the payment of the member's annuities or benefits earned under the retirement system for such civil damages, except that the annuities or benefits to the extent reasonably necessary for the support of the member or any of his or her beneficiaries shall be exempt from such payment. Any order for payment of annuities or benefits shall not be stayed on the filing of any appeal of the conviction. If the conviction is reversed on final judgment, all annuities or benefits paid as civil damages shall be forfeited and returned to the member. The changes made to this section by Laws 2012, LB916, shall apply to persons convicted of or who have pled no contest to such a felony and who have been found liable for civil damages as a result of such felony prior to, on, or after April 7, 2012.

Source: Laws 1951, c. 274, § 29, p. 925; Laws 1991, LB 350, § 8; R.S.1943, (1994), § 79-1060; Laws 1996, LB 900, § 639; Laws

1997, LB 623, § 32; Laws 1998, LB 497, § 24; Laws 2000, LB 155, § 3; Laws 2012, LB916, § 26.
Effective date April 7, 2012.

79-9,106 Employees retirement system; member; death; effect; survivorship annuity; amount; direct transfer to retirement plan; death while performing qualified military service; additional death benefit.

(1) Upon the death of a member who has not yet retired and who has twenty years or more of creditable service, the member's primary beneficiary shall receive a survivorship annuity in accordance with subdivision (1) of section 79-9,101 if the primary beneficiary is (a) the member's spouse or (b) one other designated beneficiary whose attained age in the calendar year of the member's death is no more than ten years less than the attained age of the member in such calendar year. The amount of such actuarially equivalent annuity shall be calculated using the attained ages of the member and the beneficiary and be based on the annuity earned to the date of the member's death without reduction due to any early commencement of benefits. Within sixty days from the date of the member's death, if the member has not previously filed with the administrator of the retirement system a form requiring that only the survivorship annuity be paid, the beneficiary may request to receive in a lump sum an amount equal to the member's accumulated contributions. If prior to the member's death, the member files with the administrator of the retirement system a form requiring that the beneficiary receive a lump-sum settlement in lieu of the survivorship annuity, the beneficiary shall receive, in lieu of the survivorship annuity, a lump-sum settlement in an amount equal to the member's accumulated contributions notwithstanding any other provision of this section.

(2) Upon the death of a member who has not yet retired and who has less than twenty years of creditable service or upon the death of a member who has not yet retired and who has twenty years or more of creditable service but whose beneficiary does not meet the criteria in subsection (1) of this section, the member's beneficiary or, if no beneficiary has been named, the member's estate shall receive in a lump sum an amount equal to the member's accumulated contributions.

(3) A lump-sum death benefit paid to the member's beneficiary, other than the member's estate, that is an eligible distribution may be distributed in the form of a direct transfer to a retirement plan eligible to receive such transfer under the provisions of the Internal Revenue Code.

(4) For any member whose death occurs on or after January 1, 2007, while performing qualified military service as defined in section 414(u) of the Internal Revenue Code, the member's beneficiary shall be entitled to any additional death benefit that would have been provided, other than the accrual of any benefit relating to the period of qualified military service. The additional death benefit shall be determined as if the member had returned to employment with the school district and such employment had terminated on the date of the member's death.

Source: Laws 1951, c. 274, § 16, p. 919; Laws 1965, c. 527, § 1, p. 1659; Laws 1967, c. 544, § 2, p. 1788; Laws 1982, LB 131, § 6; Laws 1985, LB 215, § 5; Laws 1992, LB 1001, § 24; Laws 1993, LB

107, § 7; R.S.1943, (1994), § 79-1047; Laws 1996, LB 900, § 641; Laws 2001, LB 711, § 16; Laws 2012, LB916, § 27.
Effective date April 7, 2012.

79-9,113 Employees retirement system; federal Social Security Act; state retirement plan; how affected; required contributions; payment; membership service annuity; computations.

(1)(a) If, at any future time, a majority of the eligible members of the retirement system votes to be included under an agreement providing old age and survivors insurance under the Social Security Act of the United States, the contributions to be made by the member and the school district for membership service, from and after the effective date of the agreement with respect to services performed subsequent to December 31, 1954, shall each be reduced from five to three percent but not less than three percent of the member's salary per annum, and the credits for membership service under this system, as provided in section 79-999, shall thereafter be reduced from one and one-half percent to nine-tenths of one percent and not less than nine-tenths of one percent of salary or wage earned by the member during each fiscal year, and from one and sixty-five hundredths percent to one percent and not less than one percent of salary or wage earned by the member during each fiscal year and from two percent to one and two-tenths percent of salary or wage earned by the member during each fiscal year, and from two and four-tenths percent to one and forty-four hundredths percent of salary or wage earned by the member during each fiscal year, except that after September 1, 1963, and prior to September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of salary covered by old age and survivors insurance, and five percent above that amount. Commencing September 1, 1969, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and three-fourths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five percent of salary or wages earned above that amount in the same fiscal year. Commencing September 1, 1976, all employees of the school district shall contribute an amount equal to the membership contribution which shall be two and nine-tenths percent of the first seven thousand eight hundred dollars of salary or wages earned each fiscal year and five and twenty-five hundredths percent of salary or wages earned above that amount in the same fiscal year. Commencing on September 1, 1982, all employees of the school district shall contribute an amount equal to the membership contribution which shall be four and nine-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1989, all employees of the school district shall contribute an amount equal to the membership contribution which shall be five and eight-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 1995, all employees of the school district shall contribute an amount equal to the membership contribution which shall be six and three-tenths percent of the compensation earned in each fiscal year. Commencing September 1, 2007, all employees of the school district shall contribute an amount equal to the membership contribution which shall be seven and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2009, all employees of the school district shall contribute an amount equal to the membership contribution which shall be

eight and three-tenths percent of the compensation paid in each fiscal year. Commencing September 1, 2011, all employees of the school district shall contribute an amount equal to the membership contribution which shall be nine and three-tenths percent of the compensation paid in each fiscal year.

(b) The contributions by the school district in any fiscal year beginning on or after September 1, 1999, shall be the greater of (i) one hundred percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(c) The contributions by the school district in any fiscal year beginning on or after September 1, 2007, shall be the greater of (i) one hundred one percent of the contributions by the employees for such fiscal year or (ii) such amount as may be necessary to maintain the solvency of the system, as determined annually by the board upon recommendation of the actuary and the trustees.

(d) The employee's contribution shall be made in the form of a monthly deduction from compensation as provided in subsection (2) of this section. Every employee who is a member of the system shall be deemed to consent and agree to such deductions and shall receipt in full for compensation, and payment to such employee of compensation less such deduction shall constitute a full and complete discharge of all claims and demands whatsoever for services rendered by such employee during the period covered by such payment except as to benefits provided under the Class V School Employees Retirement Act.

(e) After September 1, 1963, and prior to September 1, 1969, all employees shall be credited with a membership service annuity which shall be nine-tenths of one percent of salary or wage covered by old age and survivors insurance and one and one-half percent of salary or wages above that amount, except that those employees who retire on or after August 31, 1969, shall be credited with a membership service annuity which shall be one percent of salary or wages covered by old age and survivors insurance and one and sixty-five hundredths percent of salary or wages above that amount for service performed after September 1, 1963, and prior to September 1, 1969. Commencing September 1, 1969, all employees shall be credited with a membership service annuity which shall be one percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during each fiscal year and one and sixty-five hundredths percent of salary or wages earned above that amount in the same fiscal year, except that all employees retiring on or after August 31, 1976, shall be credited with a membership service annuity which shall be one and forty-four hundredths percent of the first seven thousand eight hundred dollars of salary or wages earned by the employee during such fiscal year and two and four-tenths percent of salary or wages earned above that amount in the same fiscal year, and the retirement annuities of employees who have not retired prior to September 1, 1963, and who elected under the provisions of section 79-988 as such section existed immediately prior to February 20, 1982, not to become members of the system shall not be less than they would have been had they remained under any preexisting system to date of retirement.

(f) Members of this system having the service qualifications of members of the School Employees Retirement System of the State of Nebraska, as provided by section 79-926, shall receive the state service annuity provided by sections 79-933 to 79-935 and 79-951.

(2) The school district shall pick up the employee contributions required by this section for all compensation paid on or after January 1, 1985, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service or the federal courts rule that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed or made available. The school district shall pay these employee contributions from the same source of funds which is used in paying earnings to the employee. The school district shall pick up these contributions by a salary deduction either through a reduction in the cash salary of the employee or a combination of a reduction in salary and offset against a future salary increase. Beginning September 1, 1995, the school district shall also pick up any contributions required by sections 79-990, 79-991, and 79-992 which are made under an irrevocable payroll deduction authorization between the member and the school district, and the contributions so picked up shall be treated as employer contributions in determining federal tax treatment under the Internal Revenue Code, except that the school district shall continue to withhold federal and state income taxes based upon these contributions until the Internal Revenue Service rules that, pursuant to section 414(h) of the Internal Revenue Code, these contributions shall not be included as gross income of the employee until such time as they are distributed from the system. Employee contributions picked up shall be treated for all purposes of the Class V School Employees Retirement Act in the same manner and to the extent as employee contributions made prior to the date picked up.

Source: Laws 1951, c. 274, § 25, p. 923; Laws 1953, c. 308, § 4, p. 1029; Laws 1955, c. 321, § 3, p. 993; Laws 1963, c. 490, § 5, p. 1567; Laws 1969, c. 724, § 2, p. 2755; Laws 1972, LB 1116, § 3; Laws 1976, LB 994, § 3; Laws 1982, LB 131, § 12; Laws 1983, LB 488, § 1; Laws 1984, LB 218, § 3; Laws 1989, LB 237, § 7; Laws 1995, LB 505, § 8; Laws 1995, LB 574, § 77; R.S.Supp.,1995, § 79-1056; Laws 1996, LB 900, § 648; Laws 1997, LB 623, § 33; Laws 1998, LB 497, § 26; Laws 1998, LB 1191, § 63; Laws 2000, LB 155, § 5; Laws 2007, LB596, § 3; Laws 2009, LB187, § 3; Laws 2011, LB382, § 4; Laws 2011, LB509, § 35.

Cross References

For provisions of federal Social Security Act, see Chapter 68, article 6.

79-9,117 Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.

(1) The board shall establish a comprehensive preretirement planning program for school employees who are members of the retirement system. The program shall provide information and advice regarding the many changes employees face upon retirement, including, but not limited to, changes in physical and mental health, housing, family life, leisure activity, and retirement income.

(2) The preretirement planning program shall be available to all employees who have attained the age of fifty years or are within five years of qualifying for retirement or early retirement under their retirement systems.

(3) The preretirement planning program shall include information on the federal and state income tax consequences of the various annuity or retirement benefit options available to the employee, information on social security benefits, information on various local, state, and federal government programs and programs in the private sector designed to assist elderly persons, and information and advice the board deems valuable in assisting employees in the transition from public employment to retirement.

(4) The board shall work with any governmental agency, including political subdivisions or bodies whose services or expertise may enhance the development or implementation of the preretirement planning program.

(5) The costs of the preretirement planning program shall be charged back to the retirement system.

(6) The employer shall provide each eligible employee leave with pay to attend up to two preretirement planning programs. For purposes of this subsection, leave with pay means a day off paid by the employer and does not mean vacation, sick, personal, or compensatory time. An employee may choose to attend a program more than twice, but such leave shall be at the expense of the employee and shall be at the discretion of the employer. An eligible employee shall not be entitled to attend more than one preretirement planning program per fiscal year prior to actual election of retirement.

(7) A nominal registration fee shall be charged each person attending a preretirement planning program to cover the costs for meals, meeting rooms, or other expenses incurred under such program.

Source: Laws 2011, LB509, § 36.

79-9,118 Participation in retirement system; qualification.

On and after July 1, 2011, no employee shall be authorized to participate in the retirement system unless the employee (1) is a United States citizen or (2) is a qualified alien under the federal Immigration and Nationality Act, 8 U.S.C. 1101 et seq., as such act existed on January 1, 2009, and is lawfully present in the United States.

Source: Laws 2011, LB509, § 37.

ARTICLE 10

SCHOOL TAXATION, FINANCE, AND FACILITIES

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

Section

Section

(b) SCHOOL FUNDS

(c) SCHOOL TAXATION

(d) SCHOOL BUDGETS AND ACCOUNTING

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

(g) SUMMER FOOD SERVICE PROGRAM

(a) TAX EQUITY AND EDUCATIONAL OPPORTUNITIES SUPPORT ACT

79-1001 Act, how cited.

Sections 79-1001 to 79-1033 shall be known and may be cited as the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1990, LB 1059, § 1; Laws 1995, LB 542, § 1; Laws 1995, LB 840, § 3; R.S.Supp.,1995, § 79-3801; Laws 1996, LB 900, § 652; Laws 1996, LB 1050, § 10; Laws 1997, LB 806, § 29; Laws 1998, LB 1134, § 1; Laws 1998, LB 1219, § 13; Laws 1999, LB 149, § 1; Laws 2001, LB 833, § 3; Laws 2002, LB 898, § 2; Laws 2004, LB 1091, § 8; Laws 2006, LB 1024, § 71; Laws 2007, LB641, § 12; Laws 2008, LB988, § 8; Laws 2009, LB545, § 3; Laws 2009, First Spec. Sess., LB5, § 2; Laws 2011, LB18, § 1; Laws 2011, LB235, § 4.

79-1003 Terms, defined.

For purposes of the Tax Equity and Educational Opportunities Support Act:

(1) Adjusted general fund operating expenditures means (a) for school fiscal years 2010-11 through 2012-13, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by, or for aid calculated for school fiscal year 2010-11 multiplied by, the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, elementary class size allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance, and (b) for school fiscal year 2013-14 and each school fiscal year thereafter, the difference of the general fund operating expenditures as calculated pursuant to subdivision (22) of this section increased by the cost growth factor calculated pursuant to section 79-1007.10, minus the transportation allowance, special receipts allowance, poverty allowance, limited English proficiency allowance, distance education and telecommunications allowance, elementary site allowance, summer school allowance, instructional time allowance, teacher education allowance, and focus school and program allowance;

(2) Adjusted valuation means the assessed valuation of taxable property of each local system in the state, adjusted pursuant to the adjustment factors described in section 79-1016. Adjusted valuation means the adjusted valuation for the property tax year ending during the school fiscal year immediately preceding the school fiscal year in which the aid based upon that value is to be paid. For purposes of determining the local effort rate yield pursuant to section 79-1015.01, adjusted valuation does not include the value of any property which a court, by a final judgment from which no appeal is taken, has declared to be nontaxable or exempt from taxation;

(3) Allocated income tax funds means the amount of assistance paid to a local system pursuant to section 79-1005.01 as adjusted by the minimum levy adjustment pursuant to section 79-1008.02;

(4) Average daily membership means the average daily membership for grades kindergarten through twelve attributable to the local system, as provided in each district's annual statistical summary, and includes the proportionate share of students enrolled in a public school instructional program on less than a full-time basis;

(5) Base fiscal year means the first school fiscal year following the school fiscal year in which the reorganization or unification occurred;

(6) Board means the school board of each school district;

(7) Categorical funds means funds limited to a specific purpose by federal or state law, including, but not limited to, Title I funds, Title VI funds, federal vocational education funds, federal school lunch funds, Indian education funds, Head Start funds, and funds from the Education Innovation Fund. Categorical funds does not include funds received pursuant to section 79-1028.02 or 79-1028.04;

(8) Consolidate means to voluntarily reduce the number of school districts providing education to a grade group and does not include dissolution pursuant to section 79-498;

(9) Converted contract means an expired contract that was in effect for at least fifteen school years beginning prior to school year 2012-13 for the education of students in a nonresident district in exchange for tuition from the resident district when the expiration of such contract results in the nonresident district educating students, who would have been covered by the contract if the contract were still in effect, as option students pursuant to the enrollment option program established in section 79-234;

(10) Converted contract option student means a student who will be an option student pursuant to the enrollment option program established in section 79-234 for the school fiscal year for which aid is being calculated and who would have been covered by a converted contract if the contract were still in effect and such school fiscal year is the first school fiscal year for which such contract is not in effect;

(11) Department means the State Department of Education;

(12) District means any Class I, II, III, IV, V, or VI school district and, beginning with the calculation of state aid for school fiscal year 2011-12 and each school fiscal year thereafter, a unified system as defined in section 79-4,108;

(13) Ensuing school fiscal year means the school fiscal year following the current school fiscal year;

(14) Equalization aid means the amount of assistance calculated to be paid to a local system pursuant to sections 79-1007.11 to 79-1007.23, 79-1007.25, 79-1008.01 to 79-1022, 79-1022.02, 79-1028.02, and 79-1028.04;

(15) Fall membership means the total membership in kindergarten through grade twelve attributable to the local system as reported on the fall school district membership reports for each district pursuant to section 79-528;

(16) Fiscal year means the state fiscal year which is the period from July 1 to the following June 30;

(17) Formula students means:

(a) For state aid certified pursuant to section 79-1022, the sum of the product of fall membership from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid multiplied by the average ratio of average daily membership to fall membership for the second school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and the prior two school fiscal years plus sixty percent of the qualified early childhood education fall membership plus tuitioned students from the school fiscal year immediately preceding the school fiscal year in which aid is to be paid minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the fall membership multiplied by 0.5; and

(b) For the final calculation of state aid pursuant to section 79-1065, the sum of average daily membership plus sixty percent of the qualified early childhood education average daily membership plus tuitioned students minus the product of the number of students enrolled in kindergarten that is not full-day kindergarten from the average daily membership multiplied by 0.5 from the school fiscal year immediately preceding the school fiscal year in which aid was paid;

(18) Free lunch and free milk student means a student who qualified for free lunches or free milk from the most recent data available on November 1 of the school fiscal year immediately preceding the school fiscal year in which aid is to be paid;

(19) Full-day kindergarten means kindergarten offered by a district for at least one thousand thirty-two instructional hours;

(20) General fund budget of expenditures means the total budget of disbursements and transfers for general fund purposes as certified in the budget statement adopted pursuant to the Nebraska Budget Act, except that for purposes of the limitation imposed in section 79-1023 and the calculation pursuant to subdivision (2) of section 79-1027.01, the general fund budget of expenditures does not include any special grant funds, exclusive of local matching funds, received by a district;

(21) General fund expenditures means all expenditures from the general fund;

(22) General fund operating expenditures means:

(a) For state aid calculated for school fiscal years 2010-11 and 2011-12, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, summer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (iv) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (v) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, and (vi)(A) expenditures in school fiscal years 2009-10 through 2013-14 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (B) expenditures in school fiscal years 2009-10 through 2013-14 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent; and

(b) For state aid calculated for school fiscal years 2012-13 and each school fiscal year thereafter, as reported on the annual financial report for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid, the total general fund expenditures minus (i) the amount of all receipts to the general fund, to the extent that such receipts are not included in local system formula resources, from early childhood education tuition, sum-

mer school tuition, educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities, private foundations, individuals, associations, charitable organizations, the textbook loan program authorized by section 79-734, federal impact aid, and levy override elections pursuant to section 77-3444, (ii) the amount of expenditures for categorical funds, tuition paid, transportation fees paid to other districts, adult education, community services, redemption of the principal portion of general fund debt service, retirement incentive plans authorized by section 79-855, and staff development assistance authorized by section 79-856, (iii) the amount of any transfers from the general fund to any bond fund and transfers from other funds into the general fund, (iv) any legal expenses in excess of fifteen-hundredths of one percent of the formula need for the school fiscal year in which the expenses occurred, (v) expenditures to pay for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, or occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year, (vi)(A) expenditures in school fiscal years 2009-10 through 2016-17 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent or (B) expenditures in school fiscal years 2009-10 through 2016-17 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent, and (vii) any amounts paid by the district for lobbyist fees and expenses reported to the Clerk of the Legislature pursuant to section 49-1483.

For purposes of this subdivision (22) of this section, receipts from levy override elections shall equal ninety-nine percent of the difference of the total general fund levy minus a levy of one dollar and five cents per one hundred dollars of taxable valuation multiplied by the assessed valuation for school districts that have voted pursuant to section 77-3444 to override the maximum levy provided pursuant to section 77-3442;

(23) High school district means a school district providing instruction in at least grades nine through twelve;

(24) Income tax liability means the amount of the reported income tax liability for resident individuals pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(25) Income tax receipts means the amount of income tax collected pursuant to the Nebraska Revenue Act of 1967 less all nonrefundable credits earned and refunds made;

(26) Limited English proficiency students means the number of students with limited English proficiency in a district from the most recent data available on November 1 of the school fiscal year preceding the school fiscal year in which aid is to be paid plus the difference of such students with limited English proficiency minus the average number of limited English proficiency students

for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(27) Local system means a learning community for purposes of calculation of state aid for the second full school fiscal year after becoming a learning community and each school fiscal year thereafter, a unified system, a Class VI district and the associated Class I districts, or a Class II, III, IV, or V district and any affiliated Class I districts or portions of Class I districts. The membership, expenditures, and resources of Class I districts that are affiliated with multiple high school districts will be attributed to local systems based on the percent of the Class I valuation that is affiliated with each high school district;

(28) Low-income child means a child under nineteen years of age living in a household having an annual adjusted gross income for the second calendar year preceding the beginning of the school fiscal year for which aid is being calculated equal to or less than the maximum household income that would allow a student from a family of four people to be a free lunch and free milk student during the school fiscal year immediately preceding the school fiscal year for which aid is being calculated;

(29) Low-income students means the number of low-income children within the district multiplied by the ratio of the formula students in the district divided by the total children under nineteen years of age residing in the district as derived from income tax information;

(30) Most recently available complete data year means the most recent single school fiscal year for which the annual financial report, fall school district membership report, annual statistical summary, Nebraska income tax liability by school district for the calendar year in which the majority of the school fiscal year falls, and adjusted valuation data are available;

(31) Poverty students means the number of low-income students or the number of students who are free lunch and free milk students in a district plus the difference of the number of low-income students or the number of students who are free lunch and free milk students in a district, whichever is greater, minus the average number of poverty students for such district, prior to such addition, for the three immediately preceding school fiscal years if such difference is greater than zero;

(32) Qualified early childhood education average daily membership means the product of the average daily membership for school fiscal year 2006-07 and each school fiscal year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the actual instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(33) Qualified early childhood education fall membership means the product of membership on the last Friday in September 2006 and each year thereafter of students who will be eligible to attend kindergarten the following school year and are enrolled in an early childhood education program approved by the

department pursuant to section 79-1103 for such school district for such school year multiplied by the ratio of the planned instructional hours of the program divided by one thousand thirty-two if: (a) The program is receiving a grant pursuant to such section for the third year; (b) the program has already received grants pursuant to such section for three years; or (c) the program has been approved pursuant to subsection (5) of section 79-1103 for such school year and the two preceding school years, including any such students in portions of any of such programs receiving an expansion grant;

(34) Regular route transportation means the transportation of students on regularly scheduled daily routes to and from the attendance center;

(35) Reorganized district means any district involved in a consolidation and currently educating students following consolidation;

(36) School year or school fiscal year means the fiscal year of a school district as defined in section 79-1091;

(37) Sparse local system means a local system that is not a very sparse local system but which meets the following criteria:

(a)(i) Less than two students per square mile in the county in which each high school is located, based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than ten miles between each high school attendance center and the next closest high school attendance center on paved roads;

(b)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads;

(c)(i) Less than one and one-half formula students per square mile in the local system and (ii) more than two hundred seventy-five square miles in the local system; or

(d)(i) Less than two formula students per square mile in the local system and (ii) the local system includes an area equal to ninety-five percent or more of the square miles in the largest county in which a high school attendance center is located in the local system;

(38) Special education means specially designed kindergarten through grade twelve instruction pursuant to section 79-1125, and includes special education transportation;

(39) Special grant funds means the budgeted receipts for grants, including, but not limited to, categorical funds, reimbursements for wards of the court, short-term borrowings including, but not limited to, registered warrants and tax anticipation notes, interfund loans, insurance settlements, and reimbursements to county government for previous overpayment. The state board shall approve a listing of grants that qualify as special grant funds;

(40) State aid means the amount of assistance paid to a district pursuant to the Tax Equity and Educational Opportunities Support Act;

(41) State board means the State Board of Education;

(42) State support means all funds provided to districts by the State of Nebraska for the general fund support of elementary and secondary education;

(43) Statewide average basic funding per formula student means the statewide total basic funding for all districts divided by the statewide total formula students for all districts;

(44) Statewide average general fund operating expenditures per formula student means the statewide total general fund operating expenditures for all districts divided by the statewide total formula students for all districts;

(45) Teacher has the definition found in section 79-101;

(46) Temporary aid adjustment factor means (a) for school fiscal years before school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, the local system's special receipts allowance, and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping and (b) for school fiscal year 2007-08, one and one-fourth percent of the sum of the local system's transportation allowance, special receipts allowance, and distance education and telecommunications allowance and the product of the local system's adjusted formula students multiplied by the average formula cost per student in the local system's cost grouping;

(47) Tuition receipts from converted contracts means tuition receipts received by a district from another district in the most recently available complete data year pursuant to a converted contract prior to the expiration of the contract;

(48) Tuitioned students means students in kindergarten through grade twelve of the district whose tuition is paid by the district to some other district or education agency; and

(49) Very sparse local system means a local system that has:

(a)(i) Less than one-half student per square mile in each county in which each high school attendance center is located based on the school district census, (ii) less than one formula student per square mile in the local system, and (iii) more than fifteen miles between the high school attendance center and the next closest high school attendance center on paved roads; or

(b)(i) More than four hundred fifty square miles in the local system, (ii) less than one-half student per square mile in the local system, and (iii) more than fifteen miles between each high school attendance center and the next closest high school attendance center on paved roads.

Source: Laws 1990, LB 1059, § 3; Laws 1991, LB 511, § 71; Laws 1992, LB 245, § 76; Laws 1994, LB 1290, § 3; Laws 1995, LB 840, § 4; R.S.Supp.,1995, § 79-3803; Laws 1996, LB 900, § 654; Laws 1996, LB 1050, § 12; Laws 1997, LB 347, § 29; Laws 1997, LB 710, § 5; Laws 1997, LB 713, § 1; Laws 1997, LB 806, § 31; Laws 1998, LB 306, § 42; Laws 1998, LB 1134, § 2; Laws 1998, LB 1219, § 15; Laws 1998, LB 1229, § 3; Laws 1998, Spec. Sess., LB 1, § 15; Laws 1999, LB 149, § 3; Laws 1999, LB 813, § 19; Laws 2001, LB 313, § 1; Laws 2001, LB 797, § 18; Laws 2001, LB 833, § 4; Laws 2002, LB 898, § 3; Laws 2005, LB 126, § 45; Laws 2005, LB 577, § 1; Laws 2006, LB 1024, § 73; Laws 2006, LB 1208, § 4; Referendum 2006, No. 422; Laws 2007, LB641, § 13; Laws 2008, LB988, § 9; Laws 2009, LB545, § 4; Laws 2009, LB549, § 26; Laws 2009, First Spec. Sess., LB5, § 3; Laws 2010, LB1071, § 12; Laws 2011, LB18, § 2; Laws 2011, LB235, § 5; Laws 2011, LB382, § 5; Laws 2011, LB509, § 38.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.

Nebraska Budget Act, see section 13-501.
Nebraska Revenue Act of 1967, see section 77-2701.

79-1003.01 Summer school allowance; summer school student units; calculations.

(1) The department shall calculate a summer school allowance for each district which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. A summer school allowance shall be equal to two and one-half percent of the summer school student units for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student.

(2) Summer school student units shall be calculated for each student enrolled in summer school as defined in section 79-536 in a school district who attends such summer school for at least twelve days in the most recently available complete data year, whether or not the student is in the membership of the school district. The initial number of units for each such student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended summer school classes in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended summer school classes in such district for six or more hours per day divided by twelve days.

(3) Each school district shall receive an additional summer school student unit for each summer school student unit attributed to remedial math or reading programs. Each school district shall also receive an additional summer school student unit for each summer school student unit attributed to a free lunch and free milk student.

(4) Beginning with state aid calculated for school fiscal year 2012-13, summer school student units shall be calculated for each student who was both enrolled in the most recently available complete data year in a summer session of an early childhood education program for which a qualified early childhood education fall membership greater than zero has been calculated for the school fiscal year for which aid is being calculated and eligible to attend kindergarten in the fall immediately following such summer session. The initial number of units for each such early childhood education student shall equal the sum of the ratios, each rounded down to the nearest whole number, of the number of days for which the student attended the summer session in such district for at least three hours and less than six hours per day divided by twelve days and of two times the number of days for which the student attended the summer session in such district for six or more hours per day divided by twelve days. The initial summer school student units for early childhood education students shall be multiplied by six-tenths. Instructional hours included in the calculation of the qualified early childhood education fall membership or the qualified early childhood education average daily membership shall not be included in the calculation of the summer school allowance.

(5) Each school district shall receive an additional six-tenths of a summer school student unit for each early childhood education student unit attributed to a free lunch and free milk early childhood education student.

(6) This section does not prevent school districts from requiring and collecting fees for summer school or summer sessions of early childhood education

programs, except that summer school student units shall not be calculated for school districts which collect fees for summer school from students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs.

Source: Laws 2007, LB641, § 14; Laws 2008, LB988, § 10; Laws 2010, LB1071, § 13; Laws 2011, LB235, § 6.

79-1005.01 Tax Commissioner; certify data; department; calculate allocation percentage and local system's allocated income tax funds.

(1) An amount equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 shall be disbursed as option payments as determined under section 79-1009 and as allocated income tax funds as determined in this section and sections 79-1008.01, 79-1015.01, 79-1017.01, and 79-1018.01, except as provided in section 79-1008.02. Funds not distributed as allocated income tax funds due to minimum levy adjustments shall not increase the amount available to local systems for distribution as allocated income tax funds.

(2) Not later than November 15 of each year, the Tax Commissioner shall certify to the department for the preceding tax year the income tax liability of resident individuals for each local system. The 1996 income tax liability of resident individuals of Class I districts that are affiliated with multiple high school districts shall be divided between local systems based on the percentage of the Class I district's valuation affiliated with each high school district.

(3) Using the data certified by the Tax Commissioner pursuant to subsection (2) of this section, the department shall calculate the allocation percentage and each local system's allocated income tax funds. The allocation percentage shall be an amount equal to the amount appropriated to the School District Income Tax Fund for distribution in school fiscal year 1992-93 minus the total amount paid for option students pursuant to section 79-1009 and (a) for aid calculated for school fiscal year 2010-11, minus twenty million dollars and (b) for aid calculated for school fiscal years 2011-12 and 2012-13, minus twenty-one million dollars with the difference divided by the aggregate statewide income tax liability of all resident individuals certified pursuant to subsection (2) of this section. Each local system's allocated income tax funds shall be calculated by multiplying the allocation percentage times the local system's income tax liability certified pursuant to subsection (2) of this section.

Source: Laws 1997, LB 806, § 33; Laws 1998, Spec. Sess., LB 1, § 16; Laws 1999, LB 149, § 4; Laws 2002, LB 898, § 4; Laws 2004, LB 1093, § 2; Laws 2008, LB988, § 11; Laws 2009, First Spec. Sess., LB5, § 4; Laws 2011, LB235, § 7.

79-1005.02 Repealed. Laws 2011, LB 235, § 26.

79-1007.01 Repealed. Laws 2011, LB 235, § 26.

79-1007.02 Repealed. Laws 2011, LB 235, § 26.

79-1007.04 Elementary class size allowance; calculation.

(1) For school fiscal years 2008-09 through 2012-13, the department shall determine the elementary class size allowance for each school district from information submitted by a school district on a form prescribed by the depart-

ment on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated.

(2) For school fiscal year 2008-09, the allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.20 then multiplied by the number of students in the school district in kindergarten through grade eight who qualify for free or reduced-price lunches and who spend at least fifty percent of the school day in a classroom with a minimum of ten students and a maximum of twenty students as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid.

(3) For school fiscal years 2009-10 through 2012-13, the allowance shall equal the statewide average general fund operating expenditures per formula student multiplied by twenty percent of the number of students in the school district in kindergarten through grade three who spend at least fifty percent of the school day in one or more classrooms with a minimum of ten students and a maximum of twenty students as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

Source: Laws 2006, LB 1024, § 77; Laws 2007, LB641, § 17; Laws 2008, LB988, § 27; Laws 2010, LB1071, § 14.

79-1007.05 Focus school and program allowance; calculation.

For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the focus school and program allowance for each school district in a learning community which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. Such form may require confirmation from a learning community official that the focus school or program has been approved by the learning community coordinating council for the school fiscal year for which the allowance is being calculated. The focus school and program allowance for each school district in a learning community shall equal the sum of the allowances calculated pursuant to this section for each focus school and focus program operated by the school district for the school fiscal year for which aid is being calculated.

For the school fiscal year containing the majority of the first school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769, the focus school and program allowance for such focus school or program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the estimated number of students who will be participating in the focus school or program as reported on the form required pursuant to this section.

For the school fiscal year containing the majority of the second school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769, the focus school and program allowance for such focus school or

program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by (1) for state aid certified pursuant to section 79-1022, the difference of the product of two multiplied by the number of students participating in the focus school or program as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid minus the estimated number of students used in the certification of state aid pursuant to section 79-1022 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid and (2) for the final calculation of state aid pursuant to section 79-1065, the difference of the product of two multiplied by the number of students participating in the focus school or program as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid minus the estimated number of students used in the final calculation of state aid pursuant to section 79-1065 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid.

For the school fiscal year containing the majority of the third school year that a school or program will be in operation as a focus school or program approved by the learning community and meeting the requirements of section 79-769 and each school fiscal year thereafter, the focus school and program allowance for such focus school or program shall equal the statewide average general fund operating expenditures per formula student multiplied by 0.10 then multiplied by the number of students participating in the focus school or program as reported on the fall membership report from the school fiscal year immediately preceding the school fiscal year in which the aid is to be paid for state aid certified pursuant to section 79-1022 and as reported on the annual statistical summary report from the school fiscal year immediately preceding the school fiscal year in which the aid was paid for the final calculation of state aid pursuant to section 79-1065.

Source: Laws 2006, LB 1024, § 78; Laws 2007, LB641, § 18; Laws 2010, LB1070, § 7; Laws 2010, LB1071, § 15.

79-1007.06 Poverty allowance; calculation.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the poverty allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.07. Each school district shall designate a maximum poverty allowance on a form prescribed by the department on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the poverty allowance by providing the department with a maximum poverty allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan pursuant to section 79-1013.

(2) The poverty allowance for each school district that has not been disqualified pursuant to section 79-1007.07 shall equal the lesser of:

(a) The maximum amount designated pursuant to subsection (1) of this section by the school district in the local system, if such school district

designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The sum of:

(i) The statewide average general fund operating expenditures per formula student multiplied by 0.0375 then multiplied by the poverty students comprising more than five percent and not more than ten percent of the formula students in the school district; plus

(ii) The statewide average general fund operating expenditures per formula student multiplied by 0.0750 then multiplied by the poverty students comprising more than ten percent and not more than fifteen percent of the formula students in the school district; plus

(iii) The statewide average general fund operating expenditures per formula student multiplied by 0.1125 then multiplied by the poverty students comprising more than fifteen percent and not more than twenty percent of the formula students in the school district; plus

(iv) The statewide average general fund operating expenditures per formula student multiplied by 0.1500 then multiplied by the poverty students comprising more than twenty percent and not more than twenty-five percent of the formula students in the school district; plus

(v) The statewide average general fund operating expenditures per formula student multiplied by 0.1875 then multiplied by the poverty students comprising more than twenty-five percent and not more than thirty percent of the formula students in the school district; plus

(vi) The statewide average general fund operating expenditures per formula student multiplied by 0.2250 then multiplied by the poverty students comprising more than thirty percent of the formula students in the school district.

Source: Laws 2006, LB 1024, § 79; Laws 2007, LB641, § 19; Laws 2008, LB988, § 28; Laws 2009, LB549, § 27.

79-1007.07 Financial reports relating to poverty allowance; department; duties; report; appeal of department decisions.

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the poverty allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on poverty as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to poverty with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the poverty plan submitted pursuant to section 79-1013 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's poverty plan; and

(v) An explanation of how any required elements of the poverty plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the poverty allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would include in the poverty allowance expenditures only those expenditures that were used to specifically address issues related to the education of students living in poverty or to the implementation of the poverty plan, that do not replace expenditures that would have occurred if the students involved in the program did not live in poverty, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in poverty allowance expenditures.

(3) If the poverty allowance expenditures do not equal 117.65 percent or more of the poverty allowance for the most recently available complete data year, the department shall calculate a poverty allowance correction. The poverty allowance correction shall equal the poverty allowance minus eighty-five percent of the poverty allowance expenditures. If the poverty allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(4) If the department determines that the school district did not meet the required elements of the poverty plan for the most recently available complete data year, the department shall calculate a poverty allowance correction equal to fifty percent of the poverty allowance for such school fiscal year and the school district shall also be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated. Any poverty allowance correction calculated pursuant to this subsection shall be added to any poverty allowance correction calculated pursuant to subsection (3) of this section to arrive at the total poverty allowance correction.

(5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a poverty allowance for the school fiscal year for which aid is being calculated.

(6) The department shall provide electronically an annual report to the Legislature containing a general description of the expenditures and funding sources for programs related to poverty statewide and specific descriptions of the expenditures and funding sources for programs related to poverty for each school district.

(7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 80; Laws 2007, LB641, § 20; Laws 2008, LB988, § 29; Laws 2009, LB545, § 5; Laws 2011, LB18, § 3; Laws 2012, LB782, § 158.
Operative date July 19, 2012.

79-1007.08 Limited English proficiency allowance; calculation.

(1) For school fiscal year 2008-09 and each school fiscal year thereafter, the department shall determine the limited English proficiency allowance for each school district that meets the requirements of this section and has not been disqualified pursuant to section 79-1007.09. Each school district shall designate a maximum limited English proficiency allowance on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. The school district may decline to participate in the limited English proficiency allowance by providing the department with a maximum limited English proficiency allowance of zero dollars on such form on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan pursuant to section 79-1014.

(2) The limited English proficiency allowance for each school district that has not been disqualified pursuant to section 79-1007.09 shall equal the lesser of:

(a) The amount designated pursuant to subsection (1) of this section by the school district, if such school district designated a maximum amount, for the school fiscal year for which aid is being calculated; or

(b) The statewide average general fund operating expenditures per formula student multiplied by 0.25 then multiplied by:

(i) The number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, if such number is greater than or equal to twelve;

(ii) Twelve, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is greater than or equal to one and less than twelve; or

(iii) Zero, if the number of students in the school district who are limited English proficient as defined under 20 U.S.C. 7801, as such section existed on January 1, 2006, is less than one.

Source: Laws 2006, LB 1024, § 81; Laws 2007, LB641, § 21; Laws 2008, LB988, § 30; Laws 2009, LB549, § 28.

79-1007.09 Financial reports relating to limited English proficiency; department; duties; report; appeal of department decisions.

(1)(a) The annual financial report required pursuant to section 79-528 shall include:

(i) The amount of the limited English proficiency allowance used in the certification of state aid pursuant to section 79-1022 for such school fiscal year;

(ii) The amount of federal funds received based on students who are limited English proficient as defined by the federal program providing the funds;

(iii) The expenditures and sources of funding for each program related to limited English proficiency with a narrative description of the program, the method used to allocate money to the program and within the program, and the program's relationship to the limited English proficiency plan submitted pursuant to section 79-1014 for such school fiscal year;

(iv) The expenditures and sources of funding for support costs directly attributable to implementing the district's limited English proficiency plan; and

(v) An explanation of how any required elements of the limited English proficiency plan for such school fiscal year were met.

(b) The department shall set up accounting codes for the receipts and expenditures required to be reported on the annual financial report pursuant to this subsection.

(2) The department shall determine the limited English proficiency allowance expenditures using the reported expenditures on the annual financial report for the most recently available complete data year that would only include in the limited English proficiency allowance expenditures those expenditures that were used to specifically address issues related to the education of students with limited English proficiency or to the implementation of the limited English proficiency plan, that do not replace expenditures that would have occurred if the students involved in the program did not have limited English proficiency, that are not included in other allowances, and that are paid for with noncategorical funds generated by state or local taxes or funds distributed through the Tax Equity and Educational Opportunities Support Act pursuant to the federal American Recovery and Reinvestment Act of 2009 or the federal Education Jobs Fund created pursuant to Public Law 111-226. The department shall establish a procedure to allow school districts to receive preapproval for categories of expenditures that could be included in limited English proficiency allowance expenditures.

(3) If the limited English proficiency allowance expenditures do not equal 117.65 percent or more of the limited English proficiency allowance for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction. The limited English proficiency allowance correction shall equal the limited English proficiency allowance minus eighty-five percent of the limited English proficiency allowance expenditures. If the limited English proficiency allowance expenditures do not equal fifty percent or more of the allowance for such school fiscal year, the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(4) If the department determines that the school district did not meet the required elements of the limited English proficiency plan for the most recently available complete data year, the department shall calculate a limited English proficiency allowance correction equal to fifty percent of the limited English proficiency allowance for such school fiscal year and the school district shall also be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated. Any limited English proficiency allowance correction calculated pursuant to this subsection shall be added to any limited English proficiency allowance correction calculated pursuant to subsection (3) of this section to arrive at the total limited English proficiency allowance correction.

(5) The department may request additional information from any school district to assist with calculations and determinations pursuant to this section. If the school district does not provide information upon the request of the department pursuant to this section, the school district shall be disqualified from receiving a limited English proficiency allowance for the school fiscal year for which aid is being calculated.

(6) The department shall annually provide the Legislature with a report containing a general description of the expenditures and funding sources for programs related to limited English proficiency statewide and specific descriptions of the expenditures and funding sources for programs related to limited English proficiency for each school district.

(7) The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2006, LB 1024, § 82; Laws 2007, LB641, § 22; Laws 2008, LB988, § 31; Laws 2009, LB545, § 6; Laws 2011, LB18, § 4.

79-1007.10 Cost growth factor; computation.

(1) For state aid calculated for all school fiscal years except school fiscal year 2010-11, the cost growth factor shall equal the sum of: (a) The basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (b) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed.

(2) For state aid calculated for school fiscal year 2010-11, the cost growth factor shall equal the sum of: (i) One; plus (ii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year in which the aid is to be distributed; plus (iii) the basic allowable growth rate pursuant to section 79-1025 for the school fiscal year immediately preceding the school fiscal year in which the aid is to be distributed; plus (iv) two percent.

Source: Laws 2006, LB 1024, § 83; Laws 2007, LB21, § 2; Laws 2008, LB988, § 32; Laws 2009, LB545, § 7; Laws 2011, LB235, § 8.

79-1007.11 School district formula need; calculation.

(1) Except as otherwise provided in this section, for school fiscal year 2010-11, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, elementary class size allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, and local choice adjustment.

(2) Except as otherwise provided in this section, for school fiscal years 2011-12 and 2012-13, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, elementary class size allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction,

any negative student growth adjustment correction, and local choice adjustment.

(3) Except as otherwise provided in this section, for school fiscal year 2013-14 and each school fiscal year thereafter, each school district's formula need shall equal the difference of the sum of the school district's basic funding, poverty allowance, limited English proficiency allowance, focus school and program allowance, summer school allowance, special receipts allowance, transportation allowance, elementary site allowance, instructional time allowance, teacher education allowance, distance education and telecommunications allowance, averaging adjustment, new learning community transportation adjustment, student growth adjustment, any positive student growth adjustment correction, and new school adjustment, minus the sum of the limited English proficiency allowance correction, poverty allowance correction, any negative student growth adjustment correction, and local choice adjustment.

(4) For state aid calculated for all school fiscal years except school fiscal year 2011-12, if the formula need calculated for a school district pursuant to subsections (1) through (3) of this section is less than one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. For state aid calculated for school fiscal year 2011-12, if the formula need calculated for a school district pursuant to subsection (2) of this section is less than ninety-five percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal ninety-five percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(5) For state aid calculated for school fiscal years except school fiscal year 2011-12, except as provided in subsection (7) of this section, if the formula need calculated for a school district pursuant to subsections (1) through (3) of this section is more than one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred twelve percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district receiving a student growth adjustment for the school fiscal year for which aid is being calculated. For state aid calculated for school fiscal year 2011-12, except as provided in subsection (7) of this section, if the formula need calculated for a school district pursuant to subsection (2) of this section is more than one hundred seven percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, the formula need for such district shall equal one hundred seven percent of the formula need for such district for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated, except that the formula need shall not be reduced pursuant to this subsection for any district receiving a student growth adjustment for the school fiscal year for which aid is being calculated.

(6) For purposes of subsections (4) and (5) of this section, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be the formula need used in the final calculation of aid pursuant to section 79-1065 and for districts that were affected by a reorganization with an effective date in the calendar year preceding the calendar year in which aid is certified for the school fiscal year for which aid is being calculated, the formula need for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated shall be attributed to the affected school districts based on information provided to the department by the school districts or proportionally based on the adjusted valuation transferred if sufficient information has not been provided to the department.

(7) For state aid calculated for the first full school fiscal year of a new learning community, if the formula need calculated for a member school district pursuant to subsections (1) through (4) of this section is less than the sum of the school district's state aid certified for the school fiscal year immediately preceding the first full school fiscal year of the learning community plus the school district's other actual receipts included in local system formula resources pursuant to section 79-1018.01 for such school fiscal year plus the product of the school district's general fund levy for such school fiscal year up to one dollar and five cents multiplied by the school district's assessed valuation for such school fiscal year, the formula need for such school district for the school fiscal year for which aid is being calculated shall equal such sum.

Source: Laws 2008, LB988, § 13; Laws 2008, LB1153, § 7; Laws 2009, LB545, § 8; Laws 2009, First Spec. Sess., LB5, § 5; Laws 2011, LB235, § 9.

79-1007.15 Elementary site allowance; calculation.

(1) For school fiscal year 2008-09, the department shall calculate an elementary site allowance for any district in which (a) the district has more than one elementary attendance site, (b) at least one of the elementary attendance sites does not offer any other grades, (c) the square miles in the district divided by the number of elementary attendance sites in the district equals one hundred square miles or more per elementary attendance site, and (d) the fall membership in elementary site grades in the district divided by the number of elementary site grades then divided again by the number of elementary attendance sites equals fifteen or fewer students per grade per elementary attendance site. Qualifying elementary attendance sites for such districts shall only offer elementary site grades and shall have an average of fifteen or fewer students per grade in the fall membership.

(2) For school fiscal year 2009-10 and each school fiscal year thereafter, the department shall calculate an elementary site allowance for any district which has at least one qualifying elementary attendance site and which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. A qualifying elementary attendance site shall be an elementary attendance site, in a district with multiple elementary attendance sites, which does not have another elementary attendance site within seven miles in the same school district or which is the only public elementary attendance site located in an incorporated city or village.

(3) The elementary site allowance for each qualifying district shall equal the sum of the elementary site allowances for each qualifying elementary attendance site in the district. The elementary site allowance for each qualifying elementary attendance site shall equal five hundred percent of the statewide average general fund operating expenditures per formula student multiplied by the result of rounding the ratio of the fall membership attributed to the elementary attendance site divided by eight up to the next whole number if the result was not a whole number, except that if the resulting whole number is greater than the number of elementary site grades, the whole number shall be reduced to equal the number of elementary site grades.

(4) For purposes of this section:

(a) Each district shall determine which grades are considered elementary site grades, except that (i) all grades designated as elementary site grades shall be offered in each elementary attendance site in the district, without any preference indicated by the school board or any school district administrator for students to attend different elementary attendance sites depending on their elementary site grade level, for the school fiscal year for which aid is being calculated and for each of the five school fiscal years preceding the school fiscal year for which aid is being calculated and (ii) elementary site grades shall not include grades nine, ten, eleven, or twelve;

(b) An elementary attendance site is an attendance site in which elementary site grades are offered;

(c) The primary elementary site shall be the elementary attendance site to which the most formula students are attributed in the district and shall not be a qualifying elementary attendance site; and

(d) Fall membership means the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(5) If the elementary attendance site is new or is being reopened after being closed for at least one school year, the requirements of subdivision (4)(a)(i) of this section with respect to preceding school fiscal years shall not apply to school fiscal years in which the elementary attendance site was not in operation.

(6) The department shall determine if the qualifications for the elementary site allowance have been met for each elementary attendance site for which information has been submitted. The department may rely on the information submitted and any other information available to the department, including, but not limited to, past attendance patterns. The state board shall establish a procedure for appeal of decisions of the department to the state board for a final determination.

Source: Laws 2008, LB988, § 17; Laws 2009, First Spec. Sess., LB5, § 6.

79-1007.16 Basic funding; calculation.

(1) The department shall calculate basic funding for each district as provided in this section.

(2) For state aid calculated for school fiscal years prior to school fiscal year 2011-12:

(a) A comparison group shall be established for each district consisting of the districts for which basic funding is being calculated, the five larger districts that are closest in size to the district for which basic funding is being calculated as

measured by formula students, and the five smaller districts that are closest in size to the district for which basic funding is being calculated as measured by formula students. If there are not five districts that are larger than the district for which basic funding is being calculated or if there are not five districts that are smaller than the district for which basic funding is being calculated, the comparison group shall consist of only as many districts as fit the criteria. If more than one district has exactly the same number of formula students as the largest or smallest district in the comparison group, all of the districts with exactly the same number of formula students as the largest or smallest districts in the comparison group shall be included in the comparison group. If one or more districts have exactly the same number of formula students as the district for which basic funding is being calculated, all such districts shall be included in the comparison group in addition to the five larger districts and the five smaller districts. The comparison group shall remain the same for the final calculation of aid pursuant to section 79-1065;

(b) For districts with nine hundred or more formula students, basic funding shall equal the formula students multiplied by the average of the adjusted general fund operating expenditures per formula student for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures per formula student and the district with the lowest adjusted general fund operating expenditures per formula student of the districts in the comparison group; and

(c) For districts with fewer than nine hundred formula students, basic funding shall equal the product of the average of the adjusted general fund operating expenditures for each district in the comparison group, excluding both the district with the highest adjusted general fund operating expenditures and the district with the lowest adjusted general fund operating expenditures of the districts in the comparison group.

(3) For state aid calculated for school fiscal year 2011-12 and each school fiscal year thereafter:

(a) A comparison group shall be established for each district consisting of the districts for which basic funding is being calculated, the ten larger districts that are closest in size to the district for which basic funding is being calculated as measured by formula students, and the ten smaller districts that are closest in size to the district for which basic funding is being calculated as measured by formula students. If there are not ten districts that are larger than the district for which basic funding is being calculated or if there are not ten districts that are smaller than the district for which basic funding is being calculated, the comparison group shall consist of only as many districts as fit the criteria. If more than one district has exactly the same number of formula students as the largest or smallest district in the comparison group, all of the districts with exactly the same number of formula students as the largest or smallest districts in the comparison group shall be included in the comparison group. If one or more districts have exactly the same number of formula students as the district for which basic funding is being calculated, all such districts shall be included in the comparison group in addition to the ten larger districts and the ten smaller districts. The comparison group shall remain the same for the final calculation of aid pursuant to section 79-1065;

(b) For districts with nine hundred or more formula students, basic funding shall equal the formula students multiplied by the average of the adjusted

general fund operating expenditures per formula student for each district in the comparison group, excluding both the two districts with the highest adjusted general fund operating expenditures per formula student and the two districts with the lowest adjusted general fund operating expenditures per formula student of the districts in the comparison group; and

(c) For districts with fewer than nine hundred formula students, basic funding shall equal the product of the average of the adjusted general fund operating expenditures for each district in the comparison group, excluding both the two districts with the highest adjusted general fund operating expenditures and the two districts with the lowest adjusted general fund operating expenditures of the districts in the comparison group.

Source: Laws 2008, LB988, § 18; Laws 2009, LB549, § 29; Laws 2011, LB235, § 10.

79-1007.18 Averaging adjustment; calculation.

(1) The department shall calculate an averaging adjustment for districts if the basic funding per formula student is less than the averaging adjustment threshold and the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated was at least one dollar per one hundred dollars of taxable valuation. For school districts that are members of a learning community, the general fund levy for purposes of this section includes both the common general fund levy and the school district general fund levy authorized pursuant to subdivisions (2)(b) and (2)(c) of section 77-3442. The averaging adjustment shall equal the district's formula students multiplied by the percentage specified in this section for such district of the difference between the averaging adjustment threshold minus such district's basic funding per formula student.

(2)(a) For school fiscal year 2010-11, the averaging adjustment threshold shall equal the lesser of (i) the averaging adjustment threshold for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated increased by the sum of the basic allowable growth rate plus five-tenths of one percent or (ii) the statewide average basic funding per formula student for the school fiscal year for which aid is being calculated.

(b) For school fiscal year 2011-12, the averaging adjustment threshold shall equal ninety-five percent of the lesser of (i) the averaging adjustment threshold for school fiscal year 2010-11 increased by the basic allowable growth rate or (ii) the statewide average basic funding per formula student for school fiscal year 2011-12.

(c) For school fiscal year 2012-13 and each school fiscal year thereafter, the averaging adjustment threshold shall equal the lesser of (i) the averaging adjustment threshold for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated increased by the basic allowable growth rate or (ii) the statewide average basic funding per formula student for the school fiscal year for which aid is being calculated.

(3) The percentage to be used in the calculation of an averaging adjustment shall be based on the general fund levy for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(4) The percentages to be used in the calculation of averaging adjustments shall be as follows:

(a) If such levy was at least one dollar per one hundred dollars of taxable valuation but less than one dollar and one cent per one hundred dollars of taxable valuation, the percentage shall be fifty percent;

(b) If such levy was at least one dollar and one cent per one hundred dollars of taxable valuation but less than one dollar and two cents per one hundred dollars of taxable valuation, the percentage shall be sixty percent;

(c) If such levy was at least one dollar and two cents per one hundred dollars of taxable valuation but less than one dollar and three cents per one hundred dollars of taxable valuation, the percentage shall be seventy percent;

(d) If such levy was at least one dollar and three cents per one hundred dollars of taxable valuation but less than one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be eighty percent; and

(e) If such levy was at least one dollar and four cents per one hundred dollars of taxable valuation, the percentage shall be ninety percent.

Source: Laws 2008, LB988, § 20; Laws 2009, LB545, § 9; Laws 2011, LB235, § 11.

79-1007.19 Repealed. Laws 2011, LB 235, § 26.

79-1007.20 Student growth adjustment; school district; application; department; powers.

(1) For school fiscal year 2009-10 and each school fiscal year thereafter, school districts may apply to the department for a student growth adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which aid is being calculated. Such form shall require an estimate of the average daily membership for the school fiscal year for which aid is being calculated, the estimated student growth calculated by subtracting the fall membership of the current school fiscal year from the estimated average daily membership for the school fiscal year for which aid is being calculated, and evidence supporting the estimates. On or before the immediately following December 1, the department shall approve the estimated student growth, approve a modified student growth, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The student growth adjustment for each approved district shall equal the sum of the product of the school district's basic funding per formula student multiplied by the difference of the approved student growth minus the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated plus the product of fifty percent of the school district's basic funding per formula student multiplied by the greater of twenty-five students or one percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated.

(3) For school fiscal year 2011-12 and each school fiscal year thereafter, the department shall calculate a student growth adjustment correction for each district that received a student growth adjustment for aid distributed in the most recently available complete data year. Such student growth correction

shall equal the product of the difference of the average daily membership for such school fiscal year minus the sum of the formula students and the approved student growth used to calculate the student growth adjustment for such school fiscal year multiplied by the school district's basic funding per formula student used in the final calculation of aid pursuant to section 79-1065 for such school fiscal year, except that the absolute value of a negative correction shall not exceed the original adjustment.

Source: Laws 2008, LB988, § 22; Laws 2009, LB549, § 30.

79-1007.21 Two-year new school adjustment; school district; application; department; powers.

(1) For school fiscal year 2009-10 and each school fiscal year thereafter, school districts may apply to the department for a two-year new school adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the first-year new school adjustment would be included in the calculation of state aid. Such form shall require evidence of recent and expected student growth, evidence that a new building or the expansion or remodeling of an existing building is being completed to provide additional student capacity to accommodate such growth and not to replace an existing building, evidence that the school fiscal year for which the district would receive the first-year adjustment will be the first full school fiscal year for which students will utilize such additional capacity, and evidence of the estimated additional student capacity to be provided by the project. On or before the immediately following December 1, the department shall approve the estimated additional capacity for use in the adjustment, approve a modified estimated additional capacity for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. Each approval shall include an approved estimated additional student capacity for the new building. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The first-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by twenty percent of the approved estimated additional student capacity. The second-year new school adjustment for each approved district shall equal the school district's basic funding per formula student multiplied by ten percent of the approved estimated additional student capacity.

Source: Laws 2008, LB988, § 23; Laws 2009, LB549, § 31.

79-1007.22 New learning community transportation adjustment; application; department; powers.

(1) For state aid calculated for each of the second and third full school fiscal years of a new learning community, each member school district may apply to the department for a new learning community transportation adjustment, on a form prescribed by the department, on or before October 15 of the school fiscal year immediately preceding the school fiscal year for which the new learning community transportation adjustment would be included in the calculation of state aid. Such form shall require evidence supporting estimates of increased transportation costs for the district due to the provisions of subsection (2) of

section 79-611. On or before the immediately following December 1, the department shall approve the estimate of increased transportation costs for use in the adjustment, approve a modified estimate of increased transportation costs for use in the adjustment, or deny the application based on the requirements of this section, the evidence submitted on the application, and any other information provided by the department. The state board shall establish procedures for appeal of decisions of the department to the state board for final determination.

(2) The new learning community transportation adjustment shall equal the approved estimate of increased transportation costs due to the provisions of subsection (2) of section 79-611. School districts shall submit evidence of the actual increase in transportation costs due to the provisions of subsection (2) of section 79-611, and the department shall recalculate the adjustment using such actual costs pursuant to section 79-1065.

Source: Laws 2008, LB988, § 24; Laws 2009, LB62, § 4; Laws 2009, LB549, § 32.

79-1007.23 Instructional time allowance; calculation.

For state aid calculated for school fiscal year 2009-10 and each school fiscal year thereafter:

(1) The department shall calculate an instructional time allowance for each district which submits the information required for the calculation on a form prescribed by the department on or before October 15 of the school fiscal year preceding the school fiscal year for which aid is being calculated. The instructional time allowance shall be equal to the product of the formula students of such district multiplied by the instructional time factor for such district multiplied by eighty-five percent of the statewide average general fund operating expenditures per formula student;

(2) The instructional time factor shall equal the difference of the ratio of the district's average hours of instruction for each full-time student during the regular school year for the most recently available complete data year divided by: (a) For state aid calculated for school fiscal year 2009-10, the comparison group average hours of instruction for each full-time student during the regular school year for the most recently available complete data year minus one; or (b) for state aid calculated for school fiscal year 2010-11 and each school fiscal year thereafter, the statewide average hours of instruction for each full-time student during the regular school year for the most recently available complete data year minus one, except that if the result is less than zero, the instructional time factor shall equal zero;

(3) For school fiscal years 2009-10 and 2010-11, the comparison group average hours of instruction for each full-time student shall be an average of the averages for all school districts in the comparison group. The average hours of instruction shall be defined by the department and shall not include extracurricular activities outside of the regular school day or time designated for students to eat lunch. The statewide average hours of instruction for each full-time student shall be an average of the averages for all school districts; and

(4) For school fiscal year 2011-12 and each school fiscal year thereafter, the average hours of instruction shall be defined by the department and shall be based on scheduled time for courses and the number of students participating in such courses as reported to the department for the most recently available

complete data year. Hours of instruction shall not include extracurricular activities outside of the regular school day or time designated for students to eat lunch. The statewide average hours of instruction for each student shall be an average of the averages for all school districts.

Source: Laws 2008, LB988, § 25; Laws 2009, LB545, § 10; Laws 2009, First Spec. Sess., LB5, § 9; Laws 2010, LB1071, § 16.

79-1007.24 Repealed. Laws 2011, LB 235, § 26.

79-1007.25 Teacher education allowance; calculation.

For school fiscal year 2010-11 and each school fiscal year thereafter, the department shall calculate a teacher education allowance for each district as follows:

(1) Teacher education points shall be calculated for each district by the department based upon data from the fall personnel report required pursuant to section 79-804 for the school fiscal year immediately preceding the school fiscal year in which aid is to be paid. Each full-time equivalent teacher shall (a) be under contract with a school district as required pursuant to section 79-818 and (b) only be counted one time in awarding any points pursuant to this section. Each district shall receive one point for each full-time equivalent teacher who has earned and been awarded a master's degree or an education specialist's degree and two points for each full-time equivalent teacher who has earned and been awarded a doctoral degree;

(2) A teacher education index shall be calculated for each district by dividing the ratio of teacher education points for the district divided by the number of full-time equivalent teachers in the district by the ratio of teacher education points for all districts divided by the number of full-time equivalent teachers in all districts; and

(3) The teacher education allowance for each district shall equal eight and one-half percent of the statewide average general fund operating expenditures per formula student multiplied by the district's formula students and multiplied by the difference of the product of the district's teacher education index minus one, except that if the result is less than zero, the teacher education allowance shall equal zero.

Source: Laws 2009, First Spec. Sess., LB5, § 8.

79-1008.01 Equalization aid; amount.

For all school fiscal years except school fiscal year 2010-11, except as provided in sections 79-1008.02 and 79-1009, each local system shall receive equalization aid in the amount that the total formula need of each local system, as determined pursuant to sections 79-1007.04 to 79-1007.23 and 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

For school fiscal year 2010-11, except as provided in sections 79-1008.02 and 79-1009, each local system shall receive equalization aid in the amount by which one hundred two and twenty-three hundredths percent of the total formula need of each local system, as determined pursuant to sections

79-1007.04 to 79-1007.23 and 79-1007.25, exceeds its total formula resources as determined pursuant to sections 79-1015.01 to 79-1018.01.

Source: Laws 1997, LB 710, § 11; Laws 1997, LB 806, § 38; Laws 1998, LB 989, § 7; Laws 1998, Spec. Sess., LB 1, § 19; Laws 1999, LB 149, § 6; Laws 2001, LB 797, § 20; Laws 2002, LB 898, § 8; Laws 2003, LB 540, § 4; Laws 2004, LB 1093, § 5; Laws 2006, LB 1024, § 84; Laws 2008, LB988, § 33; Laws 2009, First Spec. Sess., LB5, § 10; Laws 2011, LB8, § 2; Laws 2011, LB18, § 5; Laws 2011, LB235, § 12.

79-1008.02 Minimum levy adjustment; calculation; effect.

A minimum levy adjustment shall be calculated and applied to any local system that has a general fund common levy for the fiscal year during which aid is certified that is less than the maximum levy, for such fiscal year for such local system, allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities and less ten cents for all other local systems. To calculate the minimum levy adjustment, the department shall subtract the local system general fund common levy for such fiscal year for such local system from the maximum levy allowed pursuant to subdivision (2)(a) or (b) of section 77-3442 without a vote pursuant to section 77-3444 less five cents for learning communities and less ten cents for all other local systems and multiply the result by the local system's adjusted valuation divided by one hundred. The minimum levy adjustment shall be added to the formula resources of the local system for the determination of equalization aid pursuant to section 79-1008.01. If the minimum levy adjustment is greater than or equal to the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall not receive allocated income tax funds. If the minimum levy adjustment is less than the allocated income tax funds calculated pursuant to section 79-1005.01, the local system shall receive allocated income tax funds in the amount of the difference between the allocated income tax funds calculated pursuant to section 79-1005.01 and the minimum levy adjustment. This section does not apply to the calculation of aid for a local system containing a learning community for the first school fiscal year for which aid is calculated for such local system.

Source: Laws 1997, LB 806, § 39; Laws 1998, Spec. Sess., LB 1, § 20; Laws 2001, LB 797, § 21; Laws 2002, LB 898, § 9; Laws 2006, LB 1024, § 85; Laws 2007, LB641, § 26; Laws 2008, LB988, § 34; Laws 2011, LB235, § 13.

79-1009 Option school districts; net option funding; calculation.

(1)(a) A district shall receive net option funding if option students as defined in section 79-233 (i) were actually enrolled in the school year immediately preceding the school year in which the aid is to be paid or (ii) will be enrolled in the school year in which the aid is to be paid as converted contract option students.

(b) The determination of the net number of option students shall be based on (i) the number of students enrolled in the district as option students and the number of students residing in the district but enrolled in another district as option students as of the day of the fall membership count pursuant to section 79-528, for the school fiscal year immediately preceding the school fiscal year

in which aid is to be paid, and (ii) the number of option students that will be enrolled in the district or enrolled in another district as converted contract option students for the fiscal year in which the aid is to be paid.

(c) Net number of option students means the difference of the number of option students enrolled in the district minus the number of students residing in the district but enrolled in another district as option students.

(2) For purposes of this section, net option funding shall be the sum of the product of the net number of option students multiplied by the statewide average basic funding per formula student.

(3) A district's net option funding shall be zero if the calculation produces a negative result.

Payments made under this section shall be made from the funds to be disbursed under section 79-1005.01.

Such payments shall go directly to the option school district but shall count as a formula resource for the local system.

Source: Laws 1996, LB 1050, § 18; Laws 1997, LB 806, § 40; Laws 1998, Spec. Sess., LB 1, § 21; Laws 1999, LB 813, § 21; Laws 2001, LB 797, § 22; Laws 2001, LB 833, § 5; Laws 2002, LB 898, § 10; Laws 2004, LB 1093, § 6; Laws 2008, LB988, § 35; Laws 2011, LB235, § 14.

79-1009.01 Converted contract option students; department; calculations; notice to applicant district.

For school fiscal years prior to school fiscal year 2027-28, a district which will have converted contract option students shall apply to the department on a form approved by the department within fifteen days after April 27, 2011, for converted contract option students for school fiscal year 2011-12 and on or before November 1 of the calendar year preceding the beginning of all other school fiscal years for which there will be converted contract option students. The department shall determine the amount of tuition receipts from converted contracts to be excluded from the calculation of local system formula resources for each of the first two school fiscal years for which the converted contract will not be in effect and shall determine the number of converted contract option students to be attributed to the receiving district in the calculation of state aid for the first school fiscal year for which the converted contract will not be in effect, and the same number shall be attributed as optioning out of the resident school district. In the final calculation of state aid pursuant to section 79-1065, students that were attributed as optioning into or out of a district shall be replaced with the actual number from fall membership. The department shall notify the applicant district within thirty days after receipt of the completed application.

Source: Laws 2011, LB235, § 15.

79-1010 Repealed. Laws 2011, LB 8, § 4; Laws 2011, LB 235, § 26.

79-1011 Incentives for consolidation; qualification; requirements; payment.

(1) To encourage consolidation of Class II and III school districts with less than three hundred ninety students, incentives shall be paid to reorganized Class II, III, IV, or V districts resulting from consolidations which meet the

requirements of this section. This section shall only apply to consolidations with an effective date after May 31, 2009, and before June 1, 2011.

(2) To qualify for incentive payments under this section, the consolidation must be approved for incentive payments by the State Committee for the Reorganization of School Districts. Consolidating school districts shall file an application with the state committee on or before June 15, 2009, or within thirty days following the issuance of the boundary change order pursuant to subsection (1) of section 79-479, whichever is later. The state committee shall approve or disapprove incentive payments within thirty days after receipt of the application.

(3) For incentive payments to be approved by the state committee, a reorganization study, including efficiency, demographic, curriculum, facility, financial, and community components, must be completed prior to the reorganization. If a study containing such elements has been completed and the study indicates that the reorganization will most likely result in more efficiency in the delivery of educational services or greater educational opportunities, the state committee may approve incentive payments.

(4) Incentive payments shall be based on the number of students moving from Class II or III school districts with less than three hundred ninety students into a reorganized Class II, III, IV, or V school district with at least three hundred ninety students based on the average daily membership in each affected district in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect and the average daily membership the consolidated district would have had following the boundary change if it had occurred in the school fiscal year immediately preceding the first school fiscal year the boundary change will be in effect. The incentive amount for each district involved in the reorganization having an average daily membership of less than three hundred ninety students shall equal one hundred twenty-five thousand dollars plus the product of five hundred dollars per student multiplied by the difference of three hundred ninety students minus the average daily membership in such district.

(5) Except as otherwise provided in this subsection, base fiscal year incentive payments shall equal fifty percent of the amount calculated pursuant to subsection (4) of this section. Base fiscal year incentive payments shall be calculated as of August 2 immediately preceding the base fiscal year and shall be paid directly to the reorganized district from the School District Reorganization Fund pursuant to subsection (6) of this section. The payments shall be made in ten as nearly as possible equal payments on the last business day of each month, beginning in September and ending the following June, for the base fiscal year. If the total amount of base fiscal year incentive payments for that school fiscal year exceeds the amount in the School District Reorganization Fund, the base fiscal year incentive payments shall be reduced proportionately so that the total amount of base fiscal year incentive payments equals the amount of funds so appropriated. The base fiscal year incentive payments shall not be included in local system formula resources as calculated under section 79-1018.01.

(6) The amount calculated pursuant to subsection (4) of this section minus the amount of base fiscal year incentive payments pursuant to subsection (5) of this section shall be paid out of any remaining funds in the School District Reorganization Fund after base fiscal year incentive payments. If the total

amount of second-year incentive payments exceeds the remaining funds, the second-year incentive payments shall be reduced proportionately so that the total amount of second-year incentive payments equals the amount in the fund. Second-year incentive payments shall not be included in local system formula resources as calculated pursuant to section 79-1018.01.

Source: Laws 2004, LB 1091, § 9; Laws 2009, LB545, § 12.

79-1012 School District Reorganization Fund; created; use; investment.

The School District Reorganization Fund is created. The fund shall be administered by the department. The fund shall consist of money transferred from the Education Innovation Fund and shall be used to provide payments to reorganized school districts pursuant to section 79-1011. Any unencumbered money remaining in the School District Reorganization Fund on July 1, 2011, shall be transferred to the Education Innovation Fund on such date. Any money remaining in the School District Reorganization Fund on July 1, 2013, shall be transferred to the Education Innovation Fund on such date. Any money in the School District Reorganization 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 1091, § 10; Laws 2007, LB603, § 4; Laws 2009, LB545, § 13; Laws 2011, LB333, § 10.

Cross References

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

79-1013 Poverty plan; submission required; when; review; approval; elements required; appeal.

(1) On or before October 15 of each year, each school district designating a maximum poverty allowance greater than zero dollars shall submit a poverty plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, (a) the department shall approve or disapprove such plan for school districts that are not members of a learning community based on the inclusion of the elements required pursuant to this section and (b) the learning community coordinating council and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the poverty plan for each member school district.

(2) In order to be approved pursuant to this section, a poverty plan shall include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Attendance, including absence followup and transportation for students qualifying for free or reduced-price lunches who reside more than one mile from the attendance center;

(b) Student mobility, including transportation to allow a student to continue attendance at the same school if the student moves to another attendance area within the same school district or within the same learning community;

(c) Parental involvement at the school-building level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(d) Parental involvement at the school-district level with a focus on the involvement of parents in poverty and from other diverse backgrounds;

(e) Class size reduction or maintenance of small class sizes in elementary grades;

(f) Scheduled teaching time on a weekly basis that will be free from interruptions;

(g) Access to early childhood education programs for children in poverty;

(h) Student access to social workers;

(i) Access to summer school, extended-school-day programs, or extended-school-year programs;

(j) Mentoring for new and newly reassigned teachers;

(k) Professional development for teachers and administrators, focused on addressing the educational needs of students in poverty and students from other diverse backgrounds;

(l) Coordination with elementary learning centers if the school district is a member of a learning community; and

(m) An evaluation to determine the effectiveness of the elements of the poverty plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

Source: Laws 2007, LB641, § 23; Laws 2008, LB988, § 36; Laws 2010, LB1071, § 17.

79-1014 Limited English proficiency plan; submission required; when; review; approval; elements required; appeal.

(1) On or before October 15 of each year, each school district designating a maximum limited English proficiency allowance greater than zero dollars shall submit a limited English proficiency plan for the next school fiscal year to the department and to the learning community coordinating council of any learning community of which the school district is a member. On or before the immediately following December 1, (a) the department shall approve or disapprove such plans for school districts that are not members of a learning community, based on the inclusion of the elements required pursuant to this section and (b) the learning community coordinating council, and, as to the applicable portions thereof, each achievement subcouncil, shall approve or disapprove such plan for school districts that are members of such learning community, based on the inclusion of such elements. On or before the immediately following December 5, each learning community coordinating council shall certify to the department the approval or disapproval of the limited English proficiency plan for each member school district.

(2) In order to be approved pursuant to this section, a limited English proficiency plan must include an explanation of how the school district will address the following issues for such school fiscal year:

(a) Identification of students with limited English proficiency;

(b) Instructional approaches;

(c) Assessment of such students' progress toward mastering the English language; and

(d) An evaluation to determine the effectiveness of the elements of the limited English proficiency plan.

(3) The state board shall establish a procedure for appeal of decisions of the department and of learning community coordinating councils to the state board for a final determination.

Source: Laws 2007, LB641, § 24; Laws 2008, LB988, § 37; Laws 2009, LB549, § 33; Laws 2010, LB1071, § 18.

79-1015 Repealed. Laws 2009, LB 545, § 26.

79-1015.01 Local system formula resources; local effort rate yield; determination.

(1) Local system formula resources shall include local effort rate yield which shall be computed as prescribed in this section.

(2) For each school fiscal year except school fiscal years 2011-12 and 2012-13: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less five cents; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

(3) For school fiscal years 2011-12 and 2012-13: (a) For state aid certified pursuant to section 79-1022, the local effort rate shall be the maximum levy, for the school fiscal year for which aid is being certified, authorized pursuant to subdivision (2)(a) of section 77-3442 less one and five-hundredths of one cent; (b) for the final calculation of state aid pursuant to section 79-1065, the local effort rate shall be the rate which, when multiplied by the total adjusted valuation of all taxable property in local systems receiving equalization aid pursuant to the Tax Equity and Educational Opportunities Support Act, will produce the amount needed to support the total formula need of such local systems when added to state aid appropriated by the Legislature and other actual receipts of local systems described in section 79-1018.01; and (c) the local effort rate yield for such school fiscal years shall be determined by multiplying each local system's total adjusted valuation by the local effort rate.

Source: Laws 1997, LB 806, § 45; Laws 1998, Spec. Sess., LB 1, § 23; Laws 1999, LB 149, § 8; Laws 2001, LB 797, § 24; Laws 2007, LB641, § 27; Laws 2008, LB988, § 38; Laws 2011, LB235, § 16.

79-1016 Adjusted valuation; how established; objections; filing; appeal; notice; correction due to clerical error; injunction prohibited.

(1) On or before August 25, the county assessor shall certify to the Property Tax Administrator the total taxable value by school district in the county for the current assessment year on forms prescribed by the Tax Commissioner. The county assessor may amend the filing for changes made to the taxable valuation of the school district in the county if corrections or errors on the original certification are discovered. Amendments shall be certified to the Property Tax Administrator on or before September 30.

(2) On or before October 10, the Property Tax Administrator shall compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system. The adjusted valuation of property for each school district and each local system, for purposes of determining state aid pursuant to the Tax Equity and Educational Opportunities Support Act, shall reflect as nearly as possible state aid value as defined in subsection (3) of this section. The Property Tax Administrator shall notify each school district and each local system of its adjusted valuation for the current assessment year by class of property on or before October 10. Establishment of the adjusted valuation shall be based on the taxable value certified by the county assessor for each school district in the county adjusted by the determination of the level of value for each school district from an analysis of the comprehensive assessment ratio study or other studies developed by the Property Tax Administrator, in compliance with professionally accepted mass appraisal techniques, as required by section 77-1327. The Tax Commissioner shall adopt and promulgate rules and regulations setting forth standards for the determination of level of value for state aid purposes.

(3) For purposes of this section, state aid value means:

(a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;

(b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and horticultural land that receives special valuation pursuant to section 77-1344, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

(4) On or before November 10, any local system may file with the Tax Commissioner written objections to the adjusted valuations prepared by the Property Tax Administrator, stating the reasons why such adjusted valuations are not the valuations required by subsection (3) of this section. The Tax Commissioner shall fix a time for a hearing. Either party shall be permitted to introduce any evidence in reference thereto. On or before January 1, the Tax Commissioner shall enter a written order modifying or declining to modify, in whole or in part, the adjusted valuations and shall certify the order to the State Department of Education. Modification by the Tax Commissioner shall be based upon the evidence introduced at hearing and shall not be limited to the modification requested in the written objections or at hearing. A copy of the written order shall be mailed to the local system within seven days after the date of the order. The written order of the Tax Commissioner may be appealed within thirty days after the date of the order to the Tax Equalization and Review Commission in accordance with section 77-5013.

(5) On or before November 10, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of

the adjusted valuation due to clerical error as defined in section 77-128 or, for agricultural and horticultural land, assessed value changes by reason of land qualified or disqualified for special use valuation pursuant to sections 77-1343 to 77-1347.01. On or before the following January 1, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(6) On or before May 31 of the year following the certification of adjusted valuation pursuant to subsection (2) of this section, any local system or county official may file with the Tax Commissioner a written request for a nonappealable correction of the adjusted valuation due to changes to the tax list that change the assessed value of taxable property. Upon the filing of the written request, the Tax Commissioner shall require the county assessor to recertify the taxable valuation by school district in the county on forms prescribed by the Tax Commissioner. The recertified valuation shall be the valuation that was certified on the tax list, pursuant to section 77-1613, increased or decreased by changes to the tax list that change the assessed value of taxable property in the school district in the county in the prior assessment year. On or before the following July 31, the Tax Commissioner shall approve or deny the request and, if approved, certify the corrected adjusted valuations resulting from such action to the State Department of Education.

(7) No injunction shall be granted restraining the distribution of state aid based upon the adjusted valuations pursuant to this section.

(8) A school district whose state aid is to be calculated pursuant to subsection (5) of this section and whose state aid payment is postponed as a result of failure to calculate state aid pursuant to such subsection may apply to the state board for lump-sum payment of such postponed state aid. Such application may be for any amount up to one hundred percent of the postponed state aid. The state board may grant the entire amount applied for or any portion of such amount. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated funds and forward such warrant to the district.

Source: Laws 1990, LB 1059, § 9; Laws 1991, LB 829, § 32; Laws 1991, LB 511, § 76; Laws 1992, LB 245, § 81; Laws 1992, LB 719A, § 198; Laws 1994, LB 1290, § 7; Laws 1995, LB 490, § 185; R.S.Supp.,1995, § 79-3809; Laws 1996, LB 900, § 662; Laws 1996, LB 934, § 5; Laws 1996, LB 1050, § 24; Laws 1997, LB 270, § 103; Laws 1997, LB 271, § 53; Laws 1997, LB 342, § 4; Laws 1997, LB 595, § 6; Laws 1997, LB 713, § 3; Laws 1997, LB 806, § 46; Laws 1998, Spec. Sess., LB 1, § 24; Laws 1999, LB 194, § 34; Laws 1999, LB 813, § 22; Laws 2000, LB 968, § 80; Laws 2001, LB 170, § 28; Laws 2002, LB 994, § 30; Laws 2004, LB 973, § 66; Laws 2005, LB 126, § 46; Laws 2005, LB 263, § 16; Laws 2006, LB 808, § 46; Laws 2006, LB 968, § 16; Referendum 2006, No. 422; Laws 2007, LB334, § 101; Laws 2008, LB988, § 39; Laws 2009, LB166, § 21.

Cross References

Tax Equalization and Review Commission Act, see section 77-5001.

79-1017.01 Local system formula resources; amounts included.

For state aid calculated for school fiscal years prior to school fiscal year 2012-13, local system formula resources includes retirement aid determined under section 79-1028.03, allocated income tax funds determined for each such district pursuant to the provisions of section 79-1005.01, and adjustments pursuant to section 79-1008.02.

For state aid calculated for school fiscal years 2012-13 and 2013-14, local system formula resources includes retirement aid determined under section 79-1028.03, allocated income tax funds determined for each district pursuant to section 79-1005.01, and adjustments pursuant to section 79-1008.02, and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

For state aid calculated for school fiscal year 2014-15 and each school fiscal year thereafter, local system formula resources includes allocated income tax funds determined for each district pursuant to section 79-1005.01 and adjustments pursuant to section 79-1008.02 and is reduced by amounts paid by the district in the most recently available complete data year as property tax refunds pursuant to or in the manner prescribed by section 77-1736.06.

Source: Laws 1997, LB 806, § 48; Laws 2002, LB 898, § 11; Laws 2009, LB545, § 14; Laws 2011, LB235, § 17.

79-1018.01 Local system formula resources; other actual receipts included.

Except as otherwise provided in this section, local system formula resources include other actual receipts available for the funding of general fund operating expenditures as determined by the department for the second school fiscal year immediately preceding the school fiscal year in which aid is to be paid. Other actual receipts include:

(1) Public power district sales tax revenue;

(2) Fines and license fees;

(3) Tuition receipts from individuals, other districts, or any other source except receipts derived from adult education, receipts derived from summer school tuition, receipts derived from early childhood education tuition, tuition receipts from converted contracts beginning with the calculation of state aid to be distributed in school fiscal year 2011-12, and receipts from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

(4) Transportation receipts;

(5) Interest on investments;

(6) Other miscellaneous noncategorical local receipts, not including receipts from private foundations, individuals, associations, or charitable organizations;

(7) Special education receipts;

(8) Special education receipts and non-special education receipts from the state for wards of the court and wards of the state;

(9) All receipts from the temporary school fund. Receipts from the temporary school fund shall only include (a) receipts pursuant to section 79-1035, to the extent that such receipts for the calculation of aid for school fiscal year 2018-19 and each school fiscal year thereafter are not returned to the temporary school fund pursuant to section 79-309.01, and (b) the receipt of funds pursuant to section 79-1036 for property leased for a public purpose as set forth in subdivision (1)(a) of section 77-202;

(10) Motor vehicle tax receipts received;

(11) Pro rata motor vehicle license fee receipts;

(12) Other miscellaneous state receipts excluding revenue from the textbook loan program authorized by section 79-734;

(13) Impact aid entitlements for the school fiscal year which have actually been received by the district to the extent allowed by federal law;

(14) All other noncategorical federal receipts;

(15) All receipts pursuant to the enrollment option program under sections 79-232 to 79-246;

(16) Receipts under the federal Medicare Catastrophic Coverage Act of 1988, as such act existed on May 8, 2001, as authorized pursuant to sections 43-2510 and 43-2511 but only to the extent of the amount the local system would have otherwise received pursuant to the Special Education Act;

(17) Receipts for accelerated or differentiated curriculum programs pursuant to sections 79-1106 to 79-1108.03; and

(18) Revenue received from the nameplate capacity tax distributed pursuant to section 77-6204.

Source: Laws 1997, LB 710, § 12; Laws 1997, LB 806, § 50; Laws 1998, LB 306, § 44; Laws 1998, LB 1229, § 4; Laws 1998, Spec. Sess., LB 1, § 25; Laws 1999, LB 149, § 9; Laws 2001, LB 797, § 25; Laws 2001, LB 833, § 6; Laws 2006, LB 1208, § 6; Laws 2007, LB603, § 5; Laws 2008, LB988, § 40; Laws 2010, LB1014, § 2; Laws 2010, LB1048, § 16; Laws 2011, LB235, § 18.

Cross References

Special Education Act, see section 79-1110.

79-1022 Distribution of income tax receipts and state aid; effect on budget.

(1) On or before March 10, 2010, and March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, on or before May 1, 2012, for school fiscal year 2012-13, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall determine the amounts to be distributed to each local system and each district pursuant to the Tax Equity and Educational Opportunities Support Act and shall certify the amounts to the Director of Administrative Services, the Auditor of Public Accounts, each learning community, and each district. The amount to be distributed to each district that is not a member of a learning community from the amount certified for a local system shall be proportional based on the formula students attributed to each district in the local system. The amount to be distributed to each district that is a member of a learning community from the amount certified for the local system shall be proportional based on the formula needs calculated for each district in the local system. On or before

March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, on or before May 1, 2012, for school fiscal year 2012-13, and on or before March 1 of each year thereafter for each ensuing fiscal year, the department shall report the necessary funding level to the Governor, the Appropriations Committee of the Legislature, and the Education Committee of the Legislature. The report submitted to the committees of the Legislature shall be submitted electronically. Except as otherwise provided in this subsection, certified state aid amounts, including adjustments pursuant to section 79-1065.02, shall be shown as budgeted non-property-tax receipts and deducted prior to calculating the property tax request in the district's general fund budget statement as provided to the Auditor of Public Accounts pursuant to section 79-1024. Increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011, shall not require a school district to revise its previously adopted budget statement pursuant to section 13-511 for school fiscal year 2010-11 unless expenditures are increased in such school fiscal year as a result of such increases in state aid. The amount of such increased state aid that has not been included in an amended budget for school fiscal year 2010-11 shall be included in the unencumbered cash balance pursuant to section 13-504 for the school fiscal year 2011-12 budget for each school district.

(2) Except as provided in this subsection, subsection (8) of section 79-1016, and sections 79-1033 and 79-1065.02, the amounts certified pursuant to subsection (1) of this section shall be distributed in ten as nearly as possible equal payments on the last business day of each month beginning in September of each ensuing school fiscal year and ending in June of the following year, except that when a school district is to receive a monthly payment of less than one thousand dollars, such payment shall be one lump-sum payment on the last business day of December during the ensuing school fiscal year. For school fiscal year 2010-11, payments shall be based on the amounts certified pursuant to subsection (1) of this section on March 10, 2010, except that on the last business day of April, the department shall make federal Education Jobs Fund allocations available pursuant to section 79-1028.04 equal to any increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011, rounded to the nearest whole dollar.

Source: Laws 1990, LB 1059, § 13; Laws 1991, LB 511, § 79; Laws 1992, LB 245, § 84; Laws 1994, LB 1290, § 8; Laws 1994, LB 1310, § 16; Laws 1995, LB 840, § 9; R.S.Supp.,1995, § 79-3813; Laws 1996, LB 900, § 668; Laws 1996, LB 1050, § 30; Laws 1997, LB 710, § 13; Laws 1997, LB 713, § 5; Laws 1997, LB 806, § 51; Laws 1998, Spec. Sess., LB 1, § 28; Laws 1999, LB 149, § 10; Laws 1999, LB 194, § 35; Laws 1999, LB 813, § 23; Laws 2002, LB 898, § 12; Laws 2002, Second Spec. Sess., LB 4, § 1; Laws 2003, LB 67, § 12; Laws 2003, LB 540, § 5; Laws 2004, LB 973, § 67; Laws 2005, LB 126, § 47; Laws 2005, LB 198, § 3; Laws 2006, LB 1024, § 86; Referendum 2006, No. 422; Laws 2007, LB21, § 3; Laws 2007, LB641, § 28; Laws 2008, LB988, § 41; Laws 2009, LB61, § 1; Laws 2009, LB545, § 15; Laws 2009, LB548, § 1; Laws 2010, LB711, § 2; Laws 2010, LB1071, § 19; Laws 2011, LB18, § 6; Laws 2012, LB633, § 1; Laws 2012, LB782, § 159.

Note: The Revisor of Statutes has pursuant to section 49-769 correlated LB633, section 1, with LB782, section 159, to reflect all amendments.

Note: Changes made by LB633 became effective February 29, 2012. Changes made by LB782 became operative July 19, 2012.

79-1022.02 School fiscal year 2012-13 certifications null and void.

Notwithstanding any other provision of law, any certification of state aid pursuant to section 79-1022, certification of budget authority pursuant to section 79-1023, and certification of applicable allowable reserve percentages pursuant to section 79-1027 completed prior to February 29, 2012, for school fiscal year 2012-13 is null and void.

Source: Laws 2002, LB 898, § 13; Laws 2003, LB 540, § 6; Laws 2008, LB988, § 42; Laws 2011, LB18, § 7; Laws 2012, LB633, § 2. Effective date February 29, 2012.

79-1023 School district; general fund budget of expenditures; limitation; department; certification.

(1) On or before March 10, 2010, on or before July 1, 2011, on or before May 1, 2012, and on or before March 1 of each year thereafter, the department shall determine and certify to each school district budget authority for the general fund budget of expenditures for the immediately following school fiscal year.

(2) For school fiscal years prior to school fiscal year 2011-12, except as provided in section 79-1028.01, no school district shall have a general fund budget of expenditures minus special grant funds and the special education budget of expenditures more than the greater of (a) the product of the difference of the general fund budget of expenditures minus special grant funds and the special education budget of expenditures for the immediately preceding school fiscal year multiplied by (i) except as otherwise provided in subdivision (a)(ii) of this subsection, the sum of one plus the local system's applicable allowable growth rate or (ii) for school fiscal year 2010-11, the sum of one plus seventy-five hundredths of one percent plus the local system's applicable allowable growth rate or (b)(i) except as otherwise provided in subdivision (b)(ii) of this subsection, the difference of one hundred twenty percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year or (ii) for school fiscal years 2009-10 and 2010-11, the difference of one hundred sixteen and fifteen-hundredths percent of formula need for such school fiscal year minus the product of the sum of one plus the basic allowable growth rate for such school fiscal year multiplied by the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year.

(3) For school fiscal year 2011-12, except as provided in sections 79-1028.01, 79-1029, and 79-1030, each school district shall have budget authority for the general fund budget of expenditures equal to the greater of (a) the general fund budget of expenditures for school fiscal year 2010-11 minus exclusions for school fiscal year 2010-11 that fit within subsection (1) of section 79-1028.01 with the difference increased by an amount equal to one and one hundred fifteen thousandths percent of the formula need calculated for school fiscal year 2010-11, (b) the general fund budget of expenditures for school fiscal year

2010-11 minus exclusions for school fiscal year 2010-11 that fit within subsection (1) of section 79-1028.01 with the difference increased by an amount equal to any student growth adjustment calculated for school fiscal year 2011-12, or (c) one hundred ten percent of formula need for school fiscal year 2011-12 minus the special education budget of expenditures as filed on the school district budget statement on or before September 20 for school fiscal year 2010-11, which special education budget of expenditures is increased by the basic allowable growth rate for school fiscal year 2011-12.

(4) For school fiscal year 2012-13 and each school fiscal year thereafter, except as provided in sections 79-1028.01, 79-1029, and 79-1030, each school district shall have budget authority for the general fund budget of expenditures equal to the greater of (a) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated, (b) the general fund budget of expenditures for the immediately preceding school fiscal year minus exclusions pursuant to subsection (1) of section 79-1028.01 for such school fiscal year with the difference increased by an amount equal to any student growth adjustment calculated for the school fiscal year for which budget authority is being calculated, or (c) one hundred ten percent of formula need for the school fiscal year for which budget authority is being calculated minus the special education budget of expenditures as filed on the school district budget statement on or before September 20 for the immediately preceding school fiscal year, which special education budget of expenditures is increased by the basic allowable growth rate for the school fiscal year for which budget authority is being calculated.

(5) For any school fiscal year for which the budget authority for the general fund budget of expenditures for a school district is based on a student growth adjustment, the budget authority for the general fund budget of expenditures for such school district shall be adjusted in future years to reflect any student growth adjustment corrections related to such student growth adjustment.

Source: Laws 1990, LB 1059, § 14; Laws 1991, LB 829, § 33; Laws 1992, LB 1063, § 202; Laws 1992, Second Spec. Sess., LB 1, § 173; Laws 1995, LB 613, § 3; Laws 1996, LB 299, § 27; R.S.Supp.,1995, § 79-3814; Laws 1996, LB 900, § 669; Laws 1998, LB 989, § 8; Laws 2003, LB 67, § 13; Laws 2008, LB988, § 43; Laws 2009, LB61, § 2; Laws 2009, LB545, § 16; Laws 2009, LB548, § 2; Laws 2009, First Spec. Sess., LB5, § 11; Laws 2010, LB711, § 3; Laws 2010, LB1071, § 20; Laws 2011, LB18, § 8; Laws 2011, LB235, § 19; Laws 2012, LB633, § 3.
Effective date February 29, 2012.

Cross References

Retirement expenditures, not exempt from limitations, see section 79-977.

79-1024 Budget statement; submitted to department; Auditor of Public Accounts; duties; failure to submit; effect.

(1) The department may require each district to submit to the department a duplicate copy of such portions of the district's budget statement as the Commissioner of Education directs. The department may verify any data used

to meet the requirements of the Tax Equity and Educational Opportunities Support Act. The Auditor of Public Accounts shall review each district's budget statement for statutory compliance, make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-1023 to 79-1030, and notify the Commissioner of Education of any district failing to submit to the auditor the budget documents required pursuant to this subsection by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511.

(2) If a school district fails to submit to the department or the auditor the budget documents required pursuant to subsection (1) of this section by the date established in subsection (1) of section 13-508 or fails to make any corrections of errors in the documents pursuant to section 13-504 or 13-511, the commissioner, upon notification from the auditor or upon his or her own knowledge that the required budget documents and any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget Act and after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act be withheld until such time as the required budget documents or corrections of errors are received by the auditor and the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of the required budget documents or corrections of errors. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031. The board of any district failing to submit to the department or the auditor the budget documents required pursuant to this section by the date established in subsection (1) of section 13-508 or failing to make any corrections of errors in the documents pursuant to section 13-504 or 13-511 shall be liable to the school district for all school money which such district may lose by such failing.

Source: Laws 1990, LB 1059, § 15; Laws 1991, LB 511, § 80; Laws 1992, LB 245, § 85; Laws 1992, LB 1001, § 43; R.S.1943, (1994), § 79-3815; Laws 1996, LB 900, § 670; Laws 1997, LB 269, § 61; Laws 1997, LB 710, § 14; Laws 1998, Spec. Sess., LB 1, § 29; Laws 1999, LB 272, § 93; Laws 1999, LB 813, § 24; Laws 2001, LB 797, § 26; Laws 2003, LB 67, § 14; Laws 2006, LB 1024, § 87; Laws 2008, LB988, § 44; Laws 2009, LB392, § 11.

Cross References

Nebraska Budget Act, see section 13-501.

79-1025 Basic allowable growth rate.

The basic allowable growth rate for general fund expenditures other than expenditures for special education shall be the base limitation established under section 77-3446. The budget authority for special education for all classes of school districts shall be the actual anticipated expenditures for special education subject to the approval of the state board. Such budget authority and funds generated pursuant to such budget authority shall be used only for special education expenditures.

Source: Laws 1990, LB 1059, § 16; Laws 1991, LB 511, § 81; Laws 1992, LB 245, § 86; Laws 1992, LB 1063, § 203; Laws 1992, Second Spec. Sess., LB 1, § 174; Laws 1995, LB 613, § 4; Laws 1996, LB 299, § 28; R.S.Supp.,1995, § 79-3816; Laws 1996, LB 900, § 671; Laws 1998, LB 989, § 9; Laws 1998, Spec. Sess., LB 1, § 30; Laws 2003, LB 540, § 7; Laws 2011, LB235, § 20.

Cross References

Retirement expenditures, not exempt from limitations, see section 79-977.

79-1026 Repealed. Laws 2011, LB 235, § 26.

79-1026.01 Repealed. Laws 2011, LB 235, § 26.

79-1027 Budget; restrictions.

No district shall adopt a budget, which includes total requirements of depreciation funds, necessary employee benefit fund cash reserves, and necessary general fund cash reserves, exceeding the applicable allowable reserve percentages of total general fund budget of expenditures as specified in the schedule set forth in this section.

Average daily membership of district	Allowable reserve percentage
0 - 471	45
471.01 - 3,044	35
3,044.01 - 10,000	25
10,000.01 and over	20

On or before March 10, 2010, on or before July 1, 2011, on or before May 1, 2012, and on or before March 1 each year thereafter, the department shall determine and certify each district's applicable allowable reserve percentage.

Each district with combined necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves less than the applicable allowable reserve percentage specified in this section may, notwithstanding the district's applicable allowable growth rate, increase its necessary general fund cash reserves such that the total necessary general fund cash reserves, total requirements of depreciation funds, and necessary employee benefit fund cash reserves do not exceed such applicable allowable reserve percentage.

Source: Laws 1990, LB 1059, § 18; Laws 1991, LB 511, § 83; Laws 1992, LB 245, § 88; Laws 1992, LB 1063, § 204; Laws 1992, Second Spec. Sess., LB 1, § 175; R.S.1943, (1994), § 79-3818; Laws 1996, LB 900, § 673; Laws 1998, Spec. Sess., LB 1, § 31; Laws 1999, LB 149, § 12; Laws 1999, LB 813, § 26; Laws 2001, LB 797, § 28; Laws 2002, LB 460, § 2; Laws 2003, LB 67, § 16; Laws 2005, LB 126, § 49; Referendum 2006, No. 422; Laws 2007,

LB21, § 5; Laws 2009, LB61, § 4; Laws 2009, LB545, § 18; Laws 2009, LB548, § 4; Laws 2010, LB711, § 5; Laws 2010, LB1071, § 22; Laws 2011, LB18, § 10; Laws 2012, LB633, § 4.
Effective date February 29, 2012.

79-1028 Repealed. Laws 2011, LB 235, § 26.

79-1028.01 School fiscal years; district may exceed certain limits; situations enumerated; state board; duties.

(1) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount for the following exclusions:

(a) Expenditures for repairs to infrastructure damaged by a natural disaster which is declared a disaster emergency pursuant to the Emergency Management Act;

(b) Expenditures for judgments, except judgments or orders from the Commission of Industrial Relations, obtained against a school district which require or obligate a school district to pay such judgment, to the extent such judgment is not paid by liability insurance coverage of a school district;

(c) Expenditures pursuant to the Retirement Incentive Plan authorized in section 79-855 or the Staff Development Assistance authorized in section 79-856;

(d) Expenditures of amounts received from educational entities as defined in section 79-1201.01 for providing distance education courses through the Educational Service Unit Coordinating Council to such educational entities;

(e) Expenditures to pay another school district for the transfer of land from such other school district;

(f) Expenditures in school fiscal years 2009-10 through 2016-17 to pay for employer contributions pursuant to subsection (2) of section 79-958 to the School Employees Retirement System of the State of Nebraska to the extent that such expenditures exceed the employer contributions under such subsection that would have been made at a contribution rate of seven and thirty-five hundredths percent;

(g) Expenditures in school fiscal years 2009-10 through 2016-17 to pay for school district contributions pursuant to subdivision (1)(c)(i) of section 79-9,113 to the retirement system established pursuant to the Class V School Employees Retirement Act to the extent that such expenditures exceed the school district contributions under such subdivision that would have been made at a contribution rate of seven and thirty-seven hundredths percent;

(h) Expenditures for sums agreed to be paid by a school district to certificated employees in exchange for a voluntary termination occurring prior to July 1, 2009, or occurring on or after the last day of the 2010-11 school year and prior to the first day of the 2013-14 school year;

(i) Any expenditures in school fiscal years 2016-17 and 2017-18 of amounts specified in the notice provided by the Commissioner of Education pursuant to section 79-309.01 for teacher performance pay;

(j) The special education budget of expenditures; and

(k) Expenditures of special grant funds.

(2) For each school fiscal year, a school district may exceed its budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 for such school fiscal year by a specific dollar amount and include such dollar amount in the budget of expenditures used to calculate budget authority for the general fund budget of expenditures pursuant to section 79-1023 for future years for the following exclusions:

(a) Expenditures of incentive payments or base fiscal year incentive payments to be received in such school fiscal year pursuant to section 79-1011;

(b) The first school fiscal year the district will be participating in Network Nebraska for the full school fiscal year, for the difference of the estimated expenditures for such school fiscal year for telecommunications services, access to data transmission networks that transmit data to and from the school district, and the transmission of data on such networks as such expenditures are defined by the department for purposes of the distance education and telecommunications allowance minus the dollar amount of such expenditures for the second school fiscal year preceding the first full school fiscal year the district participates in Network Nebraska; and

(c) Expenditures for new elementary attendance sites in the first year of operation or the first year of operation after being closed for at least one school year if such elementary attendance site will most likely qualify for the elementary site allowance in the immediately following school fiscal year as determined by the state board.

(3) The state board shall approve, deny, or modify the amount allowed for any exclusions to the budget authority for the general fund budget of expenditures pursuant to this section.

Source: Laws 2008, LB988, § 46; Laws 2008, LB1154, § 10; Laws 2009, LB545, § 19; Laws 2010, LB1014, § 3; Laws 2011, LB235, § 21; Laws 2011, LB382, § 6; Laws 2011, LB509, § 39.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.
Emergency Management Act, see section 81-829.36.

79-1028.02 School fiscal years 2009-10 and 2010-11; American Recovery and Reinvestment Act percentage; school district allocation; computation; school district; duties.

For each of school fiscal years 2009-10 and 2010-11, the American Recovery and Reinvestment Act percentage shall equal the amount of funding from the federal American Recovery and Reinvestment Act of 2009 to be distributed through the Tax Equity and Educational Opportunities Support Act for such school fiscal year divided by the total equalization aid to be distributed pursuant to the Tax Equity and Educational Opportunities Support Act for such school fiscal year. For each school district, the American Recovery and Reinvestment Act allocation shall equal the equalization aid to be distributed to the school district for such school fiscal year multiplied by the American Recovery and Reinvestment Act percentage for such school fiscal year. Such allocation shall only be distributed upon filing of an application signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district, which application meets the requirements of the federal American Recovery and Reinvestment Act of 2009 and is approved by the Governor or his or her designee. A school district shall

account for, report, and spend such allocation as required by the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be considered a special grant fund and shall be considered state aid for all purposes except as otherwise provided in this section and the federal American Recovery and Reinvestment Act of 2009. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

Source: Laws 2009, LB545, § 20; Laws 2011, LB18, § 12.

79-1028.03 Retirement aid; calculation.

For school fiscal years 2009-10 through 2013-14, an amount calculated by the department shall be paid to each school district as retirement aid equal to the product of fifteen million dollars multiplied by the school district's salary percentage. The school district's salary percentage shall equal the total salary reported by the school district on the annual financial report for the most recently available complete data year divided by the total salary reported by all school districts in the state on the annual financial report for the most recently available complete data year.

Source: Laws 2009, LB545, § 21.

79-1028.04 School fiscal year 2010-11; federal Education Jobs Fund allocation; computation; school district; duties.

For school fiscal year 2010-11, the federal Education Jobs Fund allocation shall equal any increases in state aid for school fiscal year 2010-11 from the first certification in 2010 to the second certification on or before March 1, 2011. Such allocation shall only be payable upon meeting the requirements of this section, including approval by the Governor or his or her designee of either an application pursuant to section 79-1028.02 or an application for funding filed pursuant to this section which meets the requirements of the federal American Recovery and Reinvestment Act of 2009, signed by the superintendent and school board president of a school district and filed with the department by the superintendent of such school district. A school district shall account for, report, and spend such allocation as required by section 101 of Public Law 111-226. Such allocation shall not be considered special grant funds and shall be considered state aid for all purposes except as otherwise provided in this section and section 101 of Public Law 111-226. Such allocation shall not be adjusted in the final calculation of state aid pursuant to section 79-1065. Such allocation shall be included in the total state aid which may be adjusted pursuant to section 79-1065. Expenditures of such allocation shall be considered expenditures from the general fund of the school district and shall be included in general fund operating expenditures.

Source: Laws 2011, LB18, § 11.

79-1029 Budget authority for general fund budget of expenditures; Class II, III, IV, V, or VI district may exceed; procedure.

A Class II, III, IV, V, or VI district may exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 by an

amount approved by a majority of legal voters voting on the issue at a primary, general, or special election called for such purpose upon the recommendation of the board or upon the receipt by the county clerk or election commissioner of a petition requesting an election, signed by at least five percent of the legal voters of the district. The recommendation of the board or the petition of the legal voters shall include the amount by which the board would increase its general fund budget of expenditures for the ensuing school year over and above the budget authority for the general fund budget of expenditures prescribed in section 79-1023. The county clerk or election commissioner shall place the question on the primary or general election ballot or call for a special election on the issue after the receipt of such board recommendation or legal voter petition. The election shall be held pursuant to the Election Act or section 77-3444, and all costs for a special election shall be paid by the district. A vote to exceed the budget authority for the general fund budget of expenditures prescribed in section 79-1023 may be approved on the same question as a vote to exceed the levy limits provided in section 77-3444.

Source: Laws 1990, LB 1059, § 20; Laws 1991, LB 511, § 85; Laws 1992, LB 245, § 90; Laws 1994, LB 76, § 608; Laws 1996, LB 299, § 31; R.S.1943, (1994), § 79-3820; Laws 1996, LB 900, § 675; Laws 1997, LB 345, § 29; Laws 1998, LB 989, § 12; Laws 1999, LB 813, § 28; Laws 2000, LB 1213, § 1; Laws 2003, LB 67, § 19; Laws 2008, LB988, § 47; Laws 2011, LB235, § 22.

Cross References

Election Act, see section 32-101.

79-1030 Unused budget authority for general fund budget of expenditures; carried forward; limitation.

A Class II, III, IV, V, or VI district may choose not to increase its general fund budget of expenditures by the full amount of budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023. In such cases, the department shall calculate the amount of unused budget authority which shall be carried forward to future budget years. The amount of unused budget authority that may be used by a district in a single school fiscal year to increase its general fund budget of expenditures above the budget authority for the general fund budget of expenditures as calculated pursuant to section 79-1023 shall be limited to two percent of the difference of the general fund budget of expenditures minus the sum of special grant funds, the special education budget of expenditures, and exceptions pursuant to subsection (1) of section 79-1028.01 for the immediately preceding school fiscal year.

Source: Laws 1990, LB 1059, § 21; R.S.1943, (1994), § 79-3821; Laws 1996, LB 900, § 676; Laws 1998, LB 989, § 13; Laws 1998, Spec. Sess., LB 1, § 32; Laws 2006, LB 1024, § 91; Laws 2010, LB1071, § 23; Laws 2011, LB235, § 23.

79-1031.01 Appropriations Committee; duties.

The Appropriations Committee of the Legislature shall annually include the amount necessary to fund the state aid that will be certified to school districts on or before March 1, 2011, for school fiscal year 2010-11, on or before July 1, 2011, for school fiscal year 2011-12, on or before May 1, 2012, for school fiscal year 2012-13, and on or before March 1 for each ensuing school fiscal year

thereafter in its recommendations to the Legislature to carry out the requirements of the Tax Equity and Educational Opportunities Support Act.

Source: Laws 1997, LB 710, § 17; Laws 1997, LB 806, § 54; Laws 1998, Spec. Sess., LB 1, § 34; Laws 1999, LB 149, § 15; Laws 2002, LB 898, § 14; Laws 2005, LB 126, § 51; Referendum 2006, No. 422; Laws 2007, LB21, § 6; Laws 2008, LB988, § 48; Laws 2009, LB61, § 5; Laws 2009, LB545, § 22; Laws 2009, LB548, § 5; Laws 2010, LB711, § 6; Laws 2010, LB1071, § 24; Laws 2011, LB18, § 13; Laws 2012, LB633, § 5.
Effective date February 29, 2012.

79-1033 State aid; payments; reports; use; requirements; failure to submit reports; effect; early payments.

(1) Except as otherwise provided in the Tax Equity and Educational Opportunities Support Act, state aid payable pursuant to the act for each school fiscal year shall be based upon data found in applicable reports for the most recently available complete data year. The annual financial reports and the annual statistical summary of all school districts shall be submitted to the Commissioner of Education pursuant to the dates prescribed in section 79-528. If a school district fails to timely submit its reports, the commissioner, after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the act be withheld until such time as the reports are received by the department. In addition, the commissioner shall direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county treasurer of receipt of such reports. The county treasurer shall withhold such money. For school districts that are members of learning communities, a determination of school money belonging to the district shall be based on the proportionate share of state aid and property tax receipts allocated to the school district by the learning community coordinating council, and the county treasurer shall withhold any such school money in the possession of the county treasurer from the school district. If the school district does not comply with this section prior to the end of the state's biennium following the biennium which included the school fiscal year for which state aid was calculated, the state aid funds shall revert to the General Fund. The amount of any reverted funds shall be included in data provided to the Governor in accordance with section 79-1031.

(2) A district which receives, or has received in the most recently available complete data year or in either of the two school fiscal years preceding the most recently available complete data year, federal funds in excess of twenty-five percent of its general fund budget of expenditures may apply for early payment of state aid paid pursuant to the act when such federal funds are not received in a timely manner. Such application may be made at any time by a district suffering such financial hardship and may be for any amount up to fifty percent of the remaining amount to which the district is entitled during the current school fiscal year. The state board may grant the entire amount applied for or any portion of such amount if the state board finds that a financial hardship exists in the district. The state board shall notify the Director of Administrative Services of the amount of funds to be paid in lump sum and the reduced amount of the monthly payments. The Director of Administrative Services shall, at the time of the next state aid payment made pursuant to section 79-1022, draw a warrant for the lump-sum amount from appropriated

funds and forward such warrant to the district. For purposes of this subsection, financial hardship means a situation in which income to a district is exceeded by liabilities to such a degree that if early payment is not received it will be necessary for the district to discontinue vital services or functions.

Source: Laws 1990, LB 1059, § 24; Laws 1991, LB 511, § 88; Laws 1992, LB 245, § 93; Laws 1992, LB 1001, § 44; Laws 1993, LB 348, § 73; Laws 1994, LB 1290, § 9; R.S.1943, (1994), § 79-3824; Laws 1996, LB 900, § 679; Laws 1997, LB 710, § 18; Laws 1998, Spec. Sess., LB 1, § 36; Laws 1999, LB 272, § 94; Laws 2006, LB 1024, § 92; Laws 2009, LB392, § 12.

(b) SCHOOL FUNDS

79-1035 School funds; apportionment by Commissioner of Education; basis.

(1)(a) The State Treasurer shall, each year on or before the third Monday in January, make a complete exhibit of all money belonging to the permanent school fund and the temporary school fund as returned to him or her from the several counties, together with the amount derived from other sources, and deliver such exhibit duly certified to the Commissioner of Education.

(b) Beginning in 2016 and each year thereafter, the exhibit required in subdivision (1)(a) of this section shall include a separate accounting, not to exceed an amount of ten million dollars, of the income from solar and wind agreements on school lands. The Board of Educational Lands and Funds shall provide the State Treasurer with the information necessary to make the exhibit required by this subsection. Separate accounting shall not be made for income from solar or wind agreements on school lands that exceeds the sum of ten million dollars.

(2) On or before February 25 following receipt of the exhibit from the State Treasurer pursuant to subsection (1) of this section, the Commissioner of Education shall make the apportionment of the temporary school fund to each school district as follows: From the whole amount there shall be paid to those districts in which there are school or saline lands, which lands are used for a public purpose, an amount in lieu of tax money that would be raised if such lands were taxable, to be fixed in the manner prescribed in section 79-1036; and the remainder shall be apportioned to the districts according to the pro rata enumeration of children who are five through eighteen years of age in each district last returned from the school district. The calculation of apportionment for each school fiscal year shall include any corrections to the prior school fiscal year's apportionment.

(3) The Commissioner of Education shall certify the amount of the apportionment of the temporary school fund as provided in subsection (2) of this section to the Director of Administrative Services. The Director of Administrative Services shall draw a warrant on the State Treasurer in favor of the various districts for the respective amounts so certified by the Commissioner of Education.

(4) For purposes of this section, agreement means any lease, easement, covenant, or other such contractual arrangement.

Source: Laws 1881, c. 78, subdivision XI, § 3, p. 369; R.S.1913, § 6930; Laws 1915, c. 122, § 1, p. 280; C.S.1922, § 6513; C.S.1929, § 79-2002; Laws 1933, c. 144, § 3, p. 558; C.S.Supp.,1941,

§ 79-2002; R.S.1943, § 79-2002; Laws 1945, c. 210, § 1, p. 622; Laws 1949, c. 256, § 377, p. 817; Laws 1957, c. 359, § 1, p. 1217; Laws 1963, c. 493, § 1, p. 1575; Laws 1971, LB 1002, § 1; Laws 1989, LB 487, § 9; Laws 1990, LB 1090, § 22; Laws 1994, LB 858, § 10; R.S.1943, (1994), § 79-1302; Laws 1996, LB 900, § 681; Laws 1997, LB 345, § 30; Laws 1997, LB 710, § 19; Laws 1999, LB 272, § 95; Laws 2001, LB 797, § 31; Laws 2010, LB1014, § 4; Laws 2012, LB828, § 20.
Effective date March 8, 2012.

79-1036 School funds; public lands; amount in lieu of tax; reappraisement; appeal.

(1) In making the apportionment under section 79-1035, the Commissioner of Education shall distribute from the school fund for school purposes, to any and all learning communities and school districts which are not members of a learning community, in which there are situated school lands which have not been sold and transferred by deed or saline lands owned by the state, which lands are being used for a public purpose, an amount in lieu of tax money that would be raised by school district levies and learning community common levies for which the proceeds are distributed to member school districts pursuant to sections 79-1073 and 79-1073.01 if such lands were taxable, to be ascertained in accordance with subsection (2) of this section, except that:

(a) For Class I districts or portions thereof which are affiliated and in which there are situated school or saline lands, 38.6207 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the affiliated school system tax levy computed pursuant to section 79-1077, shall be distributed to the affiliated high school district and the remainder shall be distributed to the Class I district;

(b) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades nine through twelve and in which there are situated school or saline lands, 38.6207 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district;

(c) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades seven through twelve and in which there are situated school or saline lands, 55.1724 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district; and

(d) For Class I districts or portions thereof which are part of a Class VI district which offers instruction in grades six through twelve and in which there are situated school or saline lands, 62.0690 percent of the in lieu of land tax money calculated pursuant to subsection (2) of this section, based on the Class VI school system levy computed pursuant to section 79-1078, shall be distributed to the Class VI district and the remainder shall be distributed to the Class I district.

(2) The county assessor shall certify to the Commissioner of Education the tax levies of each school district and learning community in which school land or saline land is located and the last appraised value of such school land, which value shall be the same percentage of the appraised value as the percentage of the assessed value is of market value in subsection (2) of section 77-201 for the purpose of applying the applicable tax levies for each district and learning community in determining the distribution to the districts of such amounts. The school board of any school district and the learning community coordinating council of any learning community in which there is located any leased or undeeded school land or saline land subject to this section may appeal to the Board of Educational Lands and Funds for a reappraisement of such school land if such school board or learning community coordinating council deems the land not appraised in proportion to the value of adjoining land of the same or similar value. The Board of Educational Lands and Funds shall proceed to investigate the facts involved in such appeal and, if the contention of the school board or learning community coordinating council is correct, make the proper reappraisement. The value calculation in this subsection shall be used by the Commissioner of Education for making distributions in each school fiscal year.

Source: Laws 1881, c. 78, subdivision VIII, § 9, p. 364; R.S.1913, § 6906; Laws 1921, c. 82, § 1, p. 296; C.S.1922, § 6482; Laws 1929, c. 187, § 1, p. 651; C.S.1929, § 79-1609; Laws 1933, c. 144, § 2, p. 557; C.S.Supp.,1941, § 79-1609; Laws 1943, c. 200, § 1, p. 670; R.S.1943, § 79-1612; Laws 1947, c. 282, § 1, p. 890; Laws 1949, c. 256, § 378, p. 818; Laws 1957, c. 359, § 2, p. 1218; Laws 1979, LB 187, § 246; Laws 1982, LB 572, § 1; Laws 1983, LB 39, § 1; Laws 1990, LB 1090, § 23; Laws 1991, LB 511, § 61; Laws 1992, LB 245, § 66; Laws 1993, LB 839, § 5; Laws 1994, LB 858, § 11; R.S.1943, (1994), § 79-1303; Laws 1996, LB 900, § 682; Laws 1997, LB 270, § 104; Laws 1998, Spec. Sess., LB 1, § 37; Laws 1999, LB 272, § 96; Laws 2001, LB 797, § 32; Laws 2003, LB 394, § 8; Laws 2010, LB1070, § 8.

79-1041 County treasurer; distribute school funds; when.

Each county treasurer of a county with territory in a learning community shall distribute any funds collected by such county treasurer from the common general fund levy and the common building fund levy of such learning community to each member school district pursuant to sections 79-1073 and 79-1073.01 at least once each month.

Each county treasurer shall, upon request of a majority of the members of the school board or board of education in any school district, at least once each month distribute to the district any funds collected by such county treasurer for school purposes.

Source: Laws 1976, LB 803, § 1; R.S.1943, (1994), § 79-1307.01; Laws 1996, LB 900, § 687; Laws 2009, LB392, § 13.

79-1044 Forest reserve funds; distribution to counties entitled for schools and roads; how made.

The forest reserve funds, annually paid into the state treasury by the United States Government under an act of Congress approved June 30, 1906, shall be distributed among the counties of the state entitled to the same for the benefit

of the public schools and the public roads of such counties based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the forest reserves within the state for the most recent complete fiscal year; and

(2) The commissioner shall, on or before August 5, make apportionment of such funds to such counties according to the number of acres of forest reserve in each county and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount specified by the commissioner.

Source: Laws 1907, c. 143, § 1, p. 453; R.S.1913, § 6938; C.S.1922, § 6521; C.S.1929, § 79-2010; R.S.1943, § 79-2010; Laws 1947, c. 284, § 1, p. 892; Laws 1949, c. 256, § 384, p. 820; R.S.1943, (1994), § 79-1309; Laws 1996, LB 900, § 690; Laws 1999, LB 272, § 99; Laws 2001, LB 797, § 33; Laws 2011, LB333, § 11.

79-1047 Public grazing funds; distribution to counties; how made.

The public grazing funds, annually paid to the state treasury by the United States Government under the federal Taylor Grazing Act, 43 U.S.C. 315i, as such act existed on May 8, 2001, shall be distributed among the counties of the state entitled to the same for the benefit of the school districts of such counties based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the grazing lands within the state for the most recent complete fiscal year; and

(2) The commissioner shall, on or before August 5, make apportionment of such funds to such counties according to the number of acres of grazing land in each county and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount so specified by the Commissioner of Education.

Source: Laws 1947, c. 300, § 1, p. 916; R.S.Supp.,1947, § 79-2013; Laws 1949, c. 256, § 387, p. 821; Laws 1951, c. 289, § 1, p. 956; R.S.1943, (1994), § 79-1312; Laws 1996, LB 900, § 693; Laws 1999, LB 272, § 102; Laws 2001, LB 797, § 34; Laws 2011, LB333, § 12.

79-1051 Flood control funds; apportionment to counties by Commissioner of Education.

The distribution of the funds received by the State Treasurer under section 79-1049 shall be made based upon information provided by the United States Department of the Interior under the direction of the Commissioner of Education in the following manner:

(1) The State Treasurer shall annually on the first Monday in July certify to the commissioner the amount of money received from the United States Government as Nebraska's proportionate share of the income from the leasing of lands acquired by the United States for flood control purposes; and

(2) The commissioner shall, on or before August 5, make apportionment of such fund to the counties entitled thereto in accordance with section 79-1050 and certify the apportionment of each county to the county treasurer of the proper county and to the Director of Administrative Services. The director shall draw a warrant on the State Treasurer in favor of the various counties for the amount specified by the commissioner.

Source: Laws 1949, c. 251, § 3, p. 683; R.S.1943, (1994), § 79-1317; Laws 1996, LB 900, § 697; Laws 1999, LB 272, § 104; Laws 2001, LB 797, § 35; Laws 2011, LB333, § 13.

79-1065.01 Financial support to school districts; lump-sum payments.

If the adjustment under section 79-1065 results in a school district being entitled to the payment of additional funds, the district may apply to the State Department of Education for a lump-sum payment for any amount up to one hundred percent of the adjustment, except that when a school district is to receive a lump-sum payment pursuant to section 79-1022, one hundred percent of the adjustment shall be paid as one lump-sum payment on the last business day of December during the ensuing school fiscal year. The department shall notify the Director of Administrative Services of the amount of funds to be paid in a lump sum and the reduced amount of the monthly payments pursuant to section 79-1022. The department shall make such payment in a lump sum not later than the last business day of September of the year in which the final determination under this section is made.

Source: Laws 2000, LB 1213, § 2; Laws 2009, LB549, § 34.

(c) SCHOOL TAXATION

79-1073 General fund property tax receipts; learning community coordinating council; certification; division; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.

On or before September 1 for each year, each learning community coordinating council shall determine the expected amounts to be distributed by the county treasurers to each member school district from general fund property tax receipts pursuant to subdivision (2)(b) of section 77-3442 and shall certify such amounts to each member school district, the county treasurer for each county containing territory in the learning community, and the State Department of Education. Such property tax receipts shall be divided among member school districts proportionally based on the difference of the school district's formula need calculated pursuant to section 79-1007.11 minus the sum of the state aid certified pursuant to section 79-1022 and the other actual receipts included in local system formula resources pursuant to section 79-1018.01 for the school fiscal year for which the distribution is being made.

Each time the county treasurer distributes property tax receipts from the common general fund levy to member school districts, the amount to be distributed to each district shall be proportional based on the total amounts to be distributed to each member school district for the school fiscal year. Each

time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the common general fund levy for member school districts or any entity issues an in lieu of property tax reimbursement based on the common general fund levy for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.

Source: Laws 2006, LB 1024, § 93; Laws 2007, LB641, § 29; Laws 2008, LB988, § 49; Laws 2008, LB1154, § 11; Laws 2009, LB392, § 14; Laws 2009, LB545, § 23; Laws 2010, LB1070, § 9.

79-1073.01 Learning communities; special building funds; distribution; property tax refund or in lieu of property tax reimbursement; proportionality.

Amounts levied by learning communities for special building funds for member school districts pursuant to subdivision (2)(g) of section 77-3442 shall be distributed by the county treasurer collecting such levy proceeds to all member school districts proportionally based on the formula students used in the most recent certification of state aid pursuant to section 79-1022. Each time the county treasurer certifies a property tax refund pursuant to section 77-1736.06 based on the levy of a learning community for special building funds for members school districts or any entity issues an in lieu of property tax reimbursement based on the levy of a learning community for special building funds for member school districts, including amounts paid pursuant to sections 70-651.01 and 79-1036, the amount to be certified or reimbursed to each district shall be proportional on the same basis as property tax receipts from such levy are distributed to member school districts.

Any amounts distributed pursuant to this section shall be used by the member school districts for special building funds.

Source: Laws 2006, LB 1024, § 94; Laws 2007, LB641, § 30; Laws 2009, LB392, § 15; Laws 2010, LB1070, § 10.

(d) SCHOOL BUDGETS AND ACCOUNTING

79-1083.03 Repealed. Laws 2011, LB 235, § 26.

79-1084 Class III school district; school board; budget; tax; levy; publication of expenditures; violation; penalty; duty of county board.

The school board of a Class III school district shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council if the school district is a member of a learning community the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (1) The amount of funds required for the support of the schools during the ensuing school fiscal year; (2) the amount of funds required for the purchase of school sites; (3) the amount of funds required for the erection of school buildings; (4) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (5) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary

pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect. For Class III school districts that are not members of a learning community, the county board shall levy and collect such taxes as are necessary to provide the amount of revenue from property taxes as indicated by all the data contained in the budget and the certificate prescribed by this section, at the time and in the manner provided in section 77-1601.

Source: Laws 1881, c. 78, subdivision XIV, § 23, p. 385; Laws 1885, c. 80, § 1, p. 329; Laws 1893, c. 31, § 2, p. 358; R.S.1913, § 6670; C.S.1922, § 6604; C.S.1929, § 79-2522; R.S.1943, § 79-2527; Laws 1947, c. 292, § 1, p. 904; Laws 1949, c. 256, § 243, p. 771; Laws 1959, c. 404, § 1, p. 1366; Laws 1972, LB 1070, § 2; Laws 1986, LB 960, § 42; Laws 1988, LB 1193, § 1; Laws 1993, LB 734, § 51; Laws 1995, LB 452, § 32; R.S.Supp.,1995, § 79-810; Laws 1996, LB 900, § 730; Laws 1997, LB 710, § 22; Laws 1998, Spec. Sess., LB 1, § 43; Laws 2006, LB 1024, § 98; Laws 2009, LB549, § 35.

Cross References

For legal rate for publications, see section 33-141.

79-1086 Class V school district; board of education; budget; how prepared; certification of levy; levy of taxes.

(1) The board of education of a Class V school district that is not a member of a learning community shall annually during the month of July estimate the amount of resources likely to be received for school purposes, including the amounts available from fines, licenses, and other sources. Before the county board of equalization makes its levy each year, the board of education shall report to the county clerk the rate of tax deemed necessary to be levied upon the taxable value of all the taxable property of the district subject to taxation during the fiscal year next ensuing for (a) the support of the schools, (b) the purchase of school sites, (c) the erection, alteration, equipping, and furnishing of school buildings and additions to school buildings, (d) the payment of interest upon all bonds issued for school purposes, and (e) the creation of a sinking fund for the payment of such indebtedness. The county board of equalization shall levy the rate of tax so reported and demanded by the board of education and collect the tax in the same manner as other taxes are levied and collected.

(2) The school board of a Class V school district that is a member of a learning community shall annually, on or before September 20, report in writing to the county board and the learning community coordinating council the entire revenue raised by taxation and all other sources and received by the school board for the previous school fiscal year and a budget for the ensuing school fiscal year broken down generally as follows: (a) The amount of funds required for the support of the schools during the ensuing school fiscal year; (b) the amount of funds required for the purchase of school sites; (c) the amount of

funds required for the erection of school buildings; (d) the amount of funds required for the payment of interest upon all bonds issued for school purposes; and (e) the amount of funds required for the creation of a sinking fund for the payment of such indebtedness. The secretary shall publish, within ten days after the filing of such budget, a copy of the fund summary pages of the budget one time at the legal rate prescribed for the publication of legal notices in a legal newspaper published in and of general circulation in such city or village or, if none is published in such city or village, in a legal newspaper of general circulation in the city or village. The secretary of the school board failing or neglecting to comply with this section shall be deemed guilty of a Class V misdemeanor and, in the discretion of the court, the judgment of conviction may provide for the removal from office of such secretary for such failure or neglect.

Source: Laws 1891, c. 45, § 21, p. 325; Laws 1899, c. 68, § 1, p. 299; R.S.1913, § 7027; C.S.1922, § 6658; C.S.1929, § 79-2721; Laws 1931, c. 146, § 1, p. 400; Laws 1937, c. 183, § 1, p. 722; C.S.Supp.,1941, § 79-2721; R.S.1943, § 79-2722; Laws 1945, c. 214, § 1, p. 628; Laws 1947, c. 298, § 1, p. 913; Laws 1949, c. 271, § 4, p. 889; Laws 1949, c. 256, § 264, p. 780; Laws 1955, c. 320, § 1, p. 989; Laws 1976, LB 757, § 2; Laws 1979, LB 187, § 240; Laws 1992, LB 1063, § 198; Laws 1992, Second Spec. Sess., LB 1, § 169; R.S.1943, (1994), § 79-1007; Laws 1996, LB 900, § 732; Laws 2006, LB 1024, § 99; Laws 2009, LB549, § 36.

(e) SITE AND FACILITIES ACQUISITION, MAINTENANCE, AND DISPOSITION

79-10,110 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose; school board; powers and duties; hearing; tax levy authorized; issuance of bonds authorized.

(1) After making a determination that an actual or potential environmental hazard or accessibility barrier exists, that a life safety code violation exists, or that expenditures are needed for indoor air quality or mold abatement and prevention within the school buildings or grounds under its control, a school board may make and deliver to the county clerk of such county in which any part of the school district is situated, not later than the date provided in section 13-508, an itemized estimate of the amounts necessary to be expended for the abatement of such environmental hazard, for accessibility barrier elimination, or for modifications for life safety code violations, indoor air quality, or mold abatement and prevention in such school buildings or grounds. The board shall designate the particular environmental hazard abatement project, accessibility barrier elimination project, or modification for life safety code violations, indoor air quality, or mold abatement and prevention for which the tax levy provided for by this section will be expended, the period of years, which shall not exceed ten years, for which the tax will be levied for such project, and the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance.

(2) After a public hearing, a school board may undertake any qualified capital purpose in any qualified zone academy under its control and may levy a tax as provided in this section to repay a qualified zone academy bond issued for such undertaking. The board shall designate: (a) The particular qualified capital

purpose for which the qualified zone academy bond was issued and for which the tax levy provided for by this section will be expended; (b) the period of years for which the tax will be levied to repay such qualified zone academy bond, not exceeding the maturity term for such qualified zone academy bond established pursuant to federal law or, for any such bond issued prior to May 20, 2009, fifteen years; and (c) the estimated amount of the levy for each year of the period based on the taxable valuation of the district at the time of issuance. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(3) After a public hearing, a school board may undertake any American Recovery and Reinvestment Act of 2009 purpose and may levy a tax to repay any American Recovery and Reinvestment Act of 2009 bond issued for such undertaking. The board shall designate: (a) The American Recovery and Reinvestment Act of 2009 purpose for which the American Recovery and Reinvestment Act of 2009 bond will be issued and for which the tax levy provided by this section will be expended; (b) the period of years for which the tax will be levied to repay such American Recovery and Reinvestment Act of 2009 bond, not exceeding the maturity term for the type of American Recovery and Reinvestment Act of 2009 bond established pursuant to federal law or, if no such term is established, thirty years; and (c) the estimated amount of the levy for each year of such period based on the taxable valuation of the district at the time of issuance. Prior to the public hearing, the school board shall prepare an itemized estimate of the amounts necessary to be expended for the American Recovery and Reinvestment Act of 2009 purpose. The hearing required by this subsection shall be held only after notice of such hearing has been published for three consecutive weeks prior to the hearing in a legal newspaper published or of general circulation in the school district.

(4) The board may designate more than one project under subsection (1) of this section, more than one qualified capital purpose under subsection (2) of this section, or more than one American Recovery and Reinvestment Act of 2009 purpose under subsection (3) of this section and levy a tax pursuant to this section for each such project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose, concurrently or consecutively, as the case may be, if the aggregate levy in each year and the duration of each such levy will not exceed the limitations specified in this section. Each levy for a project, a qualified capital purpose, or an American Recovery and Reinvestment Act of 2009 purpose which is authorized by this section may be imposed for such duration as the board specifies, notwithstanding the contemporaneous existence or subsequent imposition of any other levy for another project, qualified capital purpose, or American Recovery and Reinvestment Act of 2009 purpose imposed pursuant to this section and notwithstanding the subsequent issuance by the district of bonded indebtedness payable from its general fund levy.

(5) The county clerk shall levy such taxes, not to exceed five and one-fifth cents per one hundred dollars of taxable valuation for Class II, III, IV, V, and VI districts, and not to exceed the limits set for Class I districts in section 79-10,124, on the taxable property of the district necessary to (a) cover the environmental hazard abatement or accessibility barrier elimination project costs or costs for modification for life safety code violations, indoor air quality, or mold abatement and prevention itemized by the board pursuant to subsec-

tion (1) of this section and (b) repay any qualified zone academy bonds or American Recovery and Reinvestment Act of 2009 bonds pursuant to subsection (2) or (3) of this section. Such taxes shall be collected by the county treasurer at the same time and in the same manner as county taxes are collected and when collected shall be paid to the treasurer of the district and used to cover the project costs.

(6) If such board operates grades nine through twelve as part of an affiliated school system, it shall designate the fraction of the project or undertaking to be conducted for the benefit of grades nine through twelve. Such fraction shall be raised by a levy placed upon all of the taxable value of all taxable property in the affiliated school system pursuant to subsection (2) of section 79-1075. The balance of the project or undertaking to be conducted for the benefit of grades kindergarten through eight shall be raised by a levy placed upon all of the taxable value of all taxable property in the district which is governed by such board. The combined rate for both levies in the high school district, to be determined by such board, shall not exceed five and one-fifth cents on each one hundred dollars of taxable value.

(7) Each board which submits an itemized estimate shall establish an environmental hazard abatement and accessibility barrier elimination project account, a life safety code modification project account, an indoor air quality project account, or a mold abatement and prevention project account, each board which undertakes a qualified capital purpose shall establish a qualified capital purpose undertaking account, within the qualified capital purpose undertaking fund, and each board which undertakes an American Recovery and Reinvestment Act of 2009 purpose shall establish an American Recovery and Reinvestment Act of 2009 purpose undertaking account. Taxes collected pursuant to this section shall be credited to the appropriate account to cover the project or undertaking costs. Such estimates may be presented to the county clerk and taxes levied accordingly.

(8) For purposes of this section:

(a) Abatement includes, but is not limited to, any inspection and testing regarding environmental hazards, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate environmental hazards, any removal or encapsulation of environmentally hazardous material or property, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate environmental hazards in the school buildings or on the school grounds under the board's control, except that abatement does not include the encapsulation of any material containing more than one percent friable asbestos;

(b) Accessibility barrier means anything which impedes entry into, exit from, or use of any building or facility by all people;

(c) Accessibility barrier elimination includes, but is not limited to, inspection for and removal of accessibility barriers, maintenance to reduce, lessen, put an end to, diminish, control, dispose of, or eliminate accessibility barriers, related restoration or replacement of facilities or property, any related architectural and engineering services, and any other action to eliminate accessibility barriers in the school buildings or grounds under the board's control;

(d) American Recovery and Reinvestment Act of 2009 bond means any type or form of bond permitted by the federal American Recovery and Reinvestment

Act of 2009, as such act or bond may be amended and supplemented, including the federal Hiring Incentives to Restore Employment Act, as amended and supplemented, for use by schools, except qualified zone academy bonds;

(e) American Recovery and Reinvestment Act of 2009 purpose means any construction of a new public school facility or the acquisition of land on which such a facility is to be constructed or any expansion, rehabilitation, modernization, renovation, or repair of any existing school facilities financed in whole or in part with an American Recovery and Reinvestment Act of 2009 bond;

(f) Environmental hazard means any contamination of the air, water, or land surface or subsurface caused by any substance adversely affecting human health or safety if such substance has been declared hazardous by a federal or state statute, rule, or regulation;

(g) Modification for indoor air quality includes, but is not limited to, any inspection and testing regarding indoor air quality, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate indoor air quality problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate indoor air quality problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(h) Modification for life safety code violation includes, but is not limited to, any inspection and testing regarding life safety codes, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate life safety hazards, any related restoration or replacement of material or property, any related architectural and engineering services, and any other action to reduce or eliminate life safety hazards in new or existing school buildings or on school grounds under the control of a school board;

(i) Modification for mold abatement and prevention includes, but is not limited to, any inspection and testing regarding mold abatement and prevention, any maintenance to reduce, lessen, put an end to, diminish, moderate, decrease, control, dispose of, or eliminate mold problems, any related restoration or replacement of material or related architectural and engineering services, and any other action to reduce or eliminate mold problems or to enhance air quality conditions in new or existing school buildings or on school grounds under the control of a school board;

(j) Qualified capital purpose means (i) rehabilitating or repairing the public school facility in which the qualified zone academy is established or (ii) providing equipment for use at such qualified zone academy;

(k) Qualified zone academy has the meaning found in (i) 26 U.S.C. 1397E(d)(4), as such section existed on October 3, 2008, for qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(d)(1), as such section existed on October 4, 2008, for qualified zone academy bonds issued on or after such date;

(l) Qualified zone academy allocation means the allocation of the qualified zone academy bond limitation by the State Department of Education to the qualified zone academies pursuant to (i) 26 U.S.C. 1397E(e)(2), as such section existed on October 3, 2008, for allocations relating to qualified zone academy bonds issued on or before such date, and (ii) 26 U.S.C. 54E(c)(2), as such section existed on October 4, 2008, for allocations relating to qualified zone academy bonds issued on or after such date; and

(m) Qualified zone academy bond has the meaning found in (i) 26 U.S.C. 1397E(d)(1), as such section existed on October 3, 2008, for such bonds issued on or before such date, and (ii) 26 U.S.C. 54E(a), as such section existed on and after October 4, 2008, for such bonds issued on or after such date, as such section or bonds may be amended or supplemented.

(9) Accessibility barrier elimination project costs includes, but is not limited to, inspection, maintenance, accounting, emergency services, consultation, or any other action to reduce or eliminate accessibility barriers.

(10)(a) For the purpose of paying amounts necessary for the abatement of environmental hazards, for accessibility barrier elimination, for modifications for life safety code violations, indoor air quality, or mold abatement and prevention, for a qualified capital purpose, or for an American Recovery and Reinvestment Act of 2009 purpose, the board may borrow money, establish a sinking fund, and issue bonds and other evidences of indebtedness of the district, which bonds and other evidences of indebtedness shall be secured by and payable from an irrevocable pledge by the district of amounts received in respect of the tax levy provided for by this section and any other funds of the district available therefor. Bonds issued for a qualified capital purpose or an American Recovery and Reinvestment Act of 2009 purpose shall be limited to the type or types of bonds authorized for each purpose in subsections (2) and (3) of this section, respectively. Bonds and other evidences of indebtedness issued by a district pursuant to this subsection shall not constitute a general obligation of the district or be payable from any portion of its general fund levy.

(b) A district may exceed the maximum levy of five and one-fifth cents per one hundred dollars of taxable valuation authorized by subsections (5) and (6) of this section in any year in which (i) the taxable valuation of the district is lower than the taxable valuation in the year in which the district last issued bonds pursuant to this section and (ii) such maximum levy is insufficient to meet the combined annual principal and interest obligations for all bonds issued pursuant to this section. The amount generated from a district's levy in excess of the maximum levy upon the taxable valuation of the district shall not exceed the combined annual principal and interest obligations for such bonds minus the amount generated by levying the maximum levy upon the taxable valuation of the district and minus any federal payments or subsidies associated with such bonds.

(11) The total principal amount of bonds for modifications to correct life safety code violations, for indoor air quality problems, for mold abatement and prevention, or for an American Recovery and Reinvestment Act of 2009 purpose which may be issued pursuant to this section shall not exceed the total amount specified in the itemized estimate described in subsections (1) and (3) of this section.

(12) The total principal amount of qualified zone academy bonds which may be issued pursuant to this section for qualified capital purposes with respect to a qualified zone academy shall not exceed the qualified zone academy allocation granted to the board by the department. The total amount that may be financed by qualified zone academy bonds pursuant to this section for qualified purposes with respect to a qualified zone academy shall not exceed seven and one-half million dollars statewide in a single year. In any year that the Nebraska qualified zone academy allocations exceed seven and one-half million dollars for qualified capital purposes to be financed with qualified zone acade-

my bonds issued pursuant to this section, (a) the department shall reduce such allocations proportionally such that the statewide total for such allocations equals seven and one-half million dollars and (b) the difference between the Nebraska allocation and seven and one-half million dollars shall be available to qualified zone academies for requests that will be financed with qualified zone academy bonds issued without the benefit of this section.

Nothing in this section directs the State Department of Education to give any preference to allocation requests that will be financed with qualified zone academy bonds issued pursuant to this section.

(13) The State Department of Education shall establish procedures for allocating bond authority to school boards as may be necessary pursuant to an American Recovery and Reinvestment Act of 2009 bond.

Source: Laws 1983, LB 624, § 2; Laws 1985, LB 405, § 1; Laws 1987, LB 212, § 1; Laws 1988, LB 1073, § 19; Laws 1989, LB 487, § 8; Laws 1989, LB 706, § 9; Laws 1992, LB 1001, § 19; Laws 1993, LB 348, § 22; Laws 1994, LB 1310, § 6; R.S.1943, (1994), § 79-4,207; Laws 1996, LB 900, § 756; Laws 1996, LB 1044, § 817; Laws 1997, LB 710, § 24; Laws 1999, LB 813, § 34; Laws 2001, LB 240, § 1; Laws 2001, LB 797, § 42; Laws 2002, LB 568, § 10; Laws 2003, LB 67, § 23; Laws 2003, LB 540, § 10; Laws 2009, LB545, § 24; Laws 2009, LB549, § 37; Laws 2010, LB1071, § 25; Laws 2012, LB633, § 6.
Effective date February 29, 2012.

79-10,110.01 Health and safety modifications, qualified zone academy, or American Recovery and Reinvestment Act of 2009 purpose bonds; refunding bonds; authorized; conditions.

(1) If a school board has issued or shall issue bonds pursuant to section 79-10,110 and such bonds or any part of such bonds are unpaid, are a legal liability against the school district governed by such school board, and are bearing interest, the school board may issue refunding bonds with which to call and redeem all or any part of such outstanding bonds at or before the date of maturity or the redemption date of such bonds. Such school board may include various series and issues of the outstanding bonds in a single issue of refunding bonds and may issue refunding bonds to pay any redemption premium and interest to accrue and become payable on the outstanding bonds being refunded. The refunding bonds may be issued and delivered at any time prior to the date of maturity or the redemption date of the bonds to be refunded that the school board determines to be in the best interests of the school district. The proceeds derived from the sale of the refunding bonds issued pursuant to this section may be invested in obligations of or guaranteed by the United States Government pending the time the proceeds are required for the purposes for which such refunding bonds were issued. To further secure the refunding bonds, the school board may enter into a contract with any bank or trust company within or without the state with respect to the safekeeping and application of the proceeds of the refunding bonds and the safekeeping and application of the earnings on the investment. All bonds issued under this section shall be redeemable at such times and under such conditions as the school board shall determine at the time of issuance.

(2) Any outstanding bonds or other evidences of indebtedness issued by a school board for which sufficient funds or obligations of or guaranteed by the United States Government have been pledged and set aside in safekeeping to be applied for the complete payment of such bonds or other evidences of indebtedness at maturity or upon redemption prior to maturity, interest thereon, and redemption premium, if any, shall not be considered as outstanding and unpaid.

(3) Each refunding bond issued under this section shall state on the bond (a) the object of its issue, (b) this section or the sections of the law under which such issue was made, including a statement that the issue is made in pursuance of such section or sections, and (c) the date and principal amount of the bond or bonds for which the refunding bonds are being issued.

(4) The refunding bonds shall be paid, and the levy made and the tax collected for their payment in the same manner and under the same authorization for levy of taxes as applied for the bonds being refunded, in accordance with section 79-10,110.

Source: Laws 2012, LB633, § 7.
Effective date February 29, 2012.

(g) SUMMER FOOD SERVICE PROGRAM

79-10,140 Summer food service program; terms, defined.

For purposes of sections 79-10,140 to 79-10,142:

(1) Department means the State Department of Education; and

(2) Sponsor means a public or private nonprofit school food authority, local, municipal, or county government, public or private nonprofit higher education institution participating in the National Youth Sports Program, or residential public or private nonprofit summer camp that provides food service similar to food service made available to children during the school year under the school lunch program or the school breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.

Source: Laws 2012, LB1090, § 1.
Effective date July 19, 2012.

79-10,141 Summer Food Service Program; legislative intent; department; duties; preference for grants; applications.

(1) Because children are susceptible to hunger in the summertime, resulting in negative health effects, the Legislature intends, as a state nutrition and health policy, that the State of Nebraska's participation in the Summer Food Service Program of the United States Department of Agriculture be strengthened where it is needed to provide adequate nutrition for children.

(2) To encourage participation and utilization of the Summer Food Service Program, the department shall:

(a) Provide information to sponsors concerning the benefits and availability of the Summer Food Service Program; and

(b) Award grants of up to fifteen thousand dollars on a competitive basis to sponsors approved by the department. Grants awarded under this section may be used for nonrecurring expenses incurred in initiating or expanding services under the Summer Food Service Program, including, but not limited to, the

acquisition of equipment, salaries of staff, training of staff in new capacities, outreach efforts to publicize new or expanded services under the Summer Food Service Program, minor alterations to accommodate new equipment, computer point-of-service systems for food service, and the purchase of vehicles for transporting food to sites. Funds shall not be used for food, computers, except point-of-service systems, or capital outlay. The total amount of grants awarded under this section shall be limited to one hundred forty thousand dollars per fiscal year.

(3) In awarding grants under this section, the department shall give preference in the following order of priority to:

(a) Sponsors located within the boundaries of school districts in which fifty percent or more of the students apply and qualify for free and reduced-price lunches or located within the boundaries of a census tract in which fifty percent or more of the children fall under the poverty threshold as defined by the United States Department of Agriculture;

(b) Sponsors in which health or education activities are emphasized; and

(c) Sponsors that participate in the Summer Food Service Program at the time of grant application.

(4) Sponsors may apply for grants under this section by:

(a) Submitting to the department a plan to start or expand services under the Summer Food Service Program;

(b) Agreeing to operate the Summer Food Service Program for a period of not less than two years; and

(c) Assuring that the expenditure of funds from state and local resources for the maintenance of other child nutrition programs administered by the department shall not be diminished as a result of grants received under this section.

Source: Laws 2012, LB1090, § 2.
Effective date July 19, 2012.

79-10,142 Summer food service program; department; collect data; report.

The department shall collect data regarding the number of sponsors, the number of sites utilized by sponsors, and the number of children served as a result of the grants awarded under section 79-10,141. The department shall submit a report to the Education Committee of the Legislature on this data not later than December 1 each year.

Source: Laws 2012, LB1090, § 3.
Effective date July 19, 2012.

ARTICLE 11

SPECIAL POPULATIONS AND SERVICES

(a) EARLY CHILDHOOD EDUCATION

Section
79-1102.01. Early childhood education program; enrollment of kindergarten age children authorized.
79-1103. Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; endowment agreement; effect.
79-1104.01. Nebraska Early Childhood Education Endowment; endowment provider; requirements; endowment agreement; Early Childhood Education En-

Section
79-11,153. Repealed. Laws 2009, LB 154, § 27.
79-11,154. Repealed. Laws 2009, LB 154, § 27.

(a) EARLY CHILDHOOD EDUCATION

79-1102.01 Early childhood education program; enrollment of kindergarten age children authorized.

For school years 2008-09 and 2009-10, any early childhood education program as defined in section 79-1101 established by a school board or an educational service unit that is not receiving a grant pursuant to section 79-1103 or funding through the Tax Equity and Educational Opportunities Support Act may enroll children who meet the age requirements to be enrolled in kindergarten pursuant to section 79-214, but who are not then enrolled in kindergarten and who are not of mandatory attendance age pursuant to section 79-201.

Source: Laws 2008, LB1153, § 2; Laws 2009, LB549, § 38.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1103 Early Childhood Education Grant Program; established; administration; priorities; programs; requirements; report; endowment agreement; effect.

(1)(a) The State Department of Education shall establish and administer the Early Childhood Education Grant Program. Upon the effective date of an endowment agreement, administration of the Early Childhood Education Grant Program with respect to programs for children from birth to age three shall transfer to the board of trustees. If there is no endowment agreement in effect, the department shall request proposals in accordance with this section for all early childhood education programs from school districts, individually or in cooperation with other school districts or educational service units, working in cooperation with existing nonpublic programs which meet the requirements of subsection (2) of section 79-1104. If there is an endowment agreement in effect, the board of trustees shall administer the Early Childhood Education Grant Program with respect to programs for children from birth to age three pursuant to section 79-1104.02 and the department shall continue to administer the Early Childhood Education Grant Program with respect to other prekindergarten programs pursuant to sections 79-1101 to 79-1104.05. All administrative procedures of the board of trustees, including, but not limited to, rules, grant applications, and funding mechanisms, shall harmonize with those established by the department for other prekindergarten programs.

(b) The first priority shall be for (i) continuation grants for programs that received grants in the prior school fiscal year and for which the state aid calculation pursuant to the Tax Equity and Educational Opportunities Support Act does not include early childhood education students, in an amount equal to the amount of such grant, except that if the grant was a first-year grant the amount shall be reduced by thirty-three percent, (ii) continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, in an amount equal to the amount of the grant for the school fiscal year prior to the first school fiscal year for which early childhood education students were included in the state aid calculation for the school district's local system minus the calculated state aid amount, and (iii) for

school fiscal year 2007-08, continuation grants for programs for which the state aid calculation pursuant to the act includes early childhood education students, but such state aid calculation does not result in the school district receiving any equalization aid, in an amount equal to the amount of the grant received in school fiscal year 2006-07. The calculated state aid amount shall be calculated by multiplying the basic funding per formula student for the school district by the formula students attributed to the early childhood education programs pursuant to the Tax Equity and Educational Opportunities Support Act.

(c) The second priority shall be for new grants and expansion grants for programs that will serve at-risk children who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half of the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half of the budget for expanding the capacity of the program to serve additional children.

(d) The third priority shall be for new grants, expansion grants, and continuation grants for programs serving children younger than those who will be eligible to attend kindergarten the following school year. New grants may be given for up to three years in an amount up to one-half the total budget of the program per year. Expansion grants may be given for one year in an amount up to one-half the budget for expanding the capacity of the program to serve additional children. Continuation grants under this priority may be given annually in an amount up to one-half the total budget of the program per year minus any continuation grants received under the first priority.

(e) Programs serving children who will be eligible to attend kindergarten the following school year shall be accounted for separately for grant purposes from programs serving younger children, but the two types of programs may be combined within the same classroom to serve multi-age children. Programs that receive grants for school fiscal years prior to school fiscal year 2005-06 to serve both children who will be eligible to attend kindergarten the following school year and younger children shall account for the two types of programs separately for grant purposes beginning with school year 2005-06 and shall be deemed to have received grants prior to school fiscal year 2005-06 for each year that grants were received for the types of programs representing the age groups of the children served.

(2) Each program proposal which is approved by the department shall include (a) a planning period, (b) an agreement to participate in periodic evaluations of the program to be specified by the department, (c) evidence that the program will be coordinated or contracted with existing programs, including those listed in subdivision (d) of this subsection and nonpublic programs which meet the requirements of subsection (2) of section 79-1104, (d) a plan to coordinate and use a combination of local, state, and federal funding sources, including, but not limited to, programs for children with disabilities below five years of age funded through the Special Education Act, the Early Intervention Act, funds available through the flexible funding provisions under the Special Education Act, the federal Head Start program, 42 U.S.C. 9831 et seq., the federal Even Start Family Literacy Program, 20 U.S.C. 6361 et seq., Title I of the federal Improving America's Schools Act of 1994, 20 U.S.C. 6301 et seq., and child care assistance through the Department of Health and Human Services, (e) a plan to use sliding fee scales and the funding sources included in subdivision (d) of this subsection to maximize the participation of economically and categorically diverse groups and to ensure that participating children and

families have access to comprehensive services, (f) the establishment of an advisory body which includes families and community members, (g) the utilization of appropriately qualified staff, (h) an appropriate child-to-staff ratio, (i) appropriate group size, (j) compliance with minimum health and safety standards, (k) appropriate facility size and equipment, (l) a strong family development and support component recognizing the central role of parents in their children's development, (m) developmentally and culturally appropriate curriculum, practices, and assessment, (n) sensitivity to the economic and logistical needs and circumstances of families in the provision of services, (o) integration of children of diverse social and economic characteristics, (p) a sound evaluation component, including at least one objective measure of child performance and progress, (q) continuity with programs in kindergarten and elementary grades, (r) instructional hours that are similar to or less than the instructional hours for kindergarten except that a summer session may be offered, (s) well-defined language development and early literacy emphasis, including the involvement of parents in family literacy activities, (t) a plan for ongoing professional development of staff, and (u) inclusion of children with disabilities as defined in the Special Education Act, all as specified by rules and regulations of the department in accordance with sound early childhood educational practice.

(3) The department shall make an effort to fund programs widely distributed across the state in both rural and urban areas.

(4) A report evaluating the programs shall be made to the State Board of Education and the Legislature by January 1 of each odd-numbered year. The report submitted to the Legislature shall be submitted electronically. Up to five percent of the total appropriation for the Early Childhood Education Grant Program may be reserved by the department for evaluation and technical assistance for the programs.

(5) Early childhood education programs, whether established pursuant to this section or section 79-1104, may be approved for purposes of the Tax Equity and Educational Opportunities Support Act, expansion grants, and continuation grants on the submission of a continuation plan demonstrating that the program will meet the requirements of subsection (2) of this section and a proposed operating budget demonstrating that the program will receive resources from other sources equal to or greater than the sum of any grant received pursuant to this section for the prior school year plus any calculated state aid as calculated pursuant to subsection (1) of this section for the prior school year.

(6) The State Board of Education may adopt and promulgate rules and regulations to implement the Early Childhood Education Grant Program, except that if there is an endowment agreement in effect, the board of trustees shall recommend any rules and regulations relating specifically to the Early Childhood Education Grant Program with respect to programs for children from birth to age three. It is the intent of the Legislature that the rules and regulations for programs for children from birth to age three be consistent to the greatest extent possible with those established for other prekindergarten programs.

Source: Laws 1990, LB 567, § 3; Laws 1991, LB 511, § 70; Laws 1992, LB 245, § 75; Laws 1993, LB 348, § 70; R.S.1943, (1994), § 79-3703; Laws 1996, LB 900, § 785; Laws 1997, LB 346, § 8; Laws 2001, LB 759, § 2; Laws 2005, LB 577, § 5; Laws 2006, LB

1256, § 2; Laws 2007, LB603, § 7; Laws 2008, LB1153, § 3; Laws 2010, LB1071, § 26; Laws 2011, LB235, § 24; Laws 2012, LB782, § 160.
Operative date July 19, 2012.

Cross References

Early Intervention Act, see section 43-2501.
Special Education Act, see section 79-1110.
Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1104.01 Nebraska Early Childhood Education Endowment; endowment provider; requirements; endowment agreement; Early Childhood Education Endowment Fund; Early Childhood Education Endowment Cash Fund; created; investment.

(1) Within ninety days after July 14, 2006, the State Department of Education shall request proposals from private endowments with experience in managing public and private funds for the benefit of children and families in multiple locations in Nebraska to be the endowment provider for the Nebraska Early Childhood Education Endowment upon the terms set forth in this section.

(2) An endowment seeking to become the endowment provider for the Nebraska Early Childhood Education Endowment shall agree to:

(a) Irrevocably commit, subject to subdivision (4)(a) of this section, no less than twenty million dollars in a private endowment to be used solely as part of the Nebraska Early Childhood Education Endowment within five years after the effective date of the endowment agreement, of which no less than five million dollars shall be pledged on the effective date of the endowment agreement. A minimum of one million dollars shall be placed in the private endowment prior to December 31, 2006, and a minimum of five million dollars shall be placed in the private endowment prior to June 30, 2007;

(b) Commit all earnings deposited from such private endowment for deposit into the Early Childhood Education Endowment Cash Fund;

(c) Permit the board of trustees to determine the allocation of funds from the Early Childhood Education Endowment Cash Fund pursuant to section 79-1104.02; and

(d) Submit to the State Department of Education an annual financial statement of the private endowment, audited by an independent auditor and complying with all applicable Internal Revenue Service requirements. The financial statement shall report details on the private endowment, including the current value of the corpus and the annual receipts to the private endowment categorized by donations and interests, together with a report listing the amount and purpose of expenditures from the private endowment.

(3) Upon selection of an endowment provider, the State Department of Education and such endowment provider shall enter into an endowment agreement pursuant to which the state and the endowment provider will agree to deposit funds as provided in subsection (4) of this section.

(4)(a) Upon the effective date of an endowment agreement, the state shall provide for the Early Childhood Education Endowment Fund, which is hereby created, in accordance with section 79-1104.05. 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.

(b) All interest, earnings, and proceeds from the Early Childhood Education Endowment Fund shall be deposited in the Early Childhood Education Endowment Cash Fund, which is hereby 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. All interest, earnings, and proceeds from the Early Childhood Education Endowment Cash Fund shall be retained in such fund.

(c) Upon the effective date of an endowment agreement, the endowment provider shall deposit the amounts set forth in the endowment agreement into a private endowment for the sole benefit of the Early Childhood Education Endowment Fund. Money in the private endowment shall be managed by the endowment provider in accordance with sound, professional, fiduciary practices and in accordance with the endowment agreement.

(d) Earnings deposited from the private endowment shall be deposited into the Early Childhood Education Endowment Cash Fund at least annually or as the endowment agreement provides.

Source: Laws 2006, LB 1256, § 4; Laws 2008, LB1153, § 4; Laws 2009, LB456, § 1.

Cross References

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

79-1104.05 Early Childhood Education Endowment Fund; funding.

The Early Childhood Education Endowment Fund shall consist of any funds allocated to the Early Childhood Education Endowment Fund from funds belonging to the state for educational purposes described in Article VII, section 7, of the Constitution of Nebraska.

Source: Laws 2006, LB 1256, § 8; Laws 2009, LB456, § 2.

(b) GIFTED CHILDREN AND LEARNERS WITH HIGH ABILITY

79-1108 Learners with high ability; identification and programs.

Each school district shall identify learners with high ability and may provide accelerated or differentiated curriculum programs that will address the educational needs of the identified students at levels appropriate for the abilities of those students. The accelerated or differentiated curriculum programs shall meet the standards of quality established by the department. Educational service units may identify learners with high ability and provide accelerated or differentiated curriculum programs for school districts.

Source: Laws 1994, LB 647, § 3; R.S.1943, (1994), § 79-4003; Laws 1996, LB 900, § 790; Laws 1998, LB 1229, § 8; Laws 2011, LB333, § 14.

79-1108.02 Learners with high ability; curriculum programs; funding.

(1) The department shall distribute amounts from the Education Innovation Fund pursuant to section 9-812 for purposes of subsection (2) of this section to local systems as defined in section 79-1003 annually on or before October 15.

The funds distributed pursuant to this section shall be distributed based on a pro rata share of the eligible costs submitted in grant applications.

(2) Local systems may apply to the department for base funds and matching funds pursuant to this section to be spent on approved accelerated or differentiated curriculum programs. Each eligible local system shall receive one-tenth of one percent of the appropriation as base funds plus a pro rata share of the remainder of the appropriation based on identified students participating in an accelerated or differentiated curriculum program, up to ten percent of the prior year's fall membership as defined in section 79-1003, as matching funds. Eligible local systems shall:

(a) Provide an approved accelerated or differentiated curriculum program for students identified as learners with high ability;

(b) Provide funds from other sources for the approved accelerated or differentiated curriculum program greater than or equal to fifty percent of the matching funds received pursuant to this subsection;

(c) Provide an accounting of the funds received pursuant to this section, funds required by subdivision (b) of this subsection, and the total cost of the program on or before August 1 of the year following the receipt of funds in a manner prescribed by the department, not to exceed one report per year;

(d) Provide data regarding the academic progress of students participating in the accelerated or differentiated curriculum program in a manner prescribed by the department, not to exceed one report per year; and

(e) Include identified students from Class I districts that are part of the local system in the accelerated or differentiated curriculum program.

If a local system will not be providing the necessary matching funds pursuant to subdivision (b) of this subsection, the local system shall request a reduction in the amount received pursuant to this subsection such that the local system will be in compliance with such subdivision. Local systems not complying with the requirements of this subsection shall not be eligible local systems in the following year.

Source: Laws 1998, LB 1229, § 10; Laws 2011, LB333, § 15.

(c) SPECIAL EDUCATION

SUBPART (i)—SPECIAL EDUCATION ACT

79-1110 Act, how cited.

Sections 79-1110 to 79-1167 shall be known and may be cited as the Special Education Act.

Source: Laws 1987, LB 367, § 1; Laws 1989, LB 487, § 14; Laws 1993, LB 520, § 22; Laws 1995, LB 742, § 4; R.S.Supp.,1995, § 79-3301; Laws 1996, LB 900, § 792; Laws 1997, LB 346, § 9; Laws 1997, LB 865, § 3; Laws 1998, Spec. Sess., LB 1, § 46; Laws 1999, LB 813, § 36; Laws 2000, LB 1135, § 23; Laws 2009, LB549, § 39; Laws 2010, LB1087, § 2.

79-1113 Definitions, where found.

For purposes of the Special Education Act, unless the context otherwise requires, the definitions found in sections 79-1114 to 79-1125.01 shall be used.

Source: Laws 1987, LB 367, § 3; Laws 1993, LB 520, § 23; R.S.1943, (1994), § 79-3303; Laws 1996, LB 900, § 795; Laws 1997, LB 865, § 4; Laws 1999, LB 813, § 37; Laws 2010, LB1087, § 3.

79-1119.01 Interim-program school, defined.

Interim-program school means a school approved by the State Board of Education and located in or operated by (1) a county detention home established under section 43-2,110, (2) a juvenile emergency shelter, or (3) any institution which is a public or private facility, not owned or operated by a school district, which provides a residential program and regular educational or special education services with a special education rate approved by the State Department of Education.

Source: Laws 2010, LB1087, § 4.

79-1124 Service agency, defined.

Service agency means the school district, educational service unit, local or regional office of mental retardation, interim-program school, or some combination thereof or such other agency as may provide a special education program approved by the State Department of Education, including an institution not wholly owned or controlled by the state or any political subdivision to the extent that it provides educational or other services for the benefit of children from the age of five to the age of twenty-one years with disabilities if such services are nonsectarian in nature.

Source: Laws 1987, LB 367, § 14; R.S.1943, (1994), § 79-3313; Laws 1996, LB 900, § 806; Laws 1997, LB 346, § 14; Laws 2010, LB1087, § 5.

79-1125.01 Support services, defined.

Support services means preventive services for those children from birth to age twenty-one years and, if the child's twenty-first birthday occurs during the school year, until the end of that school year, not identified or verified as children with disabilities pursuant to sections 79-1118.01, 79-1138, and 79-1139 but demonstrating a need for specially designed assistance in order to benefit from the school district's general education curriculum and to avoid the need for potentially expensive special education placement and services. Support services include the educational services provided to a child pursuant to subdivision (10)(c) of section 79-215 by an interim-program school or an approved or accredited school maintained by a residential setting if such child has not been identified or verified as a child with a disability pursuant to sections 79-1118.01 and 79-1138 but demonstrates a need for specially designed assistance by residing in a residential setting described in subdivision (10)(a) of section 79-215.

Source: Laws 1995, LB 742, § 3; R.S.Supp.,1995, § 79-348; Laws 1996, LB 900, § 867; Laws 1997, LB 346, § 49; Laws 1998, Spec. Sess., LB 1, § 49; R.S.Supp.,1998, § 79-1185; Laws 1999, LB 813, § 51; Laws 2000, LB 1243, § 6; Laws 2010, LB1087, § 6.

79-1127 Special education; board; duties.

The board of education of every school district shall provide or contract for special education programs and transportation for all resident children with disabilities who would benefit from such programs in accordance with the Special Education Act and all applicable requirements of the federal Individu-

als with Disabilities Education Act, 20 U.S.C. 1401 et seq., as such sections existed on January 1, 2009, and the regulations adopted thereunder.

Source: Laws 1973, LB 403, § 1; Laws 1986, LB 1093, § 2; R.S.Supp.,1986, § 43-641; Laws 1987, LB 367, § 20; R.S.1943, (1994), § 79-3320; Laws 1996, LB 900, § 809; Laws 1997, LB 346, § 17; Laws 2009, LB549, § 40.

Cross References

Option students, how treated, see section 79-235.

79-1142 State Department of Education; reimbursement for special education programs and support services; to whom; manner; limitations.

(1) Level I services refers to services provided to children with disabilities who require an aggregate of not more than three hours per week of special education services and support services and includes all administrative, diagnostic, consultative, and vocational-adjustment counselor services.

(2) The total allowable reimbursable cost for support services shall not exceed a percentage, established by the State Board of Education, of the school district's or approved cooperative's total allowable reimbursable cost for all special education programs and support services. The percentage established by the State Board of Education for support services shall not exceed the difference of ten percent minus the percentage of the appropriations for special education approved by the Legislature set aside for reimbursements for support services pursuant to subsection (5) of this section.

(3) For special education and support services provided in each school fiscal year, the State Department of Education shall reimburse each school district in the following school fiscal year a pro rata amount determined by the department. The reimbursement percentage shall be the ratio of the difference of the appropriations for special education approved by the Legislature minus the amounts set aside pursuant to subsection (5) of this section divided by the total allowable excess costs for all special education programs and support services.

(4) Cooperatives of school districts or educational service units shall also be eligible for reimbursement for cooperative programs pursuant to this section if such cooperatives or educational service units have complied with the reporting and approval requirements of section 79-1155 for cooperative programs which were offered the preceding year. The payments shall be made by the department to the school district of residence, cooperative of school districts, or educational service unit each year in a minimum of seven payments between the fifth and twentieth day of each month beginning in December. Additional payments may be made based upon additional valid claims submitted. The State Treasurer shall, between the fifth and twentieth day of each month, notify the Director of Administrative Services of the amount of funds available in the General Fund for payment purposes. The director shall, upon receiving such certification, draw warrants against funds appropriated.

(5) On and after August 1, 2010, residential settings described in subdivision (10)(c) of section 79-215 shall be reimbursed for the educational services, including special education services and support services, provided pursuant to such subdivision on or after August 1, 2010, in an amount determined pursuant to the average per pupil cost of the service agency. Reimbursements pursuant to this section shall be made from funds set aside for such purpose within sixty days after receipt of a reimbursement request submitted in the manner required

by the department and including any documentation required by the department for educational services that have been provided, except that if there are not any funds available for the remainder of the state fiscal year for such reimbursements, the reimbursement shall occur within thirty days after the beginning of the immediately following state fiscal year. The department may audit any required documentation and subtract any payments made in error from future reimbursements. The State Board of Education shall set aside separate amounts from the appropriations for special education approved by the Legislature for reimbursements pursuant to this subsection for students receiving special education services and for students receiving support services for each state fiscal year. The amounts set aside for each purpose shall be based on estimates of the reimbursements to be requested during the state fiscal year and shall not be less than the total amount of reimbursements requested in the prior state fiscal year plus any unpaid requests from the prior state fiscal year.

Source: Laws 1973, LB 403, § 8; Laws 1975, LB 555, § 4; Laws 1975, Spec. Sess., LB 3, § 1; Laws 1976, LB 903, § 1; Laws 1986, LB 929, § 1; Laws 1986, LB 942, § 10; Laws 1986, Fourth Spec. Sess., LB 2, § 2; R.S.Supp.,1986, § 43-648; Laws 1987, LB 367, § 32; Laws 1987, LB 413, § 1; Laws 1995, LB 742, § 6; R.S.Supp.,1995, § 79-3332; Laws 1996, LB 900, § 824; Laws 1997, LB 346, § 30; Laws 1997, LB 865, § 8; Laws 1998, Spec. Sess., LB 1, § 48; Laws 1999, LB 813, § 43; Laws 2000, LB 1243, § 7; Laws 2001, LB 797, § 45; Laws 2010, LB1087, § 7.

Cross References

Option enrollment program, determination of reimbursement, see section 79-246.

79-1148 Children with disabilities; regional networks, schools, or centers; authorized.

The State Department of Education is authorized to set up one or more statewide regional networks, approved schools, or centers for children with disabilities. Any such regional network, school, or center may offer residential facilities or services for such children, and such services shall be under the control and supervision of the State Department of Education.

Source: Laws 1957, c. 388, § 1, p. 1347; R.R.S.1943, § 83-246; Laws 1961, c. 209, § 1, p. 624; Laws 1972, LB 690, § 9; Laws 1978, LB 871, § 28; R.S.1943, (1984), § 43-617; Laws 1987, LB 367, § 37; R.S.1943, (1994), § 79-3337; Laws 1996, LB 900, § 830; Laws 1997, LB 346, § 34; Laws 1999, LB 813, § 46; Laws 2009, LB549, § 41.

79-1149 Regional network, school, or center; admission; rules and regulations.

The admission to any regional network, school, or center, as provided by section 79-1148, shall be by rules and regulations to be adopted, promulgated, and administered by the State Department of Education.

Source: Laws 1957, c. 388, § 2, p. 1347; R.R.S.1943, § 83-247; Laws 1961, c. 209, § 2, p. 624; R.S.1943, (1984), § 43-618; Laws 1987, LB 367, § 38; R.S.1943, (1994), § 79-3338; Laws 1996, LB 900, § 831; Laws 2009, LB549, § 42.

79-1150 Regional network, school, or center; remittance of money.

All money derived from any source other than General Fund appropriations by any regional network, school, or center as provided in sections 79-1148 and 79-1149 shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund, and such money shall be made available to any such regional network, school, or center for purposes of education, training, or maintenance of students.

Source: Laws 1965, c. 382, § 2, p. 1234; Laws 1972, LB 1000, § 3; Laws 1978, LB 871, § 29; R.S.1943, (1984), § 43-619; Laws 1987, LB 367, § 39; R.S.1943, (1994), § 79-3339; Laws 1996, LB 900, § 832; Laws 2009, LB549, § 43.

79-1161 Child with a disability; school district; protect rights of child; assignment of surrogate parent.

(1) School districts shall establish and maintain procedures to protect the rights of a child with a disability whenever (a) no parents of the child can be identified, (b) the school district cannot, after reasonable efforts, locate a parent of the child, (c) the child is a ward of the state, or (d) the child is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(6), as such section existed on January 1, 2009. Such procedures shall include the assignment of an individual to act as a surrogate for the parents. The school district shall make reasonable efforts to ensure the assignment of a surrogate not more than thirty days after there is a determination by the district that the child needs a surrogate. In the case of a child who is a ward of the state, such surrogate may alternatively be appointed by the judge overseeing the child's care if the surrogate meets the requirements of subdivision (2)(c) of this section.

(2) The surrogate parent shall (a) have no interest which conflicts with the interest of the child, (b) have knowledge and skills that insure adequate representation, and (c) not be an employee of any agency involved in the care or education of the child. A person otherwise qualified to be a surrogate parent under this subsection is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent. The surrogate parent appointed under this section may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

(3) The services of the surrogate parent shall be terminated when (a) the child is no longer eligible under subsection (1) of this section, (b) a conflict of interest develops between the interest of the child and the interest of the surrogate parent, or (c) the surrogate parent fails to fulfill his or her duties as a surrogate parent. Issues arising from the selection, appointment, or removal of a surrogate parent by a school district shall be resolved through hearings established under sections 79-1162 to 79-1167. The surrogate parent and the school district which appointed the surrogate parent shall not be liable in civil actions for damages for acts of the surrogate parent unless such acts constitute willful and wanton misconduct.

Source: Laws 1988, LB 165, § 1; R.S.1943, (1994), § 79-4,147; Laws 1996, LB 900, § 843; Laws 1997, LB 346, § 42; Laws 2009, LB549, § 44.

79-1168 Repealed. Laws 2009, LB 549, § 53.

79-1169 Repealed. Laws 2009, LB 549, § 53.

79-1170 Repealed. Laws 2009, LB 549, § 53.

79-1171 Repealed. Laws 2009, LB 549, § 53.

79-1172 Repealed. Laws 2009, LB 549, § 53.

79-1173 Repealed. Laws 2009, LB 549, § 53.

79-1174 Repealed. Laws 2009, LB 549, § 53.

79-1175 Repealed. Laws 2009, LB 549, § 53.

79-1176 Repealed. Laws 2009, LB 549, § 53.

79-1177 Repealed. Laws 2009, LB 549, § 53.

79-1178 Repealed. Laws 2009, LB 549, § 53.

(d) BRIDGE PROGRAMS

79-1189 Legislative findings.

The Legislature finds that:

(1) Nebraska faces a skills gap of educated workers to serve key roles in high-demand industries;

(2) Nebraska must develop innovative education and training solutions in order to fill these roles and compete in a global economy; and

(3) Bridge programs, in which adult learners earn postsecondary educational credentials in an expedited manner, are a proven solution to this problem.

Source: Laws 2012, LB1079, § 1.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1190 Terms, defined.

For purposes of sections 79-1189 to 79-1195:

(1) Bridge program means a structured career pathway program, developed in partnership among a provider of basic skills education and training, the provider of the Adult Education Program established pursuant to section 79-11,133, and a nonprofit social services organization, which assists students in obtaining academic, employability, and technical skills needed to enter and succeed in postsecondary education and training and the labor market; and

(2) Department means the State Department of Education.

Source: Laws 2012, LB1079, § 2.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1191 Legislative appropriation; department; provide grants to establish bridge programs.

The Legislature shall appropriate two hundred thousand dollars each fiscal year for three consecutive fiscal years beginning with FY2012-13 to the department from the Education Innovation Fund to provide grants to establish bridge programs. Such programs shall:

(1) Provide English reading and writing and math skills required to succeed in a postsecondary educational credentialing or degree program;

(2) Lead to the attainment of college credit and a recognized postsecondary educational credential or an industry-recognized credential;

(3) Be open only to low-income participants who are co-enrolled in adult education, developmental education, or English as a second language;

(4) Target the specific workforce needs of an occupational sector within the state and provide services aimed at improving education, skills, and employment prospects for low-income adults;

(5) Use educational best practices, including, but not limited to, contextualized instructional strategies, team teaching, modularized learning, or reduced student-teacher ratios; and

(6) Provide for supportive services needed for student educational and employment success, including, but not limited to, job coaching and personal needs.

Source: Laws 2012, LB1079, § 3.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1192 Department; establish process for awarding grants; priority.

The department shall establish a competitive process for awarding grants for bridge programs which meet the requirements of section 79-1191. In awarding such grants, the department shall give priority to:

(1) Applicants which leverage additional funding through local, philanthropic, or federal funding, including, but not limited to, participation in the state Supplemental Nutrition Assistance Program Employment and Training plan established pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., funding under the federal Workforce Investment Act of 1998, 29 U.S.C. 2832 et seq., as such act existed on January 1, 2012, funding under the College Access Challenge Grant Program established pursuant to the federal Higher Education Act of 1965, 20 U.S.C. 1141, as such section existed on January 1, 2012, funding under the federal Temporary Assistance to Needy Families program established in 42 U.S.C. 601 et seq., as such sections existed on January 1, 2012, and funding under the aid to dependent children program; and

(2) Programs serving recipients of public assistance.

Source: Laws 2012, LB1079, § 4.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1193 Recipient of bridge program grant; collect and provide data.

A recipient of a bridge program grant under section 79-1191 shall collect and provide to the department data illustrating the outcomes of participants, including:

(1) Participants' education levels, income, and employment status upon entry into the bridge program;

(2) The total number of participants beginning the bridge program, earning college credit, earning industry-recognized credentials, and earning recognized postsecondary educational credentials;

(3) The employment rates of participants six months, twelve months, and twenty-four months after leaving the bridge program; and

(4) The number of participants pursuing additional education six months, twelve months, and twenty-four months after leaving the bridge program.

Source: Laws 2012, LB1079, § 5.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1194 Rules and regulations.

The department may adopt and promulgate rules and regulations to carry out sections 79-1189 to 79-1193.

Source: Laws 2012, LB1079, § 6.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1195 Department of Health and Human Services; cooperate with applicants and recipients.

The Department of Health and Human Services shall cooperate with applicants and recipients under sections 79-1189 to 79-1193 pursuing funding under the state Supplemental Nutrition Assistance Program Employment and Training plan established pursuant to the federal Food and Nutrition Act of 2008, 7 U.S.C. 2011 et seq., as such act and sections existed on January 1, 2012, the federal Temporary Assistance to Needy Families program established in 42 U.S.C. 601 et seq., as such sections existed on January 1, 2012, and funding under the aid to dependent children program.

Source: Laws 2012, LB1079, § 7.
Effective date April 7, 2012.
Termination date June 30, 2015.

79-1196 Sections; termination.

Sections 79-1189 to 79-1195 terminate on June 30, 2015.

Source: Laws 2012, LB1079, § 8.
Effective date April 7, 2012.

(i) SEAMLESS DELIVERY SYSTEM PILOT PROJECT

79-11,136 Repealed. Laws 2009, LB 549, § 53.

79-11,137 Repealed. Laws 2009, LB 549, § 53.

79-11,138 Repealed. Laws 2009, LB 549, § 53.

79-11,139 Repealed. Laws 2009, LB 549, § 53.

79-11,140 Repealed. Laws 2009, LB 549, § 53.

79-11,141 Repealed. Laws 2009, LB 549, § 53.

(k) HIGH-NEEDS EDUCATION COORDINATOR

79-11,150 Repealed. Laws 2011, LB 333, § 18.

(l) SPECIAL EDUCATION SERVICES TASK FORCE

79-11,151 Repealed. Laws 2009, LB 154, § 27.

79-11,152 Repealed. Laws 2009, LB 154, § 27.

79-11,153 Repealed. Laws 2009, LB 154, § 27.

79-11,154 Repealed. Laws 2009, LB 154, § 27.

ARTICLE 12
EDUCATIONAL SERVICE UNITS ACT

Section

79-1204 Role and mission.

(1) The role and mission of the educational service units is to serve as educational service providers in the state's system of elementary and secondary education.

(2) Educational service units shall:

(a) Act primarily as service agencies in providing core services and services identified and requested by member school districts;

(b) Provide for economy, efficiency, and cost-effectiveness in the cooperative delivery of educational services;

(c) Provide educational services through leadership, research, and development in elementary and secondary education;

(d) Act in a cooperative and supportive role with the State Department of Education and school districts in development and implementation of long-

range plans, strategies, and goals for the enhancement of educational opportunities in elementary and secondary education; and

(e) Serve, when appropriate and as funds become available, as a repository, clearinghouse, and administrator of federal, state, and private funds on behalf of school districts which choose to participate in special programs, projects, or grants in order to enhance the quality of education in Nebraska schools.

(3) Core services shall be provided by educational service units to all member school districts. Core services shall be defined by each educational service unit as follows:

(a) Core services shall be within the following service areas in order of priority: (i) Staff development which shall include access to staff development related to improving the achievement of students in poverty and students with diverse backgrounds; (ii) technology, including distance education services; and (iii) instructional materials services;

(b) Core services shall improve teaching and student learning by focusing on enhancing school improvement efforts, meeting statewide requirements, and achieving statewide goals in the state's system of elementary and secondary education;

(c) Core services shall provide schools with access to services that:

(i) The educational service unit and its member school districts have identified as necessary services;

(ii) Are difficult, if not impossible, for most individual school districts to effectively and efficiently provide with their own personnel and financial resources;

(iii) Can be efficiently provided by each educational service unit to its member school districts; and

(iv) Can be adequately funded to ensure that the service is provided equitably to the state's public school districts;

(d) Core services shall be designed so that the effectiveness and efficiency of the service can be evaluated on a statewide basis; and

(e) Core services shall be provided by the educational service unit in a manner that minimizes the costs of administration or service delivery to member school districts.

(4) Educational service units shall meet minimum accreditation standards set by the State Board of Education that will:

(a) Provide for accountability to taxpayers;

(b) Assure that educational service units are assisting and cooperating with school districts to provide for equitable and adequate educational opportunities statewide; and

(c) Assure a level of quality in educational programs and services provided to school districts by the educational service units.

(5) Educational service units may contract to provide services to:

(a) Nonmember public school districts;

(b) Nonpublic school systems;

(c) Other educational service units; and

(d) Other political subdivisions, under the Interlocal Cooperation Act and the Joint Public Agency Act.

(6) Educational service units shall not regulate school districts unless specifically provided pursuant to another section of law.

Source: Laws 1987, LB 688, § 1; R.S.1943, (1994), § 79-2201.02; Laws 1996, LB 900, § 921; Laws 1997, LB 806, § 57; Laws 1999, LB 87, § 89; Laws 2006, LB 1208, § 8; Laws 2007, LB641, § 34; Laws 2009, LB549, § 45.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

79-1212 Reorganized units; board members.

Members of boards of educational service units existing prior to approval of any plan of reorganization shall serve as board members of educational service units which are reorganized pursuant to sections 79-1206 to 79-1211 until the expiration of their original terms. Such persons shall be members of the board of the reorganized educational service unit in which they reside. Within thirty days after approval of any plan of reorganization by the State Board of Education, the president of the board of each educational service unit being reorganized shall call a meeting of board members of such educational service unit. At such meeting, members of each such board shall appoint one member from each election district to be created pursuant to the plan of reorganization not having representation on such board to serve until the next general election. The board shall take all necessary action to prepare for operation of the reorganized educational service unit following approval of any plan of reorganization by the State Board of Education. Expenses incurred by such board prior to such times shall be prorated between the counties comprising the educational service unit on the basis of the assessed valuation of such counties.

Source: Laws 1969, c. 746, § 3, p. 2810; Laws 1987, LB 688, § 18; R.S.1943, (1994), § 79-2203.02; Laws 1996, LB 900, § 929; Laws 1998, Spec. Sess., LB 1, § 51; Laws 2007, LB603, § 13; Laws 2009, LB549, § 46.

79-1217 Governing board; name; members; election; qualification; vacancy; expenses; membership.

(1) All educational service units shall be governed by a board to be known as the Board of Educational Service Unit No. . . . . Until the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member from each county and four members at large, all of whom shall reside within the geographical boundaries of the educational service unit, but no more than two of the members at large shall be appointed or elected from the same county unless any one county within the educational service unit has a population in excess of one hundred fifty thousand inhabitants or the educational service unit consists of only one county. Beginning on the first Thursday after the first Tuesday in January 2009, the educational service unit board, except the board of an educational service unit with only one member school district, shall be composed of one member elected to represent each election district established pursuant to section 79-1217.01.

Successors to the members initially appointed pursuant to section 79-1212 shall be elected pursuant to section 32-515.

(2) Vacancies in office shall occur as set forth in section 32-560, except as otherwise provided in section 79-1212 regarding the requirement to live in the district represented, or in the case of absences, unless excused by a majority of the remaining members of the board, when a member is absent from the geographical boundaries of the educational service unit for a continuous period of sixty days at one time or from more than two consecutive regular meetings of the board. Whenever any vacancy occurs on the board, the remaining members of such board shall appoint an individual residing within the election district of the educational service unit for which the vacancy exists and meeting the qualifications for the office to fill such vacancy for the balance of the unexpired term.

(3) Members of the board shall receive no compensation for their services but shall be reimbursed for the actual and necessary expenses incurred in the performance of their duties under the Educational Service Units Act as provided in sections 81-1174 to 81-1177.

(4) Except as provided in subsection (5) of this section, any joint school district located in two or more counties shall be considered a part of the educational service unit in which the greater number of school-age children of such joint school district reside.

(5) Any Class I district which is part of a Class VI district shall be considered a part of the educational service unit of which the Class VI district is a member. If the Class VI district has removed itself from an educational service unit, each Class I district which is part of such Class VI district may continue its existing membership in an educational service unit or may change its status relative to membership in an educational service unit in accordance with section 79-1209. The patrons of a Class I district maintaining membership in an educational service unit pursuant to this subsection shall have the same rights and privileges as other patrons of the educational service unit, and the taxable valuation of the taxable property within the geographic boundaries of such Class I district shall be subject to the educational service unit's tax levy established pursuant to section 79-1225.

(6) The administrator of each educational service unit, prior to July 1 of each year in which a statewide primary election is to be held, shall certify to the election commissioner or county clerk of each county located within the unit the corporate name of each school district, as described in section 79-405, located within the county. If a school district is a joint school district located in two or more counties, the administrator shall certify to each election commissioner or county clerk the educational service unit of which the school district is considered to be a part.

(7) An educational service unit may consist of a single school district if the single school district is either a Class IV or Class V school district. An educational service unit with only one member school district shall be governed by the school board of such school district and shall participate in one or more of the statewide projects managed by the Educational Service Unit Coordinating Council.

Source: Laws 1965, c. 504, § 3, p. 1608; Laws 1967, c. 560, § 1, p. 1844; Laws 1969, c. 747, § 2, p. 2818; Laws 1969, c. 746, § 8, p. 2814; Laws 1977, LB 201, § 17; Laws 1978, LB 632, § 10; Laws 1981,

LB 204, § 163; Laws 1987, LB 688, § 16; Laws 1988, LB 1142, § 12; Laws 1991, LB 511, § 65; Laws 1992, LB 245, § 70; Laws 1992, LB 1063, § 200; Laws 1992, Second Spec. Sess., LB 1, § 171; Laws 1994, LB 76, § 607; R.S.1943, (1994), § 79-2203; Laws 1996, LB 900, § 934; Laws 1997, LB 345, § 47; Laws 1997, LB 347, § 47; Laws 2001, LB 797, § 49; Laws 2002, LB 647, § 2; Laws 2007, LB603, § 14; Laws 2010, LB965, § 2; Laws 2012, LB446, § 1.
Effective date July 19, 2012.

79-1218 Board; meetings; organization; duties.

The board of each educational service unit shall meet and organize by naming one of its members as president, one as vice president, and one as secretary. The board shall employ a treasurer who shall be paid a salary to be fixed by the board.

The board of the educational service unit shall determine the participation of the educational service unit in providing supplementary educational services. If the board of the educational service unit does not provide supplementary educational services, it shall meet during each succeeding January to determine the participation in providing supplementary educational services for that calendar year. Meetings may be held by means of videoconferencing or telephone conference in accordance with subsections (2) and (3) of section 84-1411.

Source: Laws 1965, c. 504, § 4, p. 1610; Laws 1969, c. 748, § 1, p. 2822; Laws 1969, c. 746, § 5, p. 2811; Laws 1987, LB 688, § 20; R.S.1943, (1994), § 79-2204; Laws 1996, LB 900, § 935; Laws 2009, LB361, § 1.

79-1225 Governing board; tax; levy; limitation; exception; proceeds; when remitted.

(1) After the adoption of its budget statement, the board for each educational service unit, except as provided in subsection (2) of this section, may levy a tax in the amount which it requires under its adopted budget statement to be received from taxation. The levy shall be subject to the limits established by section 77-3442. The amount of such levy shall be certified by the secretary of the educational service unit board to the county board of equalization of each county in which any part of the geographical area of the educational service unit is located on or before September 20 of each year. Such tax shall be levied and assessed in the same manner as other property taxes and entered on the books of the county treasurer. The proceeds of such tax, as collected, shall be remitted to the treasurer of the board on or before the fifteenth day of each month or more frequently as provided in section 77-1759.

(2) For fiscal year 2013-14 and each fiscal year thereafter, only an educational service unit which has four or more member school districts or an educational service unit composed of a single Class IV or Class V school district may levy a tax on the taxable value of the taxable property within the geographic boundaries of the educational service unit.

Source: Laws 1965, c. 504, § 10, p. 1612; Laws 1969, c. 145, § 47, p. 700; Laws 1969, c. 746, § 7, p. 2813; Laws 1977, LB 391, § 2; Laws 1979, LB 178, § 2; Laws 1979, LB 187, § 248; Laws 1980, LB

599, § 15; Laws 1992, LB 1063, § 201; Laws 1992, Second Spec. Sess., LB 1, § 172; Laws 1993, LB 348, § 50; Laws 1993, LB 452, § 3; Laws 1993, LB 734, § 53; Laws 1995, LB 452, § 34; R.S.Supp.,1995, § 79-2210; Laws 1996, LB 900, § 942; Laws 1996, LB 1114, § 67; Laws 1999, LB 141, § 14; Laws 1999, LB 287, § 3; Laws 1999, LB 386, § 4; Laws 2008, LB1154, § 14; Laws 2012, LB446, § 2.
Effective date July 19, 2012.

79-1233 Access to telecomputing resources; powers and duties.

Each educational service unit shall provide access for all school districts within the geographical area served by the unit to telecomputing resources, which shall include the capacity to receive and transmit distance education courses on at least a regional basis beginning on or before August 1, 2007, through the installation of necessary equipment at each educational service unit location or through interlocal agreements with other educational service units and shall provide support for training users to meet their specific telecomputing and distance education needs. School districts may annually elect prior to a date determined by the educational service unit not to connect to such telecomputing resources. Each educational service unit shall also develop, with the State Department of Education, a plan which provides for connecting the telecomputing and distance education equipment of such school districts with the telecomputing and distance education equipment of the unit.

Educational service units may enter into agreements pursuant to the Interlocal Cooperation Act and the Joint Public Agency Act to carry out this section. Such agreements may include, but need not be limited to, provisions requiring any school district having telecomputing or distance education equipment connected to the educational service unit's telecomputing or distance education equipment to pay periodic fees necessary to cover the cost of such usage.

Source: Laws 1993, LB 348, § 49; Laws 1993, LB 452, § 2; Laws 1995, LB 860, § 3; R.S.Supp.,1995, § 79-2225; Laws 1996, LB 900, § 950; Laws 1999, LB 87, § 90; Laws 1999, LB 141, § 15; Laws 1999, LB 386, § 5; Laws 2006, LB 1208, § 10; Laws 2007, LB603, § 22; Laws 2010, LB1071, § 27.

Cross References

Interlocal Cooperation Act, see section 13-801.
Joint Public Agency Act, see section 13-2501.

79-1241 Repealed. Laws 2009, LB 549, § 53.

79-1241.01 Core services; appropriation; legislative intent.

To carry out section 79-1241.03, it is the intent of the Legislature to appropriate for each fiscal year the amount appropriated in the prior year increased by the percentage growth in the fall membership of member districts plus the basic allowable growth rate described in section 79-1025. For purposes of this section, fall membership has the same meaning as in section 79-1003. Fall membership data used to compute growth shall be from the two most recently available fall membership reports.

Source: Laws 1998, LB 1110, § 3; Laws 1999, LB 386, § 6; Laws 2006, LB 1208, § 11; Laws 2007, LB603, § 25; Laws 2009, LB549, § 47; Laws 2010, LB1071, § 28.

79-1241.02 Repealed. Laws 2010, LB 1071, § 48.

79-1241.03 Distribution of funds; certification by department to educational service unit and learning community; distribution.

(1) Two percent of the funds appropriated for core services and technology infrastructure shall be transferred to the Educational Service Unit Coordinating Council. The remainder of such funds shall be distributed pursuant to subsections (2) through (6) of this section.

(2)(a) The distance education and telecommunications allowance for each educational service unit shall equal eighty-five percent of the difference of the costs for telecommunications services, for access to data transmission networks that transmit data to and from the educational service unit, and for the transmission of data on such networks paid by the educational service unit as reported on the annual financial report for the most recently available complete data year minus the receipts from the federal Universal Service Fund pursuant to 47 U.S.C. 254, as such section existed on January 1, 2007, for the educational service unit as reported on the annual financial report for the most recently available complete data year and minus any receipts from school districts or other educational entities for payment of such costs as reported on the annual financial report of the educational service unit.

(b) The base allocation of each educational service unit shall equal two and one-half percent of the funds appropriated for distribution pursuant to this section.

(c) The satellite office allocation for each educational service unit shall equal one percent of the funds appropriated for distribution pursuant to this section for each office of the educational service unit, except the educational service unit headquarters, up to the maximum number of satellite offices. The maximum number of satellite offices used for the calculation of the satellite office allocation for any educational service unit shall equal the difference of the ratio of the number of square miles within the boundaries of the educational service unit divided by four thousand minus one with the result rounded to the closest whole number.

(d) The statewide adjusted valuation shall equal the total adjusted valuation for all member districts of educational service units pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the Tax Equity and Educational Opportunities Support Act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(e) The adjusted valuation for each educational service unit shall equal the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section, except that such adjusted valuation for member school districts that are also member districts of a learning community shall be reduced by fifty percent for school fiscal years 2008-09 and 2009-10, thirty percent for school fiscal year 2010-11, and ten percent for each school fiscal year thereafter. The adjusted valuation for each learning community shall equal fifty percent, for school fiscal years 2008-09 and 2009-10, thirty percent, for school fiscal year 2010-11, and ten percent, for each school fiscal year thereafter, of the total adjusted valuation of the member school districts pursuant to section 79-1016 used for the calculation of state aid for school districts

pursuant to the act for the school fiscal year for which the distribution is being calculated pursuant to this section.

(f) The local effort rate shall equal $0.0135 per one hundred dollars of adjusted valuation.

(g) The statewide student allocation shall equal the difference of the sum of the amount appropriated for distribution pursuant to this section plus the product of the statewide adjusted valuation multiplied by the local effort rate minus the distance education and telecommunications allowance, base allocation, and satellite office allocation for all educational service units and minus any adjustments required by subsection (5) of this section.

(h) The sparsity adjustment for each educational service unit and learning community shall equal the sum of one plus one-tenth of the ratio of the square miles within the boundaries of the educational service unit divided by the fall membership of the member school districts for the school fiscal year immediately preceding the school fiscal year for which the distribution is being calculated pursuant to this section.

(i) The adjusted students for each multidistrict educational service unit shall equal the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated of the member school districts that will not be members of a learning community and ninety percent of the fall membership for such school fiscal year of the member school districts that will be members of a learning community pursuant to this section multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each single-district educational service unit shall equal ninety-five percent of the fall membership for the school fiscal year immediately preceding the school fiscal year for which aid is being calculated if the member school district will not be a member of a learning community and eighty-five percent of the fall membership for such school fiscal year if the member school district will be a member of a learning community pursuant to this section, multiplied by the sparsity adjustment for the educational service unit. The adjusted students for each learning community shall equal ten percent of the fall membership for such school fiscal year of the member school districts multiplied by the sparsity adjustment for the learning community.

(j) The per student allocation shall equal the statewide student allocation divided by the total adjusted students for all educational service units and learning communities.

(k) The student allocation for each educational service unit and learning community shall equal the per student allocation multiplied by the adjusted students for the educational service unit or learning community.

(l) The needs for each educational service unit shall equal the sum of the distance education and telecommunications allowance, base allocation, satellite office allocation, and student allocation for the educational service unit and the needs for each learning community shall equal the student allocation for the learning community.

(m) The distribution of core services and technology infrastructure funds for each educational service unit and learning community shall equal the needs for each educational service unit or learning community minus the product of the adjusted valuation for the educational service unit or learning community multiplied by the local effort rate.

(3) If an educational service unit is the result of a merger or received new member school districts from another educational service unit, the educational service unit shall be considered a new educational service unit for purposes of this section. For each new educational service unit, the needs minus the distance education and telecommunications allowance for such new educational service unit shall, for each of the three fiscal years following the fiscal year in which the merger takes place or the new member school districts are received, equal an amount not less than the needs minus the distance education and telecommunications allowance for the portions of the educational service units transferred to the new educational service unit for the fiscal year immediately preceding the merger or receipt of new member school districts, except that if the total amount available to be distributed pursuant to subsections (2) through (6) of this section for the year for which needs are being calculated is less than the total amount distributed pursuant to such subsections for the fiscal year immediately preceding the merger or receipt of new member school districts, the minimum needs minus the distance education and telecommunications allowance for each educational service unit pursuant to this subsection shall be reduced by a percentage equal to the ratio of such difference divided by the total amount distributed pursuant to subsections (2) through (6) of this section for the fiscal year immediately preceding the merger or receipt of new member school districts. The needs minus the distance education and telecommunications allowance for the portions of educational service units transferred to the new educational service unit for the fiscal year immediately preceding a merger or receipt of new member school districts shall equal the needs minus the distance education and telecommunications allowance calculated for such fiscal year pursuant to subsections (2) through (6) of this section for any educational service unit affected by the merger or the transfer of school districts multiplied by a ratio equal to the valuation that was transferred to the new educational service unit for which the minimum is being calculated divided by the total valuation of the educational service unit transferring the territory.

(4) For fiscal years 2010-11 through 2013-14, each educational service unit shall have needs minus the distance education and telecommunications allowance equal to an amount not less than ninety-five percent of the needs minus the distance education and telecommunications allowance for the immediately preceding fiscal year, except that if the total amount available to be distributed pursuant to subsections (2) through (6) of this section for the year for which needs are being calculated is less than the total amount distributed pursuant to such subsections for the immediately preceding fiscal year, the minimum needs minus the distance education and telecommunications allowance for each educational service unit pursuant to this subsection shall be reduced by a percentage equal to the ratio of such difference divided by the total amount distributed pursuant to subsections (2) through (6) of this section.

(5) If the minimum needs minus the distance education and telecommunications allowance pursuant to subsection (3) or (4) of this section for any educational service unit exceeds the amount that would otherwise be calculated for such educational service unit pursuant to subsection (2) of this section, the statewide student allocation shall be reduced such that the total amount to be distributed pursuant to this section equals the appropriation for core services and technology infrastructure funds and no educational service unit has needs minus the distance education and telecommunications allowance less than the

greater of any minimum amounts calculated for such educational service unit pursuant to subsections (3) and (4) of this section.

(6) The State Department of Education shall certify the distribution of core services and technology infrastructure funds pursuant to subsections (2) through (6) of this section to each educational service unit and learning community on or before July 1 of each year for the following school fiscal year. Except as otherwise provided in this subsection, any funds appropriated for distribution pursuant to this section shall be distributed in ten as nearly as possible equal payments on the first business day of each month beginning in September of each school fiscal year and ending in June. Funds to be distributed to a learning community in school fiscal year 2010-11 shall be distributed in ten payments on the first business day of each month beginning in September 2010 and ending in June 2011, with each of the first five payments equal as nearly as possible to seventeen percent of the amount to be distributed and with each of the last five payments equal as nearly as possible to three percent of the amount to be distributed. Funds distributed to educational service units pursuant to this section shall be used for core services and technology infrastructure with the approval of representatives of two-thirds of the member school districts of the educational service unit, representing a majority of the adjusted students in the member school districts used in calculations pursuant to this section for such funds. The valuation of individual school districts shall not be considered in the utilization of such core services or technology infrastructure funds by member school districts for funds received after July 1, 2010. Funds distributed to learning communities on or before January 15, 2011, shall be used for learning community purposes with the approval of the learning community coordinating council. Funds distributed to learning communities after January 15, 2011, shall be used for evaluation and research pursuant to section 79-2104.02 with the approval of the learning community coordinating council.

(7) For purposes of this section, the determination of whether or not a school district will be a member of an educational service unit or a learning community shall be based on the information available May 1 for the following school fiscal year.

(8) It is the intent of the Legislature that:

(a) Funding for core services and technology infrastructure for each educational service unit consist of both amounts received pursuant to this section and an amount greater than or equal to the product of the adjusted valuation for the educational service unit multiplied by the local effort rate; and

(b) Each multidistrict educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for cooperative projects between member school districts and that each such educational service unit use an amount equal to at least five percent of such funding for core services and technology infrastructure for statewide projects managed by the Educational Service Unit Coordinating Council.

Source: Laws 2007, LB603, § 24; Laws 2008, LB1154, § 15; Laws 2009, LB549, § 48; Laws 2010, LB1070, § 11; Laws 2012, LB446, § 3. Effective date July 19, 2012.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-1242 Property tax funds; use.

Funds generated from the property tax levy shall only be used for purposes approved by representatives of two-thirds of the member school districts in an educational service unit, representing a majority of the students in the member school districts. The valuation of individual school districts shall not be the only consideration in determining the utilization of such funds received after July 1, 2010. Each educational service unit shall prepare and transmit a written proposal of core services offerings and use of the property tax levy to all member school districts. The member school districts through their designated representatives shall indicate their approval or disapproval of the proposal within thirty calendar days after receipt of the proposal, and failure to so indicate within such time period shall be deemed approval of the proposal.

Source: Laws 1997, LB 806, § 62; Laws 1999, LB 363, § 1; Laws 2010, LB1070, § 12; Laws 2012, LB446, § 4.
Effective date July 19, 2012.

79-1243 Repealed. Laws 2010, LB 1071, § 48.

79-1245 Educational Service Unit Coordinating Council; created; composition; funding; powers.

(1) The Educational Service Unit Coordinating Council is created as of July 1, 2008. On such date the assets and liabilities of the Distance Education Council shall be transferred to the Educational Service Unit Coordinating Council. The council shall be composed of one administrator from each educational service unit. The council shall be funded from two percent of the core services and technology infrastructure funding appropriated pursuant to section 79-1241.03, appropriations by the Legislature for distance education, and fees established for services provided to educational entities.

(2) The council is a political subdivision and a public body corporate and politic of this state, exercising public powers separate from the participating educational service units. The council shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a political subdivision and a public body corporate and politic but shall not have taxing power.

(3) The council shall have power (a) to sue and be sued, (b) to have a seal and alter the same at will or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments, (d) to receive, hold, and use money and real and personal property, (e) to hire and compensate employees, including certificated employees, (f) to act as a fiscal agent for statewide initiatives being implemented by employees of one or more educational service units, and (g) from time to time, to make, amend, and repeal bylaws, rules, and regulations not inconsistent with sections 79-1245 to 79-1249. Such power shall only be used as necessary or convenient to carry out and effectuate the powers and purposes of the council.

Source: Laws 2007, LB603, § 16; Laws 2010, LB1071, § 29.

79-1247 Educational Service Unit Coordinating Council; appoint distance education director; council director authorized; salaries; expenses; duties; contract authorized; other appointments authorized.

The Educational Service Unit Coordinating Council shall appoint a distance education director and may appoint a council director, both of whom shall hold

office at the pleasure of the council. The council director and the distance education director shall receive such salaries as the council determines and shall be reimbursed for their actual expenses incurred in the performance of their duties. The council may contract with individual educational service units for the employment of the council director or the distance education director, except that the supervisory responsibilities for such employees shall remain with the council.

The council director and the distance education director shall perform duties as the council directs and shall not be members of the council. The council may also appoint or retain such other persons as it may deem necessary for the performance of its functions and shall prescribe their duties, fix their compensation, and provide for reimbursement of their actual and necessary expenses within the amounts available in the budget of the council.

Source: Laws 2007, LB603, § 18; Laws 2010, LB1071, § 30.

79-1248 Educational Service Unit Coordinating Council; powers and duties.

The powers and duties of the Educational Service Unit Coordinating Council include, but are not limited to:

(1) Providing public access to lists of qualified distance education courses;

(2) Collecting and providing school schedules for participating educational entities;

(3) Facilitation of scheduling for qualified distance education courses;

(4) Brokering of qualified distance education courses to be purchased by educational entities;

(5) Assessment of distance education needs and evaluation of distance education services;

(6) Compliance with technical standards as set forth by the Nebraska Information Technology Commission and academic standards as set forth by the State Department of Education related to distance education;

(7) Establishment of a system for scheduling courses brokered by the council and for choosing receiving educational entities when the demand for a course exceeds the capacity as determined by either the technology available or the course provider;

(8) Administration of learning management systems, either through the staff of the council or by delegation to an appropriate educational entity, with the funding for such systems provided by participating educational entities; and

(9) Coordination with educational service units and postsecondary educational institutions to provide assistance for instructional design for both two-way interactive video distance education courses and the offering of graduate credit courses in distance education.

Source: Laws 2006, LB 1208, § 20; R.S.Supp.,2006, § 79-1334; Laws 2007, LB603, § 19; Laws 2010, LB1071, § 31.

79-1249 Educational Service Unit Coordinating Council; assistance provided.

The Educational Service Unit Coordinating Council shall only provide assistance in brokering or scheduling courses to educational entities that have access to Network Nebraska. All costs to the council associated with assisting private, denominational, or parochial schools and private postsecondary edu-

cational institutions shall be paid by such private, denominational, or parochial school or private postsecondary educational institution. Any services of the council may also be offered to other public entities with access to Network Nebraska on a contractual basis.

Source: Laws 2006, LB 1208, § 21; R.S.Supp.,2006, § 79-1335; Laws 2007, LB603, § 20; Laws 2010, LB1071, § 32.

ARTICLE 13

EDUCATIONAL TECHNOLOGY AND TELECOMMUNICATIONS

(b) EDUCATIONAL TELECOMMUNICATIONS

(c) DISTANCE EDUCATION

(b) EDUCATIONAL TELECOMMUNICATIONS

79-1316 Educational telecommunications; commission; powers; duties.

The powers and duties of the Nebraska Educational Telecommunications Commission are:

(1) To promote and sponsor a noncommercial educational television network to serve a series of interconnecting units throughout the State of Nebraska;

(2) To promote and support locally operated or state-operated noncommercial educational radio stations with satellite receiving capabilities and improved transmitter coverage;

(3) To apply for and to receive and hold such authorizations, licenses, and assignments of channels from the Federal Communications Commission as may be necessary to conduct such educational telecommunications programs by standard radio and television broadcast or by other telecommunications technology broadcast systems and to prepare, file, and prosecute before the Federal Communications Commission all applications, reports, or other documents or requests for authorization of any kind necessary or appropriate to achieve the purposes set forth in the Nebraska Educational Telecommunications Act;

(4) To receive gifts and contributions from public and private sources to be expended in providing educational telecommunications facilities and programs;

(5) To acquire real estate and other property as an agency of the State of Nebraska and to hold and use the same for educational telecommunications purposes;

(6) To contract for the construction, repair, maintenance, and operation of telecommunications facilities;

(7) To contract with common carriers, qualified under the laws of the State of Nebraska, to provide interconnecting channels or satellite facilities in support of radio, television, and other telecommunications technology services unless it is first determined by the Nebraska Educational Telecommunications Commission that state-owned interconnecting channels can be constructed and operated that would furnish a comparable quality of service at a cost to the state that would be less than if such channels were provided by qualified common carriers;

(8) To provide for programming for the visually impaired, other print-handicapped persons, and the deaf and hard of hearing as authorized by the Federal Communications Commission under subsidiary communications authority rules, through contracts with appropriate nonprofit corporations or organizations which have been created for such purpose;

(9) To arrange for the operation of statewide educational telecommunications networks, as directed by the Nebraska Educational Telecommunications Commission, consistent with the provisions of the federal Communications Act of 1934, as amended, and applicable rules and regulations, with policies of the Federal Communications Commission, in cooperation with the State Board of Education insofar as elementary and secondary education programs are concerned, and in cooperation with the Coordinating Commission for Postsecondary Education insofar as postsecondary education programs are concerned;

(10) After taking into consideration the needs of the entire state, to establish and maintain general policies relating to the nature and character of educational telecommunications broadcasts or transmissions;

(11) To review, or cause to be reviewed by a person designated by the commission, all programs presented on the network prior to broadcast or transmission to insure that the programs are suitable for viewing and listening. Such suitability shall be determined by evaluating the content of the program, and screening the programs if necessary, as to their educational value and whether they enhance the cultural appreciation of the viewer and listener and do not appeal to his or her prurient interest. When it is obvious from an examination of the descriptive program materials that a program is suitable for presenting on the network, no further review shall be required;

(12) To cooperate with the United States Secretary of Commerce and other federal or state agencies for the purpose of obtaining matching federal or state funds and providing educational telecommunications facilities of all types throughout the state and to make such reports as may be required of recipients of matching funds;

(13) To arrange for and provide standard radio and television broadcast and other telecommunications technology transmissions of noncommercial educational telecommunications programs to Nebraska citizens and institutions, but no tax funds shall be used for program advertising which may only be financed out of funds received from foundations or individual gifts;

(14) To coordinate with Nebraska agencies that deal with telecommunications activities and are supported in whole or in part by public funds, providing program material for the Nebraska educational telecommunications network;

(15) To adopt bylaws for the conduct of its affairs;

(16) To make certain that the facilities are not used for any purpose which is contrary to the United States Constitution or the Constitution of Nebraska or for broadcasting propaganda or attempting to influence legislation;

(17) To publish such informational material as it deems necessary and it may, at its discretion, charge appropriate fees therefor. The proceeds of all such fees shall be remitted to the State Treasurer for credit to the State Educational Telecommunications Fund and shall be used by the commission solely for publishing such informational material. The commission shall provide to newspapers, radio stations, and other news media program schedules informing the public of programs approved by the commission; and

(18) To maintain a library of films and videotapes which depict persons who appear to be significant or prominent in Nebraska history.

Source: Laws 1963, c. 468, § 3, p. 1497; Laws 1965, c. 535, § 2, p. 1682; Laws 1969, c. 743, § 1, p. 2799; Laws 1969, c. 744, § 1, p. 2802; Laws 1969, c. 742, § 2, p. 2796; Laws 1974, LB 306, § 1; Laws 1984, LB 645, § 4; Laws 1986, LB 461, § 2; R.S.1943, (1994), § 79-2103; Laws 1996, LB 900, § 972; Laws 1997, LB 347, § 53; Laws 2000, LB 1328, § 1; Laws 2011, LB331, § 1.

79-1320 State Educational Telecommunications Fund; created; use; investment.

The State Educational Telecommunications Fund is created. The fund shall be used by the Nebraska Educational Telecommunications Commission for the purposes of carrying out the provisions of the Nebraska Educational Telecommunications Act, except that transfers may be made from the fund to the General Fund at the direction of the Legislature. The State Educational Telecommunications Fund shall consist of such sums as the Legislature may appropriate. 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. 467, § 1, p. 1496; Laws 1969, c. 584, § 91, p. 2402; Laws 1984, LB 645, § 8; Laws 1995, LB 7, § 92; R.S.Supp.,1995, § 79-2107; Laws 1996, LB 900, § 976; Laws 2009, First Spec. Sess., LB3, § 60.

Cross References

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

(c) DISTANCE EDUCATION

79-1331 Repealed. Laws 2010, LB 1071, § 48.

ARTICLE 16

PRIVATE, DENOMINATIONAL, OR PAROCHIAL SCHOOLS

Section
79-1601. Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.
79-1606. Private, denominational, or parochial schools; nonconformity with school law; penalty.

79-1601 Private, denominational, or parochial schools, teachers, and other individuals; laws applicable; election not to meet accreditation or approval requirements.

(1) Except as provided in subsections (2) through (6) of this section, all private, denominational, and parochial schools in the State of Nebraska and all teachers employed or giving instruction in such schools shall be subject to and governed by the provisions of the general school laws of the state so far as the same apply to grades, qualifications, and certification of teachers and promotion of students. All private, denominational, and parochial schools shall

have adequate equipment and supplies, shall be graded the same, and shall have courses of study for each grade conducted in such schools substantially the same as those given in the public schools which the students would attend in the absence of such private, denominational, or parochial schools.

(2) All private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in section 79-318 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in section 79-318 and subsections (2) through (6) of this section. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of this section, not to meet state accreditation or approval requirements shall be based upon evidence that such schools offer a program of instruction leading to the acquisition of basic skills in the language arts, mathematics, science, social studies, and health. Such rules and regulations may include a provision for the visitation of such schools and regular achievement testing of students attending such schools in order to insure that such schools are offering instruction in the basic skills listed in this subsection. Any arrangements for visitation or testing shall be made through a parent representative of each such school. The results of such testing may be used as evidence that such schools are offering instruction in such basic skills but shall not be used to measure, compare, or evaluate the competency of students at such schools.

(3) The provisions of subsections (3) through (6) of this section shall apply to any private, denominational, or parochial school in the State of Nebraska which elects not to meet state accreditation or approval requirements. Elections pursuant to such subsections shall be effective when a statement is received by the Commissioner of Education signed by the parents or legal guardians of all students attending such private, denominational, or parochial school, stating that (a) either specifically (i) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education violate sincerely held religious beliefs of the parents or legal guardians or (ii) the requirements for approval and accreditation required by law and the rules and regulations adopted and promulgated by the State Board of Education interfere with the decisions of the parents or legal guardians in directing the student's education, (b) an authorized representative of such parents or legal guardians will at least annually submit to the Commissioner of Education the information necessary to prove that the requirements of subdivisions (4)(a) through (c) of this section are satisfied, (c) the school offers the courses of instruction required by subsections (2), (3), and (4) of this section, and (d) the parents or legal guardians have satisfied themselves that individuals monitoring instruction at such school are qualified to monitor instruction in the basic skills as required by subsections (2), (3), and (4) of this section and that such individuals have demonstrated an alternative competency to monitor instruction or supervise students pursuant to subsections (3) through (6) of this section.

(4) Each such private, denominational, or parochial school shall (a) meet minimum requirements relating to health, fire, and safety standards prescribed by state law and the rules and regulations of the State Fire Marshal, (b) report attendance pursuant to section 79-201, (c) maintain a sequential program of instruction designed to lead to basic skills in the language arts, mathematics, science, social studies, and health, and (d) comply with the immunization requirements in section 79-217 if the statement signed by the parents or legal guardians indicate a nonreligious reason pursuant to subdivision (3)(a)(ii) of this section for the student attending a private, denominational, or parochial school which elects not to meet state accreditation or approval requirements. The State Board of Education shall establish procedures for receiving information and reports required by subsections (3) through (6) of this section from authorized parent representatives who may act as agents for parents or legal guardians of students attending such school and for individuals monitoring instruction in the basic skills required by subsections (2), (3), and (4) of this section.

(5) Individuals employed or utilized by schools which elect not to meet state accreditation or approval requirements shall not be required to meet the certification requirements prescribed in sections 79-801 to 79-815 but shall either (a) take appropriate subject matter components of a nationally recognized teacher competency examination designated by the State Board of Education as (i) including the appropriate subject matter areas for purposes of satisfying the requirements of subsections (3) and (4) of this section and (ii) a nationally recognized examination or (b) offer evidence of competence to provide instruction in the basic skills required by subsections (3) and (4) of this section pursuant to informal methods of evaluation which shall be developed by the State Board of Education. Such evidence may include educational transcripts, diplomas, and other information regarding the formal educational background of such individuals. Information concerning test results, transcripts, diplomas, and other evidence of formal education may be transmitted to the State Department of Education by authorized representatives of parents or legal guardians. The results of such testing or alternative evaluation of individuals who monitor the instruction of students attending such schools may be used as evidence of whether or not such schools are offering adequate instruction in the basic skills prescribed in subsections (2), (3), and (4) of this section but shall not be used to prohibit any such school from employing such individuals. Failure of a monitor, who is tested for the purpose of satisfying in whole or in part the requirements of subsections (3) through (6) of this section, to attain a score equal to or exceeding both the state or national average score or rating on appropriate subject matter components of recognized teacher competency examinations designated by the State Board of Education may be by itself sufficient proof that such school does not offer adequate instruction in the basic skills prescribed in subsections (3) and (4) of this section.

(6) The demonstration of competency to monitor instruction in a private, denominational, or parochial school which has elected not to meet state accreditation or approval requirements shall in no way constitute or be construed to grant a license, permit, or certificate to teach in the State of Nebraska. Any school which elects not to meet state accreditation or approval requirements and does not meet the requirements of subsections (2) through (6) of this section shall not be deemed a school for purposes of section 79-201, and the parents or legal guardians of any students attending such school shall be

subject to prosecution pursuant to such section or any statutes relating to habitual truancy.

Source: Laws 1919, c. 155, § 1, p. 346; Laws 1921, c. 53, § 1(h), p. 230; C.S.1922, § 6508f; C.S.1929, § 79-1906; R.S.1943, § 79-1913; Laws 1949, c. 256, § 506, p. 864; Laws 1984, LB 928, § 3; R.S.1943, (1994), § 79-1701; Laws 1996, LB 900, § 1004; Laws 1999, LB 268, § 1; Laws 1999, LB 813, § 55; Laws 2003, LB 685, § 25; Laws 2009, LB549, § 49.

Cross References

Admission to public college or university, see section 85-607.
Identification of students, home school duties, see section 43-2007.
Religious beliefs, conflict with required immunizations, see section 79-221.
Sales and use tax exemption, see section 77-2704.12.
Student transfer, access to student files or records, see section 79-2,105.

79-1606 Private, denominational, or parochial schools; nonconformity with school law; penalty.

In case any private, denominational, or parochial school, after a final determination by the proper authorities under sections 79-1601 to 79-1607, fails, refuses, or neglects to conform to and comply with such sections, no person shall be granted or allowed a certificate to teach in such school and the students attending such school shall be required to attend the public school of the proper district as provided by law in like manner as though there were no such private, denominational, or parochial school. Full credit for certification under the law shall be given all teachers who have taught in private, denominational, or parochial schools the same as though they had taught in public schools.

Source: Laws 1919, c. 155, § 7, p. 349; Laws 1921, c. 53, § 1(n), p. 231; C.S.1922, § 6508l; C.S.1929, § 79-1912; R.S.1943, § 79-1919; Laws 1949, c. 256, § 511, p. 865; R.S.1943, (1994), § 79-1706; Laws 1996, LB 900, § 1009; Laws 2009, LB549, § 50.

ARTICLE 19

NEBRASKA READ, EDUCATE, AND DEVELOP YOUTH ACT

Section
79-1905. Report.

79-1905 Report.

The State Department of Education and the Department of Health and Human Services shall annually report to the Legislature and the Governor regarding the actions, activities, accomplishments, and shortcomings in carrying out the Nebraska Read, Educate, and Develop Youth Act. The report submitted to the Legislature shall be submitted electronically.

Source: Laws 2002, LB 326, § 5; Laws 2007, LB296, § 717; Laws 2012, LB782, § 161.
Operative date July 19, 2012.

ARTICLE 21
LEARNING COMMUNITY

Section

79-2104 Learning community coordinating council; powers.

A learning community coordinating council shall have the authority to:

(1) Levy a common levy for the general funds of member school districts pursuant to sections 77-3442 and 79-1073;

(2) Levy a common levy for the special building funds of member school districts pursuant to sections 77-3442 and 79-1073.01;

(3) Levy for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated cost for focus school or program capital projects approved by the learning community coordinating council pursuant to subdivision (2)(h) of section 77-3442 and section 79-2111;

(4) Levy for elementary learning center employees, for contracts with other entities or individuals who are not employees of the learning community for elementary learning center programs and services, and for pilot projects pursuant to subdivision (2)(i) of section 77-3442, except that not more than ten percent of such levy may be used for elementary learning center employees;

(5) Collect, analyze, and report data and information, including, but not limited to, information provided by a school district pursuant to subsection (5) of section 79-201;

(6) Approve focus schools and focus programs to be operated by member school districts;

(7) Adopt, approve, and implement a diversity plan which shall include open enrollment and may include focus schools, focus programs, magnet schools, and pathways pursuant to section 79-2110;

(8) Administer the open enrollment provisions in section 79-2110 for the learning community as part of a diversity plan developed by the council to

provide educational opportunities which will result in increased diversity in schools across the learning community;

(9) Annually conduct school fairs to provide students and parents the opportunity to explore the educational opportunities available at each school in the learning community and develop other methods for encouraging access to such information and promotional materials;

(10) Develop and approve reorganization plans for submission pursuant to the Learning Community Reorganization Act;

(11) Establish and administer elementary learning centers through achievement subcouncils pursuant to sections 79-2112 to 79-2114;

(12) Administer the learning community funds distributed to the learning community pursuant to section 79-2111;

(13) Approve or disapprove poverty plans and limited English proficiency plans for member school districts through achievement subcouncils established under section 79-2117;

(14) Establish a procedure for receiving community input and complaints regarding the learning community;

(15) Establish a procedure to assist parents, citizens, and member school districts in accessing an approved center pursuant to the Dispute Resolution Act to resolve disputes involving member school districts or the learning community. Such procedure may include payment by the learning community for some mediation services;

(16) Establish and administer pilot projects related to enhancing the academic achievement of elementary students, particularly students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility; and

(17) Provide funding to public or private entities engaged in the juvenile justice system providing prefiling and diversion programming designed to reduce excessive absenteeism and unnecessary involvement with the juvenile justice system.

Source: Laws 2006, LB 1024, § 106; Laws 2007, LB641, § 40; Laws 2008, LB1154, § 18; Laws 2009, LB392, § 16; Laws 2010, LB1070, § 13; Laws 2011, LB463, § 20.

Cross References

Dispute Resolution Act, see section 25-2901.
Learning Community Reorganization Act, see section 79-4,117.

79-2104.02 Learning community coordinating council; use of funds; report.

Each learning community coordinating council shall use any funds received after January 15, 2011, pursuant to section 79-1241.03 for evaluation and research pursuant to plans developed by the learning community coordinating council with assistance from the Educational Service Unit Coordinating Council and adjusted on an ongoing basis. The evaluation shall be conducted by one or more other entities or individuals who are not employees of the learning community and shall measure progress toward the goals and objectives of the learning community, which goals and objectives shall include reduction of excessive absenteeism of students in the member school districts of the learning community and closing academic achievement gaps based on socioeconomic status, and the effectiveness of the approaches used by the learning community

or pilot project to reach such goals and objectives. Any research conducted pursuant to this section shall also be related to such goals and objectives. After the first full year of operation, each learning community shall report evaluation and research results electronically to the Education Committee of the Legislature on or before December 1 of each year.

Source: Laws 2010, LB1070, § 17; Laws 2011, LB333, § 16; Laws 2011, LB463, § 21; Laws 2012, LB782, § 162.
Operative date July 19, 2012.

79-2110 Diversity plan; limitations; school building maximum capacity; attendance areas; school board; duties; application to attend school outside attendance area; procedure; continuing student; notice.

(1)(a) Each diversity plan shall provide for open enrollment in all school buildings in the learning community, subject to specific limitations necessary to bring about diverse enrollments in each school building in the learning community. Such limitations, for school buildings other than focus schools and programs other than focus programs, shall include giving preference at each school building first to siblings of students who will be enrolled as continuing students in such school building or program for the first school year for which enrollment is sought in such school building and then to students that contribute to the socioeconomic diversity of enrollment at each building and may include establishing zone limitations in which students may access several schools other than their home attendance area school. Notwithstanding the limitations necessary to bring about diversity, open enrollment shall include providing access to students who do not contribute to the socioeconomic diversity of a school building, if, subsequent to the open enrollment selection process that is subject to limitations necessary to bring about diverse enrollments, capacity remains in a school building. In such a case, students who have applied to attend such school building shall be selected to attend such school building on a random basis up to the remaining capacity of such building. A student who has otherwise been disqualified from the school building pursuant to the school district's code of conduct or related school discipline rules shall not be eligible for open enrollment pursuant to this section. Any student who attended a particular school building in the prior school year and who is seeking education in the grades offered in such school building shall be allowed to continue attending such school building as a continuing student.

(b) To facilitate the open enrollment provisions of this subsection, each school year each member school district in a learning community shall establish a maximum capacity for each school building under such district's control pursuant to procedures and criteria established by the learning community coordinating council. Each member school district shall also establish attendance areas for each school building under the district's control, except that the school board shall not establish attendance areas for focus schools or focus programs. The attendance areas shall be established such that all of the territory of the school district is within an attendance area for each grade. Students residing in a school district shall be allowed to attend a school building in such school district.

(c) For purposes of this section and sections 79-238 and 79-611, student who contributes to the socioeconomic diversity of enrollment means (i) a student who does not qualify for free or reduced-price lunches when, based upon the

certification pursuant to section 79-2120, the school building the student will attend has more students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community or (ii) a student who qualifies for free or reduced-price lunches when, based upon the certification pursuant to section 79-2120, the school building the student will attend has fewer students qualifying for free or reduced-price lunches than the average percentage of such students in all school buildings in the learning community.

(2)(a) On or before March 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student residing in a member school district in a learning community may submit an application to any school district in the learning community on behalf of a student who is applying to attend a school building for the following school year that is not in an attendance area where the applicant resides or a focus school, focus program, or magnet school as such terms are defined in section 79-769. On or before April 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, the school district shall accept or reject such applications based on the capacity of the school building, the eligibility of the applicant for the school building or program, the number of such applicants that will be accepted for a given school building, and whether or not the applicant contributes to the socioeconomic diversity of the school or program to which he or she has applied and for which he or she is eligible. The school district shall notify such parent or guardian in writing of the acceptance or rejection.

(b) A parent or guardian may provide information on the application regarding the applicant's potential qualification for free or reduced-price lunches. Any such information provided shall be subject to verification and shall only be used for the purposes of this section. Nothing in this section requires a parent or guardian to provide such information. Determinations about an applicant's qualification for free or reduced-price lunches for purposes of this section shall be based on any verified information provided on the application. If no such information is provided the student shall be presumed not to qualify for free or reduced-price lunches for the purposes of this section.

(c) A student may not apply to attend a school building in the learning community for any grades that are offered by another school building for which the student had previously applied and been accepted pursuant to this section, absent a hardship exception as established by the individual school district. On or before September 1 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, each school district shall provide to the learning community coordinating council a complete and accurate report of all applications received, including the number of students who applied at each grade level at each building, the number of students accepted at each grade level at each building, the number of such students that contributed to the socioeconomic diversity that applied and were accepted, the number of applicants denied and the rationales for denial, and other such information as requested by the learning community coordinating council.

(3) Each diversity plan may also include establishment of one or more focus schools or focus programs and the involvement of every member school district in one or more pathways across member school districts. Enrollment in each

focus school or focus program shall be designed to reflect the socioeconomic diversity of the learning community as a whole. School district selection of students for focus schools or focus programs shall be on a random basis from two pools of applicants, those who qualify for free and reduced-price lunches and those who do not qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who qualify for free and reduced-price lunches. The percentage of students selected for focus schools from the pool of applicants who do not qualify for free and reduced-price lunches shall be as nearly equal as possible to the percentage of the student body of the learning community who do not qualify for free and reduced-price lunches. If more capacity exists in a focus school or program than the number of applicants for such focus school or program that contribute to the socioeconomic diversity of the focus school or program, the school district shall randomly select applicants up to the number of applicants that will be accepted for such building. A student who will complete the grades offered at a focus program, focus school, or magnet school that is part of a pathway shall be allowed to attend the focus program, focus school, or magnet school offering the next grade level as part of the pathway as a continuing student. A student who completes the grades offered at a focus program, focus school, or magnet school shall be allowed to attend a school offering the next grade level in the school district responsible for the focus program, focus school, or magnet school as a continuing student. A student who attended a program or school in the school year immediately preceding the first school year for which the program or school will operate as a focus program or focus school approved by the learning community and meeting the requirements of section 79-769 and who has not completed the grades offered at the focus program or focus school shall be a continuing student in the program or school.

(4) On or before February 15 of each year beginning with the year immediately following the year in which the initial coordinating council for the learning community takes office, a parent or guardian of a student who is currently attending a school building or program, except a magnet school, focus school, or focus program, outside of the attendance area where the student resides and who will complete the grades offered at such school building prior to the following school year shall provide notice, on a form provided by the school district, to the school board of the school district containing such school building if such student will attend another school building within such district as a continuing student and which school building such student would prefer to attend. On or before March 1, such school board shall provide a notice to such parent or guardian stating which school building or buildings the student shall be allowed to attend in such school district as a continuing student for the following school year. If the student resides within the school district, the notice shall include the school building offering the grade the student will be entering for the following school year in the attendance area where the student resides. This subsection shall not apply to focus schools or programs.

(5) A parent or guardian of a student who moves to a new residence in the learning community after April 1 may apply directly to a school board within the learning community within ninety days after moving for the student to

attend a school building outside of the attendance area where the student resides. Such school board shall accept or reject such application within fifteen days after receiving the application, based on the number of applications and qualifications pursuant to subsection (2) or (3) of this section for all other students.

(6) A parent or guardian of a student who wishes to change school buildings for emergency or hardship reasons may apply directly to a school board within the learning community at any time for the student to attend a school building outside of the attendance area where the student resides. Such application shall state the emergency or hardship and shall be kept confidential by the school board. Such school board shall accept or reject such application within fifteen days after receiving the application. Applications shall only be accepted if an emergency or hardship was presented which justifies an exemption from the procedures in subsection (4) of this section based on the judgment of such school board, and such acceptance shall not exceed the number of applications that will be accepted for the school year pursuant to subsection (2) or (3) of this section for such building.

Source: Laws 2006, LB 1024, § 16; Laws 2007, LB641, § 42; Laws 2008, LB1154, § 21; Laws 2009, LB62, § 6; Laws 2010, LB1070, § 14.

79-2110.01 Open enrollment students; how treated; disability; transportation services.

(1) For purposes of all duties, entitlements, and rights established by law, including special education as provided in section 79-1127, open enrollment students shall be treated as resident students of the open enrollment school district. In determining eligibility for extracurricular activities as defined in section 79-2,126, the open enrollment student shall be treated similarly to other students who transfer into the school from another public, private, denominational, or parochial school.

(2) For open enrollment students verified as having a disability as defined in section 79-1118.01, the transportation services set forth in section 79-1129 shall be provided by the open enrollment school district. The State Department of Education shall reimburse each learning community school district for special education programs provided to open enrollment students in accordance with section 79-1142. The resident school district of an open enrollment student shall be exempted from the payment responsibility set forth in section 79-1140. For purposes of the calculation to determine reimbursement pursuant to section 79-1142, the open enrollment school district shall include the adjusted average per pupil cost as defined in section 79-1114 of the open enrollment school district.

(3) For purposes of the Tax Equity and Educational Opportunities Support Act, open enrollment students shall not be counted as formula students by the resident school district and shall be counted by the open enrollment school district.

Source: Laws 2010, LB1071, § 33.

Cross References

Tax Equity and Educational Opportunities Support Act, see section 79-1001.

79-2111 Elementary learning center facilities; focus school or program capital projects; tax levy; repayment of funds; interest; waiver.

(1) A learning community may levy a maximum levy pursuant to subdivision (2)(h) of section 77-3442 for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and for up to fifty percent of the estimated costs for focus school or program capital projects approved pursuant to this section. The proceeds from such levy shall be used for elementary learning center facility leases, for remodeling of leased elementary learning center facilities, and to reduce the bonded indebtedness required for approved projects by up to fifty percent of the estimated cost of the approved project. The funds used for reductions of bonded indebtedness shall be transferred to the school district for which the project was approved and shall be deposited in such school district's special building fund for use on such project.

(2) The learning community may approve pursuant to this section funding for capital projects which will include the purchase, construction, or remodeling of facilities for a focus school or program designed to meet the requirements of section 79-769. Such approval shall include an estimated cost for the project and shall state the amount that will be provided by the learning community for such project.

(3) If, within the ten years following receipt of the funding for a capital project pursuant to this section, a school district receiving such funding uses the facility purchased, constructed, or remodeled with such funding for purposes other than those stated to qualify for the funds, the school district shall repay such funds to the learning community with interest at the rate prescribed in section 45-104.02 accruing from the date the funds were transferred to the school district's building fund as of the last date the facility was used for such purpose as determined by the learning community coordinating council or the date that the learning community coordinating council determines that the facility will not be used for such purpose or that such facility will not be purchased, constructed, or remodeled for such purpose. Interest shall continue to accrue on outstanding balances until the repayment has been completed. The remaining terms of repayment shall be determined by the learning community coordinating council. The learning community coordinating council may waive such repayment if the facility is used for a different focus school or program for a period of time that will result in the use of the facility for qualifying purposes for a total of at least ten years.

Source: Laws 2007, LB641, § 43; Laws 2008, LB1154, § 22; Laws 2010, LB1070, § 15.

79-2112 Elementary learning center; elementary learning center executive director; qualifications; assistants and employees.

(1) Elementary learning centers shall serve as visionary resource centers for enhancing the academic success of elementary students, particularly those students who face challenges in the educational environment due to factors such as poverty, limited English skills, and mobility. Each learning community coordinating council shall provide for a system of elementary learning centers to be administered by an elementary learning center executive director.

(2) The elementary learning center executive director shall be appointed by the learning community coordinating council. The executive director shall be a person well equipped to work with populations in poverty and to analyze effective methods for assisting and encouraging such populations to access the

programs offered by elementary learning centers. The elementary learning center executive director shall receive such salary as is set by the learning community coordinating council.

(3) The elementary learning center executive director may select, appoint, and compensate as he or she sees fit, within the amount provided by the learning community coordinating council, such noncertificated assistants and noncertificated employees as he or she deems necessary to discharge the responsibilities under sections 79-2112 to 79-2114. Such assistants and employees shall be subject to the control and supervision of the elementary learning center executive director.

Source: Laws 2007, LB641, § 44; Laws 2010, LB1070, § 16.

79-2113 Elementary learning center; establishment; achievement subcouncil; plan; powers and duties; location of facilities.

(1) On or before the second June 1 immediately following the establishment of a new learning community, the learning community coordinating council shall establish at least one elementary learning center for each twenty-five elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches. The council shall determine how many of the initial elementary learning centers shall be located in each subcouncil district on or before September 1 immediately following the establishment of a new learning community.

(2) Each achievement subcouncil shall submit a plan to the learning community coordinating council for any elementary learning center in its subcouncil district and the services to be provided by such elementary learning center. In developing the plan, the achievement subcouncil shall seek input from community resources and collaborate with such resources in order to maximize the available opportunities and the participation of elementary students and their families. An achievement subcouncil may, as part of such plan, recommend services be provided through contracts with, or grants to, entities other than school districts to provide some or all of the services. Such entities may include collaborative groups which may include the participation of a school district. An achievement subcouncil may also, as part of such plan, recommend that the elementary learning center serve as a clearinghouse for recommending programs provided by school districts or other entities and that the elementary learning center assist students in accessing such programs. The plans for the initial elementary learning centers shall be submitted by the achievement subcouncils to the coordinating council on or before January 1 immediately following the establishment of a new learning community.

(3) Each elementary learning center shall have at least one facility that is located in an area with a high concentration of poverty. Such facility may be owned or leased by the learning community, or the use of the facility may be donated to the learning community. Programs offered by the elementary learning center may be offered in such facility or in other facilities, including school buildings.

Source: Laws 2007, LB641, § 45; Laws 2008, LB1154, § 23; Laws 2009, LB392, § 17.

79-2115 Learning community funds; use; learning community coordinating council; powers and duties; pilot project; audits.

(1) Learning community funds distributed pursuant to section 79-2103 may be used by the learning community coordinating council receiving the funds for:

(a) The administration and operation of the learning community;

(b) The administration, operations, and programs of elementary learning centers pursuant to sections 79-2112 to 79-2114;

(c) Supplements for extended hours to teachers in elementary schools in which at least thirty-five percent of the students attending the school who reside in the attendance area of such school qualify for free or reduced-price lunches;

(d) Transportation for parents of elementary students who qualify for free or reduced-price lunches to school functions of such students in elementary schools;

(e) Up to six social workers to provide services through the elementary learning centers; and

(f) Pilot projects authorized pursuant to section 79-2104.

(2) Each learning community coordinating council shall adopt policies and procedures for granting supplements for extended hours and for providing transportation for parents if any such funds are to be used for such purposes. An example of a pilot project that could receive such funds would be a school designated as Jump Start Center focused on providing intensive literacy services for elementary students with low reading scores.

(3) Each learning community coordinating council shall provide for financial audits of elementary learning centers and pilot projects. A learning community coordinating council shall serve as the recipient of private funds donated to support any elementary learning center or pilot project receiving funds from such learning community coordinating council and shall assure that the use of such private funds is included in the financial audits required pursuant to this section.

Source: Laws 2007, LB641, § 47; Laws 2008, LB1154, § 24; Laws 2010, LB1070, § 18.

79-2116 Elementary learning center; employees; terms and conditions of employment.

Terms and conditions of employment of school employees providing services for an elementary learning center shall be established by the negotiated agreement of the learning community employing such school employees to provide services. For certificated employees as defined in section 79-824, the learning community shall be deemed to be a public employer as defined in section 48-801. Compensation paid to school employees for services provided to a learning community shall be subject to the School Employees Retirement Act unless such employee is employed by a Class V school district, in which case compensation paid such school employee shall be subject to the Class V School Employees Retirement Act.

Source: Laws 2007, LB641, § 48; Laws 2011, LB397, § 18.

Cross References

Class V School Employees Retirement Act, see section 79-978.01.
School Employees Retirement Act, see section 79-901.

79-2117 Learning community coordinating council; achievement subcouncil; membership; meeting; hearing; duties.

Each learning community coordinating council shall have an achievement subcouncil for each subcouncil district. Each achievement subcouncil shall consist of the three voting coordinating council members representing the subcouncil district plus any nonvoting coordinating council members choosing to participate who represent a school district that has territory within the subcouncil district. The voting coordinating council members shall also be the voting members on the achievement subcouncil. Each achievement subcouncil shall meet as necessary but shall meet and conduct a public hearing within its subcouncil district at least once each school year. Each achievement subcouncil shall:

(1) Develop a diversity plan recommendation for the territory in its subcouncil district that will provide educational opportunities which will result in increased diversity in schools in the subcouncil district;

(2) Administer elementary learning centers in cooperation with the elementary learning center executive director;

(3) Review and approve or disapprove of the poverty plans and limited English proficiency plans for the schools located in its subcouncil district;

(4) Receive community input and complaints regarding the learning community and academic achievement in the subcouncil district; and

(5) Hold public hearings at its discretion in its subcouncil district in response to issues raised by residents of the subcouncil district regarding the learning community, a member school district, and academic achievement in the subcouncil district.

Source: Laws 2007, LB641, § 50; Laws 2008, LB1154, § 25; Laws 2009, LB392, § 18.

79-2118 Diversity plan; contents; approval; report.

(1) Each learning community, together with its member school districts, shall develop a diversity plan to provide educational opportunities pursuant to sections 79-769 and 79-2110 in each subcouncil district designed to attract students from diverse backgrounds, which plan may be revised from time to time. The initial diversity plan shall be completed by December 31 of the year the initial learning community coordinating council for the learning community takes office. The goal of the diversity plan shall be to annually increase the socioeconomic diversity of enrollment at each grade level in each school building within the learning community until such enrollment reflects the average socioeconomic diversity of the entire enrollment of the learning community.

(2) Each diversity plan for a learning community shall include specific provisions relating to each subcouncil district within such learning community. The specific provisions relating to each subcouncil district shall be approved by both the achievement subcouncil for such district and by the learning community coordinating council.

(3) The learning community coordinating council shall report electronically to the Education Committee of the Legislature on or before December 1 of each even-numbered year on the diversity and changes in diversity at each grade level in each school building within the learning community and on the academic achievement for different demographic groups in each school building within the learning community.

Source: Laws 2007, LB641, § 51; Laws 2008, LB1154, § 26; Laws 2009, LB392, § 19; Laws 2012, LB782, § 163.
Operative date July 19, 2012.

79-2120 State Department of Education; certification of students qualifying for free or reduced-price lunches.

On or before March 1, 2009, and February 1 of each year thereafter, for purposes of subsection (3) of section 79-238 and sections 79-611 and 79-2110, the State Department of Education shall certify to each learning community and each member school district the average percentage of students qualifying for free or reduced-price lunches in each school building in each member school district and in the aggregate for all school buildings in the learning community based on the most current information available to the department on the immediately preceding January 1. The State Board of Education may adopt and promulgate rules and regulations to carry out this section.

Source: Laws 2009, LB62, § 5.

79-2121 Plan to reduce excessive absenteeism; development and participation.

The superintendents of any school districts that are members of a learning community shall develop and participate in a plan by August 1, 2011, to reduce excessive absenteeism including a process to share information regarding at-risk youth with the goal of improving educational outcomes, providing effective interventions that impact risk factors, and reducing unnecessary penetration deeper into the juvenile justice system. For purposes of this section, at-risk youth means children who are under the supervision of the Office of Probation Administration, are committed to the care, custody, or supervision of the Department of Health and Human Services, are otherwise involved in the juvenile justice system, or have been absent from school for more than five days per quarter or the hourly equivalent except when excused by school authorities or when a documented illness makes attendance impossible or impracticable.

Source: Laws 2011, LB463, § 22.

ARTICLE 22

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

Section

79-2201 Compact; contents.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Interstate Compact on Educational Opportunity for Military Children

ARTICLE I

PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district or variations in entrance or age requirements.

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

D. Facilitating the on-time graduation of children of military families.

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

G. Promoting coordination between this compact and other compacts affecting military children.

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. ''Active duty'' means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211.

B. ''Children of military families'' means school-aged children, enrolled in kindergarten through twelfth grade, in the household of an active duty member.

C. ''Compact commissioner'' means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. ''Deployment'' means the period one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

E. ''Education records'' or ''educational records'' means those official records, files, and data directly related to a student and maintained by the school

or local education agency, including, but not limited to, records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. ''Extracurricular activities'' means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. ''Interstate Commission on Educational Opportunity for Military Children'' means the commission that is created under Article IX of this compact, which is generally referred to as Interstate Commission.

H. ''Local education agency'' means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

I. ''Member state'' means a state that has enacted this compact.

J. ''Military installation'' means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other United States territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. ''Nonmember state'' means a state that has not enacted this compact.

L. ''Receiving state'' means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. ''Rule'' means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the Interstate Commission, and has the force and effect of statutory law in a member state, and includes the amendment, repeal, or suspension of an existing rule.

N. ''Sending state'' means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. ''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other United States territory.

P. ''Student'' means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

Q. ''Transition'' means (1) the formal and physical process of transferring from school to school or (2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. ''Uniformed services'' means the Army, Navy, Air Force, Marine Corps, Coast Guard as well as the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services.

S. ''Veteran'' means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

ARTICLE III

APPLICABILITY

A. Except as otherwise provided in Section B, this compact shall apply to the children of:

1. active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. 1209 and 1211;

2. members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

3. members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. inactive members of the National Guard and military reserves;

2. members of the uniformed services now retired, except as provided in Section A;

3. veterans of the uniformed services, except as provided in Section A; and

4. other United States Department of Defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

ARTICLE IV

EDUCATIONAL RECORDS AND ENROLLMENT

A. Unofficial or ''hand-carried'' education records -- In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records and transcripts -- Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

C. Immunizations -- Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the Interstate Commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the Interstate Commission.

D. Kindergarten and first grade entrance age -- Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on their validated level from an accredited school in the sending state.

ARTICLE V

PLACEMENT AND ATTENDANCE

A. Course placement -- When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school or educational assessments conducted at the school in the sending state if the courses are offered. Course placement includes, but is not limited to, Honors, International Baccalaureate, Advanced Placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. Educational program placement -- The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to: (1) gifted and talented programs; and (2) English as a second language. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services -- (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program; and (2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 to 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II Plan, to provide the student with equal access to education. This does not preclude the school in the receiving state

from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility -- Local education agency administrative officials shall have flexibility in waiving course or program prerequisites, or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities -- A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI

ELIGIBILITY

A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation -- State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

ARTICLE VII

GRADUATION

In order to facilitate the on-time graduation of children of military families states and local education agencies shall incorporate the following procedures:

A. Waiver requirements -- Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams -- States shall accept: (1) exit or end-of-course exams required for graduation from the sending state; (2) national norm-referenced achievement tests; or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be

accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of Article VII, Section C shall apply.

C. Transfers during senior year -- Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with Sections A and B of this Article.

ARTICLE VIII

STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own state council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the Governor or as otherwise determined by each member state.

D. The compact commissioner and the military family education liaison designated herein shall be ex-officio members of the state council, unless either is already a full voting member of the state council.

ARTICLE IX

INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the ''Interstate Commission on Educational Opportunity for Military Children.'' The activities of the Interstate Commission are the formation of public policy and are a discretionary state function. The Interstate Commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

B. Consist of one Interstate Commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the Interstate Commission, the Governor or state council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include, but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

E. Establish an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The United States Department of Defense, shall serve as an ex officio, nonvoting member of the executive committee.

F. Establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

H. Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

I. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

J. Create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the Interstate Commission or any member state.

ARTICLE X

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

A. To provide for dispute resolution among member states.

B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact.

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions.

D. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including, but not limited to, the use of judicial process.

E. To establish and maintain offices which shall be located within one or more of the member states.

F. To purchase and maintain insurance and bonds.

G. To borrow, accept, hire, or contract for services of personnel.

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, Section E, which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder.

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel.

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it.

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed.

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

M. To establish a budget and make expenditures.

N. To adopt a seal and bylaws governing the management and operation of the Interstate Commission.

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission.

P. To coordinate education, training, and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity.

Q. To establish uniform standards for the reporting, collecting, and exchanging of data.

R. To maintain corporate books and records in accordance with the bylaws.

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact.

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

ARTICLE XI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the Interstate Commission;

2. Establishing an executive committee and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

4. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;

6. Providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. Providing ''start up'' rules for initial administration of the compact.

B. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

C. Executive Committee, Officers, and Personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

a. Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

b. Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

2. The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, but shall not be a member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

D. The Interstate Commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or

liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

ARTICLE XII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rulemaking Authority -- The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

B. Rulemaking Procedure -- Rules shall be made pursuant to a rulemaking process that substantially conforms to the ''Model State Administrative Procedure Act'' of 1981, Uniform Laws Annotated, Vol. 15, p. 1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

C. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success.

The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

ARTICLE XIII

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the Interstate Commission.

3. The Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission shall render a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

B. Default, Technical Assistance, Suspension, and Termination -- If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

1. Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default.

2. Provide remedial training and specific technical assistance regarding the default.

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

5. The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of

suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

6. The Interstate Commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

7. The defaulting state may appeal the action of the Interstate Commission by petitioning the United States District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

C. Dispute Resolution

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

D. Enforcement

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission, may by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.

ARTICLE XIV

FINANCING OF THE INTERSTATE COMMISSION

A. The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

C. The Interstate Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV

MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007. Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

C. The Interstate Commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI

WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Dissolution of Compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII

SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

2. All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state.

Source: Laws 2011, LB575, § 1.

79-2202 Terms, defined.

For purposes of the Interstate Compact on Educational Opportunity for Military Children and sections 79-2202 to 79-2206:

(1) Council means the State Council on Educational Opportunity for Military Children;

(2) Department means the State Department of Education;

(3) Local education agency means a school district as defined in section 79-101; and

(4) State superintendent of education means the Commissioner of Education.

Source: Laws 2011, LB575, § 2.

79-2203 Department; duties; staff support.

The department shall oversee and provide coordination for the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children. The department shall provide staff support for the council created in section 79-2204.

Source: Laws 2011, LB575, § 3.

79-2204 State Council on Educational Opportunity for Military Children; created; members; terms; expenses; duties.

(1) The State Council on Educational Opportunity for Military Children is created within the department. The council shall consist of:

(a) The following ex officio members:

(i) The Commissioner of Education;

(ii) The chairperson of the Education Committee of the Legislature, who shall serve as a nonvoting member of the council;

(iii) The compact commissioner appointed pursuant to section 79-2205; and

(iv) The military family education liaison, who shall serve as a member of the council after his or her appointment pursuant to subsection (3) of this section; and

(b) The following members appointed by the State Board of Education:

(i) The superintendent of a school district that has a high concentration of children of military families; and

(ii) A representative of a military installation located in this state.

(2) The members of the council appointed by the State Board of Education shall serve three-year terms. Vacancies in the council shall be filled in the same manner as the initial appointments. The members of the council shall be reimbursed for their actual and necessary expenses as provided in sections 81-1174 to 81-1177.

(3) The council shall have the following duties:

(a) To advise the department with regard to the state's participation in and compliance with the Interstate Compact on Educational Opportunity for Military Children; and

(b) To appoint a military family education liaison to assist families and the state in implementing the compact.

Source: Laws 2011, LB575, § 4.

79-2205 Compact commissioner; duties.

The deputy commissioner of education shall serve as the compact commissioner and shall be responsible for administering the state's participation in the Interstate Compact on Educational Opportunity for Military Children.

Source: Laws 2011, LB575, § 5.

79-2206 Costs of administering compact.

The department shall distribute amounts from the Education Innovation Fund pursuant to section 9-812 and may accept a devise, donation, or bequest to pay for any or all of the cost of administering the Interstate Compact on

Educational Opportunity for Military Children under the authority given to the State Board of Education under section 79-318.

Source: Laws 2011, LB575, § 6.